

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

County of Monterey
Housing & Redevelopment Office
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

NO RECORDING FEE REQUIRED AS PER GOV'T CODE 27383

APN: 261-101-044-000

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement") is entered into as of this ____ day of _____, 2016, by and among Jardines LLC, a California limited liability company ("Buyer") and South County Housing Corporation, a California nonprofit public benefit corporation ("Seller"), with the consent of the County of Monterey, a political subdivision of the State of California (the "County"), with reference to the following facts:

A. Buyer is acquiring Seller's fee interest in certain real property commonly referred to as Boronda Oaks Subdivision Lot 16 (APN 261-101-044-000), in the unincorporated area of the County of Monterey, California which is more particularly described in **Exhibit A**, attached to this Agreement and incorporated herein by this reference (the "Property").

B. Pursuant to that certain Predevelopment Loan Agreement (the "Loan Agreement") between the County and the Seller, the County agreed to make a loan to the Seller in the amount of \$400,000 (the "Loan"). The Loan was to acquire property that the Seller subsequently subdivided into 24 developable lots, of which 22 were developed with for-sale single family homes and one lot was developed with 15 units of rental housing. The for-sale units are commonly referred to as Boronda Oaks. The rental units are commonly referred to as Jardines de Boronda. The Loan is evidenced by a Promissory Note dated July 30, 2001, (the "Note") and secured by a Deed of Trust and Security Agreement dated February 9, 2004, that was recorded in the Official Records of Monterey County (the "Official Records") on February 19, 2004, as Instrument No. 2004-015058 (the "Deed of Trust"); by a Declaration of Affordability Covenants as to the Boronda Oaks lots that was recorded in the Official Records on February 19, 2004, as Instrument No. 2004-0015060; and by a Regulatory Agreement and Declaration of Restrictive Covenants as to the Jardines de Boronda that was recorded in the Official Records on September 19, 2006, as Instrument No. 2006-081922.

C. Pursuant to Modification Agreement 1, dated as of June 16, 2003, the Loan Agreement and Note were amended to make the following changes:

(a) Term. The term of this Note (the "Term") shall terminate on July 30, 2006.

(b) Initial Payment. Two Hundred Fifty Thousand Dollars (\$250,000) of the principal balance

plus accrued interest shall be due on September 1, 2003.

- (c) Deferred Payment. The remaining One Hundred Fifty Thousand Dollars (\$150,000) of the principal balance plus accrued interest shall be due on the earlier of (i) thirty (30) days after the sale of the last Agency-Assisted Unit, or (ii) the expiration of the Term.”

D. Pursuant to Modification Agreement 2, dated as of February 9, 2004, the Loan Agreement and Note were amended to make the following changes, among others:

- “(a) Initial Payment. Two Hundred Fifty Thousand Dollars (\$250,000) of the principal balance plus accrued interest shall be due on January 31, 2004.
- (b) Deferred Payment. The remaining One Hundred Fifty Thousand Dollars (\$150,000) of the principal balance plus accrued interest shall be due on the earlier of (i) thirty (30) days after the sale of the last Single Family Unit (excluding the Single Family Unit to be built on lot 16 of the Property), or (ii) the expiration of the Term.”

E. Pursuant to Modification Agreement 3 dated as of December 7, 2009, the Loan was amended to make the following changes, among others:

- “(a) Term. All references to the “Term” of the Note or the Agreement, whether in the PLA or the either of the Modification Agreements dated June 16, 2003 and February 9, 2004 (collectively the “Modification Agreements”) is hereby amended as follows:

This Agreement shall terminate with the repayment of the Note, which is to occur on the earlier of either:

- a. The close of escrow on Lot 16 in the Boronda Oaks Subdivision (Assessor’s Parcel Number 261-101-044-000; or,
- b. December 17, 2017.

- (b) Deferred Payment. Section 1.a.(c) of the Modification Agreements is hereby deleted in its entirety and replaced with the following:

The remaining One Hundred Fifty Thousand Dollars (\$150,000) of the principal balance plus \$19,902.72 in interest accrued through December 17, 2007 shall be paid as part of the escrow for the sale of Lot 16, on December 2017, whichever occurs first, as reflected in the Restated Promissory Note.”

The Note dated July 30, 2001, as amended was replaced with a Restated Promissory Note dated December 2, 2009 in the face amount of \$169,902.72 (the “Restated Note”).

F. The Loan Agreement, the Restated Note, the Deed of Trust as amended by the Modification Agreements, the Regulatory Agreement and Declaration of Restrictive Covenants as to Jardines de Boronda, the Declaration of Affordability Covenants as to the Boronda Oaks lots, the Modification Agreements, and any other documents, as amended from time to time, evidencing or securing the Loan shall be referred to herein collectively as the “Loan Documents.” Capitalized terms used in

this Agreement and not defined shall have the meanings set forth in the Loan Documents.

G. Concurrently with the transfer described above, Seller will assign to Buyer all of Seller's rights, title and interest in and obligations under the Loan Documents, and Buyer will accept such assignment.

H. Following the assignment of the Loan Documents from Seller to Buyer, Buyer desires to release Seller from all obligations in connection with the Loan Documents.

I. Separate and apart from the Loan, the County previously provided financing to Seller in the amount of \$685,174 in connection with the development of Jardines de Boronda (the "Apartment Loan"). The Apartment Loan has a maturity date of June 16, 2039. On June 23, 2015, per Board of Supervisors' authorization, the County consented to the Buyer and Seller entering into an Assignment and Assumption Agreement for the Seller's obligations under the Apartment Loan and the Seller's obligations under the Regulatory Agreement and Declaration of Restrictive Covenants—Jardines de Boronda. As such, Buyer has fully previously assumed the obligations attendant to Jardines de Boronda.

J. The Buyer and the County desire to extend the term of the Loan Agreement to June 16, 2039 to conform to the maturity date of the Apartment Loan, to modify the Restated Note to change the maturity date to June 16, 2039, and to make all attendant Loan Documents consistent with these terms.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Seller. Seller hereby assigns to Buyer all of Seller's rights and obligations under the Loan Documents, as amended and modified.
2. Acceptance of Assignment. Buyer hereby accepts the above assignment and hereby assumes all of the rights, obligations, covenants, and agreements of Seller under the Loan Documents, as amended and modified, that were assigned to Buyer. Any reference to Seller in the Loan Documents described above and as amended shall be deemed a reference to Buyer.
3. Payment of Obligations. Buyer agrees that all amounts due from Seller pursuant to the Loan Documents, as amended and modified, shall be assumed by Buyer.
4. Consent to Assignment. The County hereby consents to the assignment of the Loan Documents, as amended and modified, from Seller to Buyer and hereby releases Seller from all obligations imposed under the Loan Documents, as amended and modified.
5. Representations. Seller hereby represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Loan Documents.

6. Amendment of Predevelopment Loan Agreement.

a) The Loan Agreement, as amended by the Modification Agreements, is hereby amended as follows:

i) Term. All references to the “Term” of the Restated Note or Loan Agreement, whether in the Predevelopment Loan Agreement or the Modification Agreements, are deleted in their entirety and replaced with the following:

This Agreement shall terminate with the repayment of the Restated Note, which is to occur on the earlier of either:

- (1) The close of escrow of the sale and transfer of Lot 16 in the Boronda Oaks Subdivision (Assessor’s Parcel Number 261-101-044-000); or,
- (2) June 16, 2039.

ii) Deferred Payment Section 1.a.(c) of each of the Modification Agreements is hereby deleted in its entirety and replaced with the following:

The remaining One Hundred Fifty Thousand Dollars (\$150,000) of the principal balance plus \$19,902.72 in interest accrued through December 17, 2009, shall be paid as part of escrow for the sale of Lot 16, or on June 16, 2039, whichever occurs first, as reflected in the Restated Note.

7. Declaration of Affordability Covenants (Boronda Oaks lots)

a) The Seller has satisfied the conditions of Section 3 (a) at the time of assumption by originally selling eleven (11) to First Time Homebuyers, a minimum of five (5) of whom were also farmworkers, all with incomes at the time of initial occupancy at or below eighty percent (80%) of the Median Income adjusted for actual household size, at a cost that did not exceed Affordable Lower Income Housing Cost.

b) The Seller has not satisfied the conditions of Section 3 (b) at the time of assumption. Seller has sold eleven (11) of the twelve (12) Units to First Time Homebuyers, with incomes at the time of initial occupancy at or below one hundred ten percent (110%) of the Median Income adjusted for actual household size, at a cost that did not exceed Affordable Lower Income Housing Cost.

i) Accordingly, Boronda Oaks Subdivision Lot 16 (APN 261-101-044-000) shall only be sold pursuant to the conditions of Section 3 (b) of the Declaration of Affordability Covenants.

c) All other terms and conditions in the Declaration of Affordability Covenants remain unchanged by this Assignment and Assumption Agreement and Fourth Amendment to the Housing Successor Agency Predevelopment Loan.

8. Amendment of the Restated Promissory Note

a) The Restated Note, attached as Exhibit B, Paragraph 5 is hereby amended as follows:

The Note shall be due and payable in full on the earlier of either:

- (1) The close of escrow on the sale and transfer of Lot 16 in the Boronda Oaks Subdivision (Assessor's Parcel Number 261-101-044-000); or,
- (2) June 16, 2039.

9. Amendment to the Deed of Trust and Security Agreement (Boronda Oaks – Lot 16)
 - a) The Deed of Trust and Security Agreement is hereby amended as follows:
 - i) South County Housing Corporation, a California nonprofit public benefit corporation shall be replaced with Jardines LLC.
 - ii) Jardines LLC is assuming all responsibilities and obligations of the Trustor under the Deed of Trust and Security Agreement.
10. No Other Amendments. Except as described above and as amended by this Assignment and Assumption Agreement, the Loan Documents shall continue unmodified and in full force and effect.
11. Effective Date. The assignment set forth above shall be effective as of the date of recordation of this Agreement.
12. Counterparts. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BUYER:

Jardines LLC,
a California limited liability company

By: Eden South County, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Linda Mandolini
President

SELLER:

South County Housing Corporation,
a California nonprofit public benefit corporation

By: _____
John Cesare, Chief Financial Officer

COUNTY:

County of Monterey,
a political subdivision of the State of California

By: _____
Its: David Spaur, Economic Development Director

APPROVED AS TO FORM:

Rebecca Cenicerros, Deputy County Counsel

[SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said State, personally appeared,

_____, who proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

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 _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said State, personally appeared,

_, who proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

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 _____

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State of California)

County of _____)

On _____ before me, _____, a Notary Public in and for said State, personally appeared,

_, who proved to me the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

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 _____

**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the unincorporated area of the County of Monterey, State of California, described as follows:

PARCEL I:

LOT 16, AS SHOWN ON THE MAP OF TRACT NO.1404, A PRIVATE ROAD SUBDIVISION, BORONDA OAKS, FILED FOR RECORD ON OCTOBER 21, 2003 IN VOLUME 22 OF CITIES AND TOWNS, AT PAGE 41, MONTEREY COUNTY RECORDS.

AMENDED BY A CERTIFICATE OF CORRECTION RECORDED MAY 12,2004 IN SERIES NO.2004047802, OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY AND ALL WATER, BUT WITHOUT THE RIGHT OF ENTRY OR TO MAKE ANY WITHDRAWAL OF WATER WHICH WILL RESULT IN DAMAGE TO ANY BUILDING OR STRUCTURE, AS GRANTED IN THE DEED TO CALIFORNIA WATER SERVICE COMPANY, RECORDED JANUARY 15, 2004 IN SERIES 2004004153, OFFICIAL RECORDS.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND UTILITIES PURPOSES OVER LOT 25 (C.A.) MILANO STREET, LOT 26 (C.A.) CANARIO STREET, AND LOT 27 (C.A.) CARBONERO STREET, ALL AS SHOWN ON THE MAP OF TRACT NO. 1404, A PRIVATE ROAD SUBDIVISION, BORONDA OAKS, FILED FOR RECORD ON OCTOBER 21, 2003 IN VOLUME 22 OF CITIES AND TOWNS, AT PAGE 41, MONTEREY COUNTY RECORDS.

PARCEL III:

A NON-EXCLUSIVE EASEMENT FOR PRIVATE ROAD AND PUBLIC UTILITY PURPOSES OVER THAT CERTAIN PORTION OF CARBONERO STREET DESIGNATED AND SHOWN AS "LANDS OF SAMMUT 10,004+ S.F." ON THE MAP OF TRACT NO.1404, A PRIVATE ROAD SUBDIVISION, BORONDA OAKS, FILED FOR RECORD ON OCTOBER 21, 2003 IN VOLUME 22 OF CITIES AND TOWNS, AT PAGE 41, MONTEREY COUNTY RECORDS.

SAID EASEMENT IS SET FORTH IN THAT CERTAIN EASEMENT AND MAINTENANCE AGREEMENT EXECUTED BY ALFRED SAMMUT AND ALICE SAMMUT, TRUSTEES OF THE ALFRED AND ALICE SAMMUT REVOCABLE TRUST, AND SOUTH COUNTY HOUSING CORPORATION, A CALIFORNIA NONPROFIT BENEFIT CORPORATION, RECORDED FEBRUARY 19, 2004 IN SERIES NO. 2004015053, MONTEREY COUNTY RECORDS.

APN: 261-101-044-000