

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.5

MEETING DATE:

Tuesday, November 8, 2016

2749
FROM : Riverside University Health System and
ECONOMIC DEVELOPMENT AGENCY (EDA):

SUBJECT: ECONOMIC DEVELOPMENT AGENCY (EDA) AND RIVERSIDE UNIVERSITY
HEALTH SYSTEM: Subordination, Non-Disturbance and Attornment Agreement,
Riverside University Health System Care Clinic, Corona , District 2 [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. That the Board of Supervisors approve the attached Subordination, Non-Disturbance,
and Attornment Agreement and authorize the Chairman of the Board to execute the
same on behalf of the County.

Policy

Robert Field

Robert Field, Assistant County Director of Economic Development

10/24/2016

Jennifer Cruikshank

Jennifer Cruikshank

10/26/2016

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	
			2016/17	

C.E.O. RECOMMENDATION: Approved

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: November 8, 2016
xc: EDA, RUHS

Kecia Harper-Ihem
Clerk of the Board
By *[Signature]*
Deputy

3-5

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

BACKGROUND:

Summary

On February 9, 2016 the Board of Supervisors approved minute order 3-21 to provide approval for EDA Real Estate to identify an existing building or to engage in a build to suit leased facility project that would meet the space requirements for the Riverside University Health System Care Clinic (RUHS) in Corona for establishment of a new RUHS Care Clinic.

On September 13, 2016 the Board of Supervisors approved minute order 3-12, and the County entered into a 15 year Lease with Corona Medical Arts Plaza, LLC (Lessor). The Lease provides for the design and construction of a new 45,204 square foot integrated Care Clinic facility. To facilitate the construction and financing of this property, the Lender has requested the execution of this agreement by the County and Lessor.

BACKGROUND:

Summary (continued)

By execution of this agreement, the County agrees to subordinate its Leasehold Estate to the liens in favor of the Lender which shall have no effect on prospective rights and obligations of the County or the Lender as set forth in the lease. In addition, in the event the Lender or its successor becomes the Lessor, the County will recognize (attorn) the Lender or its successor as Lessor and the County's rights and obligations shall remain the same (not disturbed) as set forth in the lease for the remainder of the lease term.

Impact on Residents and Businesses

This RUHS Care Clinic will provide an appropriately located facility that will serve the Family Medicine and Primary Health Care needs of all the residents within the region. The RUHS Care Clinic is conveniently located close to public transportation for ease of access.

Contract History and Price Reasonableness

The attached Subordination, Non-Disturbance and Attornment Agreement supports the original lease and does not require modification of the financial terms of the contract.

Attachments:

Subordination, Non-Disturbance and Attornment Agreement

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

RF:JWW:VC:VY:CE:ra CR042 18.488 13392
MinuteTraq# 2749

RECORDED AT REQUEST OF AND
WHEN RECORDED RETURN TO:

Greenberg Traurig, LLP

77 West Wacker Drive

Chicago, IL 60601

Attention: David J. LaSota

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance, and Attornment Agreement ("**Agreement**") is made as of November 2, 2016 among Wells Fargo Bank Northwest, National Association, as Trustee for the registered certificate holders, from time to time, of the CTL Pass-Through Trust, Series 2016 (Corona, Riverside County) ("**Lender**") having its address for notification at 299 S. Main Street, 5th Floor, Salt Lake City, Utah 84111 and the County of Riverside ("**County**"), by its authorized representative the Assistant County Executive Officer/EDA having its address for notification at 3403 Tenth Street, Suite 400, Riverside, California 92501 and Corona Medical Arts Plaza, LLC, a California limited liability company ("**Lessor**") having its address for notification at 650 Town Center Drive, Suite #890, Costa Mesa, California 92626.

Recitals:

A. Lender has agreed to make a loan to Lessor, to be secured by that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated _____, 2016, and recorded on _____, _____, as Instrument No. _____, in the Official Records of Riverside County, California (together with all amendments, increases, renewals, modifications, consolidations, replacements, substitutions, and extensions, either current or future, referred to hereafter as the "**Mortgage**") encumbering Lessor's ownership interest in real property located in Corona, Riverside County, State of California. The legal description of the encumbered real property (the "**Mortgage Premises**") is set forth in Exhibit A, attached to this Agreement. The Mortgage, together with the note or notes, the loan agreement(s), and other documents executed in connection with it are hereafter collectively referred to as the "**Loan Documents**".

B. On September 13, 2016, County and Lessor entered into that certain Lease for the property at 2813 South Main Street, Corona, California (the "**Lease**"). The Lease creates a leasehold estate in favor of County for space (the "**Premises**") located on the Mortgage Premises.

C. In connection with execution of the Mortgage, Lessor also executed and delivered to Lender an Assignment of Leases and Rents dated _____, 2016, and recorded on _____, _____, as Instrument No. _____, in the Official Records of the County Recorder of Riverside County, California concerning all rents, issues and profits from the Mortgage Premises. This document, together with all amendments, renewals, modifications

consolidations, replacements, substitutions and extensions, is hereafter referred to as the **"Assignment of Rents."**

To confirm their understanding concerning the legal effect of the Mortgage and the Lease, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, County and Lessor, intending to be legally bound, agree and covenant as follows:

1. **Representations and Warranties.** County warrants and represents that the Lease is in full force and effect and that, as of the date of this Agreement and to the best of County's knowledge, there is no default under the Lease by Lessor or County.

2. **County Subordination.**

2.1. Subject to the provisions of Section 3, the Loan Documents shall constitute a lien or charge on the Mortgage Premises that is prior and superior to the Lease, to the leasehold estate created by it, and to all rights and privileges of County under it; by this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of County under it, is subordinated, at all times, to the lien or charge of the Loan Documents in favor of Lender.

2.2. By executing this Agreement, County subordinates the Lease and County's interest under it to the lien right and security title, and terms of the Loan Documents, and to all advances or payments made, or to be made, under any Loan Document.

3. **Non-disturbance.**

3.1. Lender consents to the Lease.

3.2. Despite County's subordination under Section 2, County's peaceful and quiet possession of the Premises shall not be disturbed and County's rights and privileges under the Lease, including its right to extend the term of the Lease, its right of first refusal to lease the property after expiration of the original term and any extensions thereof, shall not be diminished by Lender's exercise of its rights or remedies under the Loan Documents, provided that County is not in default under this Lease.

3.3. If (a) Lender shall acquire title to, and possession of, the Premises on foreclosure in an action in which Lender shall have been required to name County as a party defendant, and (b) County is not in default under the Lease beyond any applicable cure or grace periods, has not surrendered, vacated or abandoned the Premises and remains in actual possession of the Premises at the time Lender shall so acquire title to, and possession of, the Premises, Lender and County shall enter into a new lease on the same terms and conditions as were contained in the Lease, except that:

(a) The obligations and liabilities of Lender under a new lease shall be subject to the terms and conditions of this Agreement (including the provisions of Sections 5-7);

(b) Lender shall have no obligations or liabilities to County under any such new lease beyond those of Lessor as were contained in the Lease; and

(c) The expiration date of any new lease shall coincide with the original expiration date of the Lease.

3.4. County shall not be named or joined in any foreclosure, trustee's sale, or other proceeding to enforce the Loan Documents unless such joinder shall be legally required to perfect the foreclosure, trustee's sale, or other proceeding.

4. **Attornment.**

4.1. If Lender shall succeed to Lessor's interest in the Mortgage Premises by foreclosure of the Mortgage, by deed in lieu of foreclosure, or in any other manner, County shall be bound to Lender under all the terms, covenants and conditions of the Lease for the balance of its term with the same force and effect, as if Lender were the Lessor under the Lease. County shall be deemed to have full and complete attornment to, and to have established direct privity between County and:

- (a) Lender when in possession of the Mortgage Premises;
- (b) a receiver appointed in any action or proceeding to foreclose the Mortgage;
- (c) any party acquiring title to the Mortgage Premises; or
- (d) any successor to Lessor.

4.2. County's attornment is self-operating, and it shall continue to be effective without execution of any further instrument by any of the parties to this Agreement or the Lease. Lender agrees to give County written notice if Lender has succeeded to the interest of the Lessor under the Lease. The terms of the Lease are incorporated into this Agreement by reference.

4.3. If the interests of Lessor under the Lease are transferred by foreclosure of the Mortgage, deed in lieu of foreclosure, or otherwise, to a party other than Lender (Transferee), in consideration of, and as condition precedent to, County's agreement to attorn to any such Transferee, Transferee shall be deemed to have assumed all terms, covenants, and conditions of the Lease to be observed or performed by Lessor from the date on which the Transferee succeeds to Lessor's interests under the Lease.

5. **Lender as Lessor.** If Lender shall succeed to the interest of Lessor under the Lease, Lender shall be bound to County under all the terms, covenants and conditions of the Lease, and County shall, from the date of Lender's succession to the Lessor's interest under the Lease, have the same remedies against Lender for breach of the Lease that County would have had under the Lease against Lessor; provided, however, that despite anything to the contrary in this Agreement or the Lease, Lender, as successor to the Lessor's interest, shall not be:

- (a) liable for any act or omission of the Lessor;

(b) subject to any offsets or defenses expressly permitted under the Lease, including abatement rights which County might have had against Lessor;

(c) bound by any rent or additional rent that County might have paid for more than one month in advance to Lessor; or

(d) bound by an amendment or modification of the Lease.

(e) subject to the County's right to assert continuing claims, such as material interference with the County's use and enjoyment of the premises, against the Lender.

6. **Right To Cure.** County agrees that, before County exercises any of its rights or remedies under the Lease, Lender shall have the right, but not the obligation, to cure the default within the same time given Lessor in the lease to cure the default, plus an additional thirty (30) days or ten (10) days in the case of defaults in the payment of money from Lessor to County. County agrees that the cure period shall be extended by the time necessary for Lender to commence foreclosure proceedings and to obtain possession of the Mortgage Premises, provided that:

(a) Lender shall notify County of Lenders intent to effect its remedy;

(b) Lender initiates immediate steps to foreclose on or to recover possession of the Mortgage Premises;

(c) Lender initiates immediate legal proceedings to appoint a receiver for the Mortgage Premises or to foreclose on or recover possession of the Mortgage Premises within the thirty (30) day period; and

(d) Lender prosecutes such proceedings and remedies with due diligence and continuity to completion.

7. **Assignment of Rents.** If Lessor defaults in its performance of the terms of the Loan Documents, County agrees to recognize the Assignment of Rents made by Lessor to Lender and shall pay to Lender, as assignee, from the time Lender gives County notice that Lessor is in default under the terms of the Loan Documents, the rents under the Lease, but only those rents that are due or that become due under the terms of the Lease after notice by Lender. Payments of rents to Lender by County under the assignment of rents and Lessor's default shall continue until the first of the following occurs:

(a) No further rent is due or payable under the Lease;

(b) Lender gives County notice that the Lessor's default under the Loan Documents has been cured and instructs County that the rents shall thereafter be payable to Lessor;

(c) The lien of the Mortgage has been foreclosed and the purchaser at the foreclosure sale (whether Lender or a Transferee) gives County notice of the foreclosure sale. On giving notice, the purchaser shall succeed to Lessors interests under the Lease, after which time

the rents and other benefits due Lessor under the Lease shall be payable to the purchaser as the owner of the Mortgage Premises.

8. **County's Reliance.** When complying with the provisions of Section 7, County shall be entitled to rely on the notices given by Lender under Section 7, and Lessor agrees to release, relieve, and protect County from and against any and all loss, claim, damage, or liability (including reasonable attorney's fees) arising out of County's compliance with such notice.

Lessor acknowledges and agrees that County shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with Section 7 to the same extent as if such rents were paid directly to Lessor. Any dispute between Lender (or Lender's Transferee) and Lessor as to the existence of a default by Lessor under the terms of the Mortgage, the extent or nature of such default, or Lenders right to foreclosure of the Mortgage, shall be dealt with and adjusted solely between Lender (or Transferee) and Lessor, and County shall not be made a party to any such dispute (unless required by law).

9. **Lender's Status.** Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the Lessor under the Lease unless and until it obtains title to the Mortgage Premises by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Mortgage Premises under the terms of the Loan Documents.

10. **Cancellation of Lease.** County agrees that it will not cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term or as provided in the Lease, and then for only such period that lender holds title to the Mortgaged Premises.

11. **Special Covenants.** Despite anything in this Agreement or the Lease to the contrary, if Lender acquires title to the Mortgage Premises, County agrees that: Lender shall have the right at any time in connection with the sale or other transfer of the Mortgage Premises to assign the Lease or Lender's rights under it to any person or entity, and that Lender, its officers, directors, shareholders, agents, and employees shall be released from any further liability under the Lease arising after the date of such transfer, provided that the assignee of Lender's interest assumes Lender's obligations under the Lease, in writing, from the date of such transfer.

12. **Transferee's Liability (Non-Recourse).** If a Transferee acquires title to the Mortgage Premises:

(a) County's recourse against Transferee for default under the Lease shall be limited to the Mortgage Premises or any sale, insurance, or condemnation proceeds from the Mortgage Premises;

(b) County shall look exclusively to Transferee's interests described in (a) above for the payment and discharge of any obligations imposed on Transferee under this Agreement or the Lease; and

(i) Transferee, its officers, directors, shareholders, agents, and employees are released and relieved of any personal liability under the Lease;

(ii) County shall look solely to the interests of Transferee set forth in (a) above, and

(iii) County shall not collect or attempt to collect any judgment out of any other assets, or from any general or limited partners or shareholders of Transferee.

13. **Transferee's Performance Obligations.** Subject to the limitations provided in Sections 11 and 12, if a Transferee acquires title to the Mortgage Premises, the Transferee shall perform and recognize all County improvement allowance provisions, all rent-free and rent rebate provisions, and all options and rights of offer, in addition to Lessor's other obligations under the Lease.

14. **Notice.** All notices required by this Agreement shall be given in writing and shall be deemed to have been duly given for all purposes when:

(a) deposited in the United States mail (by registered or certified mail, return receipt requested, postage prepaid); or

(b) deposited with a nationally recognized overnight delivery service such as Federal Express or Airborne.

Each notice must be directed to the party to receive it at its address stated below or at such other address as may be substituted by notice given as provided in this section.

The addresses are:

Wells Fargo Bank Northwest, N.A., as Trustee
299 S. Main Street, 5th Floor
MAC: U1228-051
Salt Lake City, Utah 84111
Attn: Corporate Trust Services
Telephone Number: (801) 246-6000

County:

Economic Development Agency
3403 Tenth Street, Suite 400
Riverside, CA 92501
Attention: Deputy Director of Real Estate

If to Company:

650 Town Center Drive, Suite #890
Costa Mesa, California 92626
Attention: Brandon Sudweeks and Richard Boureston

Copies of notices sent to the parties' attorneys or other parties are courtesy copies, and failure to provide such copies shall not affect the effectiveness of a notice given hereunder.

15. Miscellaneous Provisions.

15.1. This Agreement may not be modified orally; it may be modified only by an agreement in writing signed by the parties or their successors-in-interest. This Agreement shall inure to the benefit of and bind the parties and their successors and assignees.

15.2. The captions contained in this Agreement are for convenience only and in no way limit or alter the terms and conditions of the Agreement.

15.3. This Agreement has been executed under and shall be construed, governed, and enforced, in accordance with the laws of the State of California except to the extent that California law is preempted by the U.S. federal law. The invalidity or unenforceability of one or more provisions of this Agreement does not affect the validity or enforceability of any other provisions.

15.4. This Agreement has been executed in duplicate. Lender, County and Lessor agree that one (1) copy of the Agreement will be recorded.

15.5. This Agreement shall be the entire and only agreement concerning subordination of the Lease and the leasehold estate created by it, together with all rights and privileges of County under it, to the lien or charge of the Loan Documents and shall supersede and cancel, to the extent that it would affect priority between the Lease and the Loan Documents, any previous subordination agreements, including provisions, if any, contained in the Lease that provide for the subordination of the Lease and the leasehold estate created by it to a deed of trust or mortgage. This Agreement supersedes any inconsistent provision of the Lease.

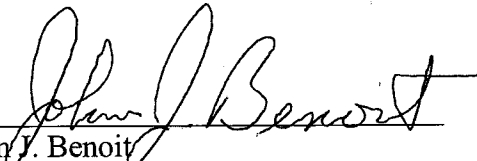
15.6. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which copies, taken together, shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the copies and attached to a single copy of this Agreement to physically form one original document, which may be recorded without an attached copy of the Lease.

15.7. If any legal action or proceeding is commenced to interpret or enforce the terms of this Agreement or obligations arising out of it, or to recover damages for the breach of the Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the non-prevailing party or parties all reasonable attorneys' fees, costs, and expenses it has incurred.

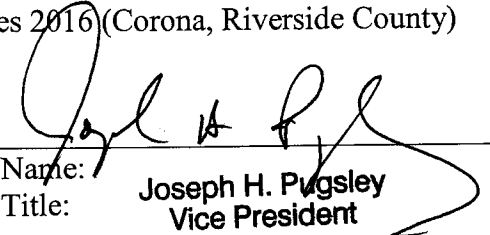
15.8. Word Usage. Unless the context clearly requires otherwise, (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting.

Executed on the date first above written.

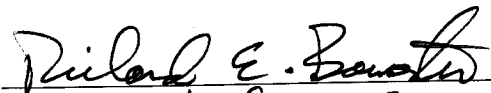
COUNTY OF RIVERSIDE:

By: 
John J. Benoit
Chairman, Board of Supervisors

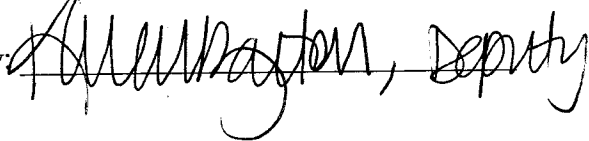
Wells Fargo Bank Northwest, N.A., as
Trustee of the CTL Pass-Through Trust,
Series 2016 (Corona, Riverside County)

By: 
Name: Joseph H. Pugsley
Title: Vice President

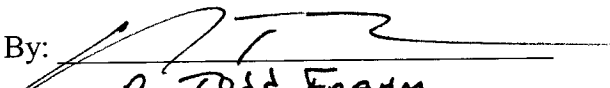
Corona Medical Arts Plaza, LLC, a
California limited liability company

By: 
Name: Richard E. Bourastou
Title: Managing Member

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: , Deputy

APPROVED AS TO FORM:
Gregory P. Priamos, County Counsel

By: 
R. Todd Frazee
Deputy County Counsel

STATE OF UTAH)
):ss
COUNTY OF SALT LAKE)

On October 26, 2016, personally appeared before me Joseph H. Pugsley on who being by me duly sworn did say, for himself, that he the said Joseph H. Pugsley is the Vice President of Wells Fargo Bank Northwest, National Association and that the within and foregoing instrument was signed in behalf of said association by authority of a resolution of its Board of Directors, and said Joseph H. Pugsley duly acknowledged to me that said association executed the same.



Notary Public

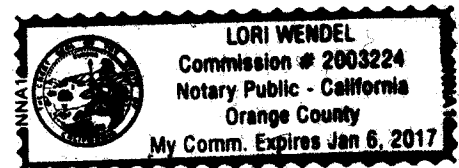


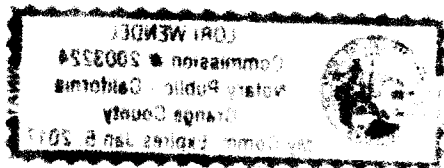
STATE OF CALIFORNIA)
)
)SS.
COUNTY OF ~~RIVERSIDE~~)
 of Orange

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Forwender* (Seal)





STATE OF CALIFORNIA)
)
)SS.
COUNTY OF RIVERSIDE)

I certify under Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Signature _____ (Seal)