

## SUCCESSOR AGREEMENT

INSTRUMENT OF REMOVAL, APPOINTMENT AND ACCEPTANCE, dated as of March 19, 2013, by and among the ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “*Issuer*”), THE BANK OF NEW YORK MELLON, formerly known as The Bank of New York, a banking corporation duly organized and existing under the laws of the State of New York, having an office at 101 Barclay Street, New York, New York, 10007 (“*Prior Trustee and Agent*”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America as Successor Trustee, Registrar, and Paying Agent (“*Successor Trustee and Agent*”) and TUXEDO BOND 007 LLC, as owner of 100% of the Series 1999 Bonds (the “*Majority Owner*”).

All capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Indenture of Trust, dated as of August 1, 2009 (the “*Indenture*”), by and between the Issuer and the Prior Trustee and Agent.

### RECITALS:

**WHEREAS**, the Issuer previously issued its \$10,500,000 original aggregate principal amount Senior Facility Revenue Bonds (Tuxedo Place, L.P. Project), Series 1999 (the “*Series 1999 Bonds*”), for the purpose of providing funds for the acquisition, reconstruction, construction and equipping of a certain Project Facility (as defined in the Indenture) for the benefit of TUXEDO PLACE, L.P. (the “*Company*”) of which \$9,815,000 in principal amount remain outstanding; and

**WHEREAS**, in connection with the issuance of the Series 1999 Bonds, the Prior Trustee and Agent entered into certain agreements including, a certain Pledge and Assignment, dated as of August 1, 1999, by and between the Issuer and the Trustee with acknowledgement thereof by the Company (the “*Pledge and Assignment*”), a certain Mortgage and Security Agreement, dated as August 1, 1999, from the Issuer and the Company to the Trustee (the “*Mortgage*”), a certain Assignment of Leases and Rents, dated as of August 1, 1999, from the Company and the Issuer to the Trustee (the “*Assignment of Leases and Rents*”), a certain Operating Reserve Fund Guaranty, dated as of August 1, 1999, from Martin S. Irwin and William Helmer (collectively, the “*Guarantors*”) to the Trustee (the “*Guaranty*”), a certain Building Loan Agreement, dated as of September 28, 1999, by and among the Company, the Issuer and the Trustee (the “*Continuing Disclosure Agreement*”), and together with the Indenture, the Pledge and Assignment, the Mortgage, the Assignment of Leases and Rents, the Guaranty, and the Building Loan Agreement, the “*Agreements*”); and

**WHEREAS**, pursuant to Sections 10.7 and 10.8 of the Indenture, the Majority Owner desires to appoint the Successor Trustee and Agent to succeed Prior Trustee and Agent in such capacities under the Agreements; and

**WHEREAS**, the Majority Owner has requested that the Issuer consent to and acknowledge the removal of the Prior Trustee and Agent and the appointment of the Successor Trustee and Agent by the Majority Owner to succeed Prior Trustee and Agent in such capacities under the Agreements; and

**WHEREAS**, Successor Trustee and Agent is willing to accept such appointment as Successor Trustee and Agent under the Agreements;

**NOW, THEREFORE**, the Issuer, Prior Trustee and Agent, Successor Trustee and Agent, and Majority Owner for and in consideration of the premises of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby consent and agree as follows:

## ARTICLE I

### THE PRIOR TRUSTEE AND AGENT

**SECTION 1.01** Prior Trustee and Agent is hereby removed as Trustee, Registrar, and Paying Agent under the Agreements.

**SECTION 1.02** Prior Trustee and Agent hereby represents and warrants to Successor Trustee and Agent that (a) there have been no prior assignments of the Agreements made by Prior Trustee and Agent to any other party, (b) this agreement has been duly authorized, executed and delivered and constitutes its legal, valid and binding obligation, and (c) Prior Trustee and Agent has complied with all provisions of the Indenture regarding the assignment.

**SECTION 1.03** Subject to the provisions of Section 1.05 below, the Prior Trustee and Agent hereby assigns, transfers, delivers and confers to Successor Trustee and Agent all right, title and interest of Prior Trustee and Agent under the Agreements and all the rights and powers of the Trustee, Registrar, and Paying Agent under the Agreements. Prior Trustee and Agent shall execute and deliver such further instruments and shall do such other things as Successor Trustee and Agent may reasonably require so as to more fully and certainly vest and confirm in Successor Trustee and Agent all the rights and powers hereby assigned, transferred, delivered and confirmed to Successor Trustee and Agent.

**SECTION 1.04** Prior Trustee and Agent will, on or prior to the effective date specified in Section 5.01 below, transfer to Successor Trustee and Agent the documents described on the attached Exhibit A.

**SECTION 1.05** Prior Trustee and Agent has asserted a right to payment or reimbursement of fees and expenses due and payable to Prior Trustee and Agent under the Agreements in the total amount of \$18,412.28 (the "*Reimbursement Amount*"). Set forth on Exhibit B attached hereto is a schedule of the reserve accounts and balances held by Prior Trustee and Agent. Prior Trustee and Agent will, on or prior to the effective date specified in Section 5.01 below, transfer to Successor Trustee and Agent the total funds set forth on Exhibit B less the Reimbursement Amount on which Prior Trustee and Agent will has asserted a lien right pursuant to Section 10.2 of the Indenture.

## ARTICLE II

### THE ISSUER

**SECTION 2.01** The Issuer hereby consents to and accepts the removal of Prior Trustee and Agent as Trustee, Registrar, and Paying Agent under the Agreements.

**SECTION 2.02** The Issuer hereby acknowledges the appointment of Successor Trustee and Agent under the Agreements with like effect as if originally named as Trustee and Agent in the Agreements.

## ARTICLE III

### THE SUCCESSOR TRUSTEE AND AGENT

**SECTION 3.01** Successor Trustee and Agent hereby represents and warrants to Prior Trustee and Agent and to the Issuer and Borrower that Successor Trustee and Agent is qualified to act as Trustee and Agent under the Agreements.

**SECTION 3.02** Successor Trustee and Agent hereby accepts its appointment as Successor Trustee and Agent under the Agreements and accepts the rights, powers, duties and obligations of Prior Trustee and Agent as Trustee, Registrar and Paying Agent under the Agreements, upon the terms and conditions set forth therein, with like effect as if originally named as Trustee, Registrar and Paying Agent under the Agreements.

#### **ARTICLE IV**

##### **THE MAJORITY OWNER**

**SECTION 4.01** The Majority Owner hereby represents and warrants that it is the owner of 100% of the outstanding Series 1999 Bonds, hereby removes the Prior Trustee and Agent, hereby confirms, based on its actual knowledge, that all conditions relating to the appointment of U.S. Bank National Association as Successor Trustee and Agent under the Agreements have been met and hereby appoints Successor Trustee and Agent to succeed Prior Trustee and Agent as Trustee, Registrar, and Paying Agent under the Agreements with like effect as if originally named as Trustee, Registrar and Paying Agent in the Agreements.

**SECTION 4.02** Effective upon compliance by the Prior Trustee and Agent with Section 1.04, the Majority Owner hereby releases the Prior Trustee and Agent from all further liability or accountability as Trustee under the Indenture or as a party to the Agreements relating to any possible failure by the Company to comply with the Agreements.

#### **ARTICLE V**

##### **MISCELLANEOUS**

**SECTION 5.01** This Instrument and the removal, appointment and acceptance effected hereby shall be effective following thirty days after delivery to the Issuer of this agreement, and subject to compliance with the provisions of SEC Regulation 17Ad-16 which requires notification to the Depository Trust Clearing Corporation 10 days prior. The effective date will be changed without further documentation to such later date as may be necessary to comply with the terms of the Agreements and the provisions of such regulation.

**SECTION 5.02** This Instrument shall be governed by and construed in accordance with the laws of the State of New York.

**SECTION 5.03** This Instrument may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

**SECTION 5.04** The persons signing this Instrument on behalf of the Issuer, Borrower, Successor Trustee and Agent and Prior Trustee and Agent, and Majority Owner are duly authorized to execute it on behalf of the each party, and each party warrants that it is authorized to execute this Instrument and to perform its duties hereunder.

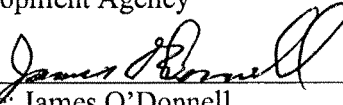
**SECTION 5.05** Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this agreement and in whose favor the provisions of this agreement shall inure.

**SECTION 5.06** This agreement represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

**IN WITNESS WHEREOF**, the parties hereto have caused this Instrument of Removal, Appointment and Acceptance to be duly executed and acknowledged all as of the day and year first above written.

Issuer

Orange County Industrial  
Development Agency

By:   
Name: James O'Donnell  
Title: Executive Director

Prior Trustee

The Bank of New York Mellon,  
as Prior Trustee, Registrar and  
Paying Agent

By: \_\_\_\_\_  
Name: Stuart Rothenberg  
Title: Vice President

Successor Trustee

U.S. Bank National Association,  
as Successor Trustee, Registrar and Paying Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Majority Owner

Tuxedo Bond 007 LLC,  
as Majority Owner and Beneficial Holder of  
of 100% of the Series 1999 Bonds

By: SML LLC, as Manager

By: \_\_\_\_\_  
Name: Steven Laufer  
Title: Sole Member

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Orange County Industrial  
Development Agency

By: \_\_\_\_\_  
Name: James O'Donnell  
Title: Executive Director

Prior Trustee

The Bank of New York Mellon,  
as Prior Trustee, Registrar and  
Paying Agent

By:  \_\_\_\_\_  
Name: Stuart Rothenberg  
Title: Vice President

Successor Trustee

U.S. Bank National Association,  
as Successor Trustee, Registrar and Paying Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Development Agency

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Name: James O'Donnell  
Title: Executive Director

Prior Trustee

The Bank of New York Mellon,  
as Prior Trustee, Registrar and  
Paying Agent

By: \_\_\_\_\_  
Name: Stuart Rothenberg  
Title: Vice President

Successor Trustee

U.S. Bank National Association,  
as Successor Trustee, Registrar and Paying Agent

By: Lawrence J. Bell  
Name: Lawrence J. Bell  
Title: Vice President

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Successor Trustee

U.S. Bank National Association,  
as Successor Trustee, Registrar and Paying Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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as Majority Owner and Beneficial Holder of  
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By: SML LLC, as Manager

By: \_\_\_\_\_  
Name: Steven Laufer  
Title: Sole Member

## EXHIBIT A

### LIST OF DOCUMENTS TO BE DELIVERED TO U.S. BANK BY BANK OF NEW YORK MELLON

1. Closing Transcripts that includes executed copies of the Indentures and other closing documents.
2. Certified List of Holders of the Bonds as of the effective date of this Agreement with certificate detail, names and addresses, and tax identification numbers and all “stop transfers” and the reason for such “stop transfers”.
3. Certified report of principal outstanding as of the date of this Agreement.
4. Bond debt service records.
5. Trust account statements for a one-year period preceding the date of this Agreement.
6. All unissued Bonds inventory or DTC FAST held global certificates.
7. Such other documents as Successor Trustee and Agent or Majority Owner may reasonably require in order to transfer the appointment to Successor Trustee and Agent.



EXHIBIT B

TRUST ACCOUNTS AND BALANCES

276548 ORANGE IDA (TUXEDO PL) CONS DEV FEE A/C - CLOSED

276547 ORANGE IDA (TUXEDO PL) CONS EQUITY A/C - \$14,080.00

276551 ORANGE IDA (TUXEDO PL) DS INT A/C

276556 ORANGE IDA (TUXEDO PL) DSR FUND - \$80,278.55

276554 ORANGE IDA (TUXEDO PL) OP RES FUND - \$181,574.07 GIC

276557 ORANGE IDA (TUXEDO PL) REV OPER A/C - CLOSED