

**ATTACHMENT N 6**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

[Orange County Housing Authority]  
[County of Orange  
OC Community Resources/  
Housing & Community Development]  
1501 E. St. Andrew Place, 1st Floor,  
Santa Ana, CA 92705  
Attn: [Executive] Director

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**ASSIGNMENT OF LESSOR'S INTEREST IN LEASES, RENTS AND PROFITS**

THIS ASSIGNMENT (“**Assignment**”) is dated for reference purposes only as of [MONTH] \_\_\_\_, 20[ ] and is made by the [ORANGE COUNTY HOUSING AUTHORITY, a public corporation created pursuant to California Health and Safety Code section 34200 *et. seq.*, acting solely as the Housing Successor Agency to the Orange County Development Agency][COUNTY OF ORANGE, a political subdivision of the state of California], (the “**County**”) and [XXX] [BORROWER], (the “**Borrower**”).

**RECITALS**

A. Borrower proposes to borrow from County the principal sum of the Loan as such term is defined in that separate Loan Agreement between Borrower and County of even date herewith. The Loan is evidenced by a Promissory Note (“**Note**”) executed by Borrower payable to County in the principal amount of the Loan and is secured by, among other things, a Deed of Trust, Assignment of Rents and Security Agreement (“**Deed of Trust**”), encumbering certain real property and improvements currently on such property or which are to be constructed thereon, described in Exhibit "A" attached hereto and incorporated herein by this reference (“**Property**”), by the security interests granted under this Assignment and by other security instruments specified in the Note, Deed of Trust or other Loan Documents entered into relating to the Loan. Unless otherwise noted, all defined terms used in this Assignment shall have the same meaning ascribed to them under said Loan Agreement.

B. Borrower has entered into and will hereafter be entering, into Leases, as defined hereafter, regarding the Property.

C. The County Note and Deed of Trust, as well as all rights interests and remedies with respect to Leases, Rents and other collateral described in this Assignment shall at all times be subject and subordinate to the senior collateral rights and interest in such items as provided for in the Permanent Deed of Trust (as defined in the Loan Agreement).

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**NOW, THEREFORE**, in consideration of County's agreement to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower covenants and agrees as follows:

1. **Assignment**. Borrower absolutely and unconditionally grants and assigns to County as of the date hereof:

(a) all of Borrower's right, title and interest in, to and under all leases, licenses and other rental agreements of any kind relating to the use or occupancy of the Property and any portion thereof, which are currently in effect for the Property or are entered into on or after the date of this Assignment (collectively referred to as "**Leases**" and each individually as a "**Lease**"). The Leases shall include (i) all guarantees of and security for lessees' performance under any and all Leases and (ii) all amendments, extensions, renewals or modifications thereto which are permitted hereunder; and

(b) all rents (and payments in lieu of rents), and tenant expense reimbursements at any time payable under any and all Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Borrower under any and all Leases (collectively, "**Rent**").

2. **Obligations Secured**. This Assignment secures the payment and performance of all present and future obligations of Borrower to County under the Note, the Deed of Trust, any Loan Documents that are executed by Borrower and under any other agreement, which recites that, it is secured hereby.

3. **License**. This Assignment shall constitute a present and absolute assignment to County. However, Borrower shall have the right under a license (the "**License**") granted hereby to collect and use at the time of, but not prior to, the date provided for payment, all of the Rent and to retain and use the same in accordance with the terms and provisions of the Note, Deed of Trust, and other Loan Documents; provided, that such license shall be revoked automatically upon the occurrence of a Default as defined below. County shall not revoke the License prior to an Event of Default.

4. **Covenants**. Borrower covenants and agrees as follows:

(a) at Borrower's sole cost to: (i) perform the duties and obligations of lessor under the Leases and to enforce performance by the lessees of the obligations contained in the Leases; (ii) enforce all remedies available to Borrower in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases in the ordinary course of Borrower's business; (iii) give County prompt notice of any material default by Borrower which occurs with respect to any of the Leases, and complete copies of any notice of default; (iv)

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exercise Borrower's best efforts to keep all portions of the Property designated as lease property leased at all times; (v) upon County's request, deliver to County a fully executed photocopy and a counterpart original of each and every Lease; (vi) execute and record such additional assignments of any Lease, in form and substance reasonably acceptable to County, as County may request; and (vii) execute and deliver such additional documents and instruments as County may reasonably request from time to time to carry out the purpose of this Assignment; and

(b) except with County's prior written consent, which consent will not be arbitrarily withheld, not to either orally or in writing: (i) enter into any Leases after the date of this Assignment which are not in compliance with the applicable provisions of the Loan Agreement, Regulatory Agreement and other Loan Documents; (ii) execute any other assignment relating to any of the Leases or collect the rent in advance, other than to collect one (1) month in advance of the time when it becomes due; (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge any lessee from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee of the Leases; or (v) do or permit anything to be done to impair the validity or enforceability of any of the Leases. Any such attempted action in violation of the provisions of this Paragraph 4(b) shall be null and void.

(c) to duly observe, perform, and discharge the obligations, terms, covenants, conditions and warranties of the Loan Agreement, Note and Deed of Trust or other Loan Documents entered into relating to the Loan.

**5. Representations and Warranties.** Borrower hereby represents and warrants

(a) Borrower is and will be the sole owner of lessor's interest in each Lease;

(b) each Lease, when executed and delivered, will be valid and enforceable in accordance with its terms, will constitute the entire agreement between the lessee named therein and Borrower, and there will be no amendments, written or oral, to such agreements except in the ordinary course of business, without County's prior written consent; and

(c) none of the lessor's interests in, and no Rent under, any of the Leases has been transferred or assigned except as expressly provided for in the Loan Agreement; and

(d) Borrower is the owner of the Property, and has good title to the Leases, any contracts of sale that exist or may be made relating to the sale of a portion of the Property, and any Rent, money, rights or claims under the Leases or contracts of sale, and no other person firm, or corporation has any right, title, or interest in them.

**6. Default.** "Default" shall mean (i) the failure to perform any obligation hereunder or the failure to be true of any representation or warranty of Borrower herein, or (ii) the existence of any "Event of Default" as defined in and under the Note, Deed of Trust, or any of the other Loan Documents. Any breach or Default by Borrower under this Assignment shall constitute an Event of Default under the Note, Deed of Trust, and related Loan Documents.

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7. **Remedies.** In addition to the remedies contained in the Note, Deed of Trust, and other Loan Documents, County shall have the following rights and remedies upon Default:

(a) to demand, receive and enforce all Rent and other amounts arising or accruing under the Leases, and any and all amendments to each Lease, or from the Property;

(b) to collect, sue for, settle, compromise and give acquittances or releases for all of the rent and pursue all remedies for the enforcement of the Leases and Borrower's rights in and under the Leases as Borrower might have pursued, but for this Assignment;

(c) to take possession of the Property, and have, hold, manage, lease and operate the same on such terms and for such period of time as County may deem proper and, either with or without taking possession of the Property, in its own name, make from time to time all alterations, renovations, repairs or replacements thereto as County deems proper.

County may exercise the foregoing rights and remedies (i) at Borrower's cost and expense, and in the name of Borrower or County as the latter may determine in its sole discretion; (ii) prior to, simultaneously with or subsequent to the exercise of any rights or remedies under the Note, Deed of Trust, or any of the other Loan Documents; (iii) either in person or by its agent; (iv) with or without bringing any action or proceeding or having a receiver appointed; (v) without regard to the adequacy of any security held by County for the obligations secured hereby; (vi) without notice or remand on Borrower except as otherwise provided herein; and (vii) without releasing Borrower from any obligations under this Assignment, the Note, Deed of Trust, or any of the other Loan Documents.

8. **Tenants Entitled to Rely on County's Requests.** Borrower hereby irrevocably authorizes and directs each tenant and any successor to the interest of each tenant under the Leases, upon receipt of any written request of County stating that a Default or Event of Default exists in the payments due under, or in the performance of any of the terms, covenants or conditions of, this Assignment, the Note, the Deed of Trust, or any other Loan Document to pay to County the rents, royalties, issues and profits due and to become due under the Leases. Borrower agrees that such tenant shall have the right to rely upon any such statement and request by County that such tenant shall pay such rents, royalties, issues and profits to County without any obligation or right to inquire as to whether such Default or Event of Default actually exists notwithstanding any notice from or claim of Borrower to the contrary and that Borrower shall have no right or claim against such tenant for any such rents, royalties, issues and profits so paid by such tenant to County. Upon the curing of all Defaults and Events of Default, County shall give written notice thereof to such tenant and thereafter, until the possible receipt of any further similar written request of County, such tenant shall pay the rents, royalties, issues and profits to Borrower.

9. **Proceeds.** County shall apply any and all Rent collected by it, and any and all sums, which County may receive or collect pursuant to this Assignment, in the following manner:

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(a) First, to pay the portion of the obligations secured by this Assignment attributable to the costs and expenses of operation and collection;

(b) Second, to pay all other obligations secured by this Assignment in any order and proportions as County in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it. County shall have no liability for any funds, which it does not actually receive.

10. **Indemnification and Reimbursement.** Borrower hereby indemnifies, defends and agrees to hold County harmless from and against any and all costs, expenses and attorneys' fees, including allocated costs for services of County's in-house professionals, arising out of: (a) any liability County may incur under any Lease or by reason of this Assignment; (b) County's defense of any claims or demands arising under any Lease or by reason of this Assignment; or (c) actions taken by County which it deems necessary to conserve the value of the Property.

11. **Effect of Assignment.** This Assignment shall not cause County to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees or any other parties, any dangerous or defective condition of the Property, any environmental condition or occurrence on or affecting the Property, or any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. County shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (i) the exercise of the rights, remedies or powers granted to County in this Assignment; (ii) the failure or refusal of County to perform or discharge any obligation, duty or liability of Borrower arising under the Leases or this Assignment; or (iii) any loss sustained by Borrower or any third party resulting from County's failure to lease the Property after the occurrence of a Default or Event of Default or from any other act or omission of County in managing the Property after the occurrence of a Default or Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of County, and no such liability shall be asserted against or imposed upon County, all such liability being expressly waived and released by Borrower.

12. **Foreclosure.** Upon issuance of any deed pursuant to any judicial or nonjudicial foreclosure of the Deed of Trust or any deed in lieu of foreclosure, all right, title and interest of Borrower in and to the Leases and the rents shall, by virtue of this Assignment, vest in and become the absolute Property of the grantee or grantees of any such deed without any further act or assignment by Borrower. Borrower hereby irrevocably appoints County, and its successors and assigns, as its attorney-in-fact, to: (i) execute all instruments of assignment or further assurance in favor of any such grantee of any deed, as may be necessary or desirable for such purpose; and (ii) after a Default under this Assignment, take any other action permitted under Paragraph 7 hereof; provided, however, that County as such attorney-in-fact shall only be accountable for such funds as are actually received by County. Nothing contained in this Assignment shall

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prevent County at County's sole discretion from terminating any subordinate Lease through such foreclosure.

13. **Release.** County may take or release security for the performance of the obligations referred to in Paragraph 2 and County may release any party primarily or secondarily liable for the performance of any such obligations, all without prejudice to any of County's rights under this Assignment.

**9. Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the County or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two (2) days after mailing in the United States), addressed to the respective parties as follows:

COUNTY:

[Orange County Housing Authority]

[County of Orange  
OC Community Resources/  
Housing & Community Development]  
1501 E. St. Andrew Place, 1st Floor,  
Santa Ana, CA 92705  
Attn: [Executive] Director

BORROWER:

[PLEASE PROVIDE]

14. **Definitions.** The terms "lessor" and "lessors" as used in this Assignment shall include all owners, landlords, licensors and other parties in a similar position with respect to the Leases. The terms "lessee" and "lessees" shall include any tenants, licensees, occupants and any other parties in a similar position and shall also include any guarantors of or other obligors under

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the Leases. Any reference in this Assignment to "Lease" or "Leases" shall be construed as including any extension, renewals, amendments or modifications thereto. The term "including" shall mean "including but not limited to."

15. **Integration**. This Assignment and the other Loan Documents contain the entire agreement of the parties and supersede any and all prior negotiations. In the event of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the Deed of Trust shall control.

16. **Waiver**. No delay or omission to exercise any power or remedy accruing to County upon any breach or Default of Borrower under this Assignment shall impair any such right, power or remedy of County, nor shall such delay or omission be construed as a waiver of any such breach or Default or an acquiescence therein or in any similar breach or Default thereafter occurring; nor shall any waiver of any single breach or Default be deemed a waiver of any other previous or subsequent breach or Default. Any waiver, permit, consent or approval of any kind or character on the part of County of any provision or condition of this Assignment must be in writing and shall be effective only to the extent specifically set forth in the writing. All remedies, either under this Assignment, by law or otherwise, afforded to County, shall be cumulative and not alternative.

17. **Term**. This Assignment shall become effective as of the date of its recordation in the Official Records of Orange County and shall remain in effect until it is terminated in writing by County or the Loan is repaid in full, whichever occurs first.

18. **Successors and Assigns**. This Assignment is binding on Borrower, its heirs, successors and assigns and shall inure to the benefit of County, its successors and assigns. Notwithstanding the foregoing, this Assignment is subject to restrictions on assignment by Borrower as set forth in the Loan Documents.

19. **Prevailing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law rules of that state. In the event of any legal action to enforce or interpret this Assignment, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

20. **Waiver of Jury Trial**. Each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Assignment and/or any claim of injury or damage to the fullest extent permitted by applicable law.

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**IN WITNESS WHEREOF**, Borrower has executed this Assignment as of the date first  
above written.

SAMPLE



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**BORROWER:**

**[BORROWER SIGNATURE BLOCK]**

By:

SAMPLE

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[COUNTY SIGNATURE BLOCK]**

By \_\_\_\_\_  
[NAME] [TITLE]

APPROVED AS TO FORM  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By \_\_\_\_\_  
Deputy

Dated \_\_\_\_\_

SAMPLE

**ATTACHMENT N 6  
EXHIBIT A  
Legal Description  
[TO BE PROVIDED]**

SAMPLE