

RECORDED AT REQUEST OF AND WHEN
RECORDED RETURN TO:

Attention: _____

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-disturbance, and Attornment Agreement ("Agreement") is made as of _____ between _____ (Lender), a _____, having its principal place of business at _____, _____, _____ 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.

Recitals:

A. Lender has agreed to make a loan to _____, a _____ (Lessor), to be secured by a deed of trust, dated _____, _____, and recorded on _____, _____, as Instrument No. _____, in the Official Records of _____ 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 _____, _____, 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 promissory 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 _____, _____, County and Lessor entered into a lease for the Mortgage Premises (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, Rents and Profits dated _____, _____, and recorded on _____, _____, as Instrument No. _____, in the Official Records of the County Recorder of _____, 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 and County, 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 early termination, 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 has not canceled or terminated the Lease, nor surrendered, or abandoned the Premises.

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 canceled or terminated the Lease, nor 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 be:

- (a) liable for any act or omission of the Lessor; provided that the Lender may elect either to perform the pre-existing obligation or to permit the County to perform it and to recover the cost out of Rent;
- (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 even though

made without Lender's written consent and whether or not the amendment or modification materially adversely affect any right of Lessor under 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 Lender's 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 Lessor's 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.

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 Lender's 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.

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:

Lender: _____

Attention: _____

Copy to: _____

Attention: _____

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

Copy to: _____

Attention: _____

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 and County 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.

Lender:

a _____

By: _____ [signature]

Its: _____ [state title]

COUNTY OF RIVERSIDE:

By: _____
Marion Ashley
Chairman, Board of Supervisors

ATTEST:
Kecia Harper-Ihem
Clerk to the Board

By: _____

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

By: _____
Deputy County Counsel

Accepted and Agreed To:

Lessor:

_____,
a _____

By: ___[signature]_____
Its: ___[state title]_____

[Exhibit A: Legal description of Mortgage Premises]

EXHIBIT I

DISPUTE RESOLUTION PROCEDURE

1. Lessor and County agree to follow the dispute resolution process set forth below in this Exhibit I to resolve disputes pertaining to Sections 8.2, 10.3.3, 10.4.3, and 17.3 of the Lease.
2. In the event that a dispute arises between Lessor and County as set forth in Section 1 of this Exhibit I, the Parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of any services or repairs that must be performed, or payments that must be made, are not delayed. If, however, the Parties are unable to resolve the dispute within three (3) business days, either Party may, by delivering written notice to the other Party, refer the matter to a dispute resolution mediator as set forth in Section 3 below.
3. In the event a dispute is not resolved in accordance with Section 2 of this Exhibit I, the Parties agree to participate in neutral, non-binding mediation prior to the filing of litigation or any other legal action or any other proceeding before a trier of fact. Lessor or County shall provide thirty (30) days written notice to the other Party of the desire to mediate. The mediation shall be conducted in Riverside County, California. Lessor and County shall choose a mutually agreeable mediator within fifteen (15) days of notice of the desire to mediate and shall thereafter attend the mediation in good faith. The mediator chosen must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Mediation fees will be divided evenly between parties.

The Parties recognize that mediation proceedings are settlement negotiations, and that all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any arbitration or court proceeding, to the extent allowed by applicable state law. The Parties agree to not subpoena or otherwise require the mediator to testify or produce records, notes or work product in any future proceedings, and no recording or stenographic record will be made of the mediation session. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation session. In the event the Parties do reach a settlement agreement, the terms of that settlement will be admissible in any court or arbitration proceedings required to enforce it, unless the Parties agree otherwise. Information disclosed to the mediator in a private caucus shall remain confidential unless the Party authorizes disclosure.

4. If mediation is unsuccessful, either the Lessor or the County may file litigation or any other legal action or proceeding pursuant to California law.