

**SETTLEMENT, ACCORD AND SATISFACTION AGREEMENT**  
**(South County Housing – Morgan Hill)**

This SETTLEMENT, ACCORD AND SATISFACTION AGREEMENT (the "**Agreement**") is entered into effective as of \_\_\_\_\_, 2015 (the "**Effective Date**") by and among City of Morgan Hill, a municipal corporation ("**City**"), South County Housing Corporation, a California nonprofit public benefit corporation ("**SCH**"), and South County Community Builders, a California nonprofit public benefit corporation ("**SCCB**"). SCCB and SCH are referred to jointly herein as "**South County**". City, SCH and SCCB are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Redevelopment Agency of the City of Morgan Hill (the "**Former Agency**") provided a loan to SCCB in the amount of \$875,000 to assist with the construction of housing units affordable to low and moderate income households ("**Viale Loan**"). The Viale Loan was evidenced by a loan agreement dated September 2, 2004, a promissory note, and a deed of trust recorded on certain property owned by SCCB ("**Viale Loan Documents**"). In accordance with the terms of the Viale Loan, SCCB developed ten units of owner occupied housing which were sold to low and moderate income households. In accordance with the terms of the Viale Loan, a portion of the Viale Loan was forgiven with each sale of a home and assumption by the homebuyer of a portion of the loan, and the Former Agency reconveyed the deed of trust as each home was sold. The deed of trust has been fully reconveyed. At the time of the sale of the last home, \$364,384 of the Viale Loan remained outstanding and continues to remain unpaid.

B. The Former Agency provided a loan to SCCB in the amount of \$2,000,000 to assist with the construction of low and moderate income housing as part of the Madrone Plaza Development ("**Madrone Loan**"). The Madrone Loan was evidenced by a loan agreement dated July 27, 2007, a promissory note, and a deed of trust (the "**Madrone Deed of Trust**") recorded on certain property owned by SCCB ("**Madrone Loan Documents**"). The Madrone Deed of Trust was subordinate to a deed of trust given by SCCB for the benefit of Wells Fargo Bank securing a construction loan to SCCB. As part of a loan workout with Wells Fargo Bank, SCCB sold the Madrone property using the sales proceeds to partially repay Wells Fargo Bank. Sale of the Madrone property required the City to release the Madrone Deed of Trust from the Madrone property. In consideration for the City's agreement to release and reconvey the Madrone Deed of Trust, SCCB gave the City a note in the principal amount of \$200,000 dated December 19, 2012 ("**Madrone Deficiency Note**"). The principal amount and interest on the Madrone Deficiency Note that remains outstanding equals \$214,465.

C. The Former Agency provided a loan to Villa Ciolino Associates ("**Villa Ciolino**"), an affiliate of SCH, to assist with environmental remediation costs associated with certain property owned by Villa Ciolino commonly referred to as Villa Ciolino Apartments (the "**Villa Ciolino Loan**") in the original principal amount of \$285,000. The Villa Ciolino Loan is evidenced by a note and deed of trust ("**Villa Ciolino Loan Documents**"). The outstanding principal and interest due on the Villa Ciolino Loan is \$179,062.

D. The Former Agency provided a loan to SCCB to assist with the acquisition of real property for the Madrone Plaza Development for low and moderate income housing in the original principal amount of \$1,600,000 ("**Madrone Plaza Loan**"). The Madrone Plaza Loan is evidenced by a loan agreement, promissory note, and deed of trust dated October 11, 2006 ("**Madrone Plaza Deed of Trust**") ("**Madrone Plaza Loan Documents**"). When permanent financing of the Madrone Plaza Development was secured, the Madrone Plaza Loan was amended and restated on September 17, 2008 with an amended and restated loan agreement, an amended and restated deed of trust, and an amended and restated promissory note in the amount of \$1,900,000 (reflecting an additional \$300,000 in principal plus accrued interest). The Madrone Plaza Loan was converted from a property acquisition loan to a first-time homebuyer downpayment assistance loan program for Madrone Plaza homeowners. The Madrone Plaza Deed of Trust was subordinate to a deed of trust given by SCCB for the benefit of Wells Fargo Bank securing a construction loan to SCCB. As part of a loan workout with Wells Fargo Bank, SCCB sold the Madrone property using the sales proceeds to partially repay Wells Fargo Bank. Sale of the Madrone property required the City to release the Madrone Plaza Deed of Trust from the Madrone property. The Madrone Plaza Loan has a current outstanding principal balance of \$65,500 plus \$74,912 in accrued interest.

E. The Viale Loan, the Madrone Deficiency Note, the Villa Ciolino Loan and the Madrone Plaza Loan are referred to herein as the "**South County Loans**". The Viale Loan Documents, the Madrone Deficiency Note, the Villa Ciolino Loan Documents and the Madrone Plaza Loan Documents are referred to herein as the "**Loan Documents**". In the aggregate, as of the date of this Agreement, the amount owed to City under the South County Loans is \$898,323.

F. As of February 1, 2012, the Former Agency was dissolved pursuant to California Health & Safety Code Section 34172. In accordance with California Health & Safety Code Section 34176, the City assumed all of the Former Agency's housing obligations and assets including the South County Loans. As the successor-in-interest to the Former Agency with respect to the Former Agency's housing obligations and assets, the City is a party to the Loan Documents, and has all of the Former Agency's rights, duties, and obligations thereunder.

G. South County is in the process of dissolving, and is unable to fully repay the South County Loans.

H. In settlement of the amounts owed to City under the South County Loans, South County proposes to: (i) receive credit for payment already made to City in the amount of \$295,404, and (ii) cause to be conveyed to City or to City's designee that certain property more particularly described in Exhibit A attached hereto ("**Villa Ciolino Parcel B Property**").

I. As part of the construction of the Viale housing development and as a condition of approval of the subdivision map for the development, South County and the City entered into a Subdivision Improvement Agreement dated January 27, 2005 ("**Subdivision Improvement Agreement**") whereby South County agreed to install certain storm drain improvements (the "**South County Storm Drain Improvements**") in accordance with plans and specifications approved by the City and pursuant to which South County provided the City with subdivision improvement bonds securing its obligations under the Subdivision Improvement Agreement ("**Subdivision Bonds**"). After completion of the development it was discovered that the storm

drain improvements installed by South County connected to City-owned storm drain improvements that do not include an adequate outfall, thereby creating standing water in the City's storm pipes. The City has not accepted the storm drain improvements installed by South County, and in accordance with the Subdivision Improvement Agreement, South County remains obligated to maintain the Subdivision Bonds. The City and South County have determined that certain improvements to the City-owned storm drain improvements will correct the problem, and the City has agreed to assume responsibility for the installation and costs of such improvements and has agreed to terminate the Subdivision Improvement Agreement as part of the settlement described in this Agreement in order to resolve all issues between the City and South County.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants contained in this Agreement, the Parties agree as follows:

### AGREEMENT

1. Settlement Payment. South County paid to City the sum of Two Hundred Ninety-Five Thousand, Four Hundred Four Dollars (\$295,404) on June 19, 2015 ("**Settlement Payment**").

2. Conveyance of Villa Ciolino Parcel B Property. On or before \_\_\_\_\_, 2015, SCH shall cause to be deposited with Old Republic Title Company a grant deed fully executed by the record title holder of the Villa Ciolino Parcel B Property substantially in the form attached as Exhibit B ("**Grant Deed**") granting the Villa Ciolino Parcel B Property to City or to City's designee. Prior to the closing date for conveyance of the Villa Ciolino Parcel B Property to City or City's designee, the City shall deposit with Old Republic Title Company a reconveyance of the deed of trust securing the Villa Ciolino Loan and such other documents as may be required in connection with the recordation of the Grant Deed. The City, City's designee, and South County shall provide Old Republic Title Company with escrow instructions.

3. Acceptance of Settlement Payment and Satisfaction of Obligations Under Loan Documents. The City agrees to accept the payment of the Settlement Payment and the conveyance of the Villa Ciolino Parcel B Property to City or City's designee as payment in full of the obligations under the South County Loans.

4. Cancellation of Notes. Upon recordation of the Grant Deed, the City shall cancel the promissory notes evidencing the South County Loans and shall return each note to South County, and the Loan Documents shall be terminated and be of no further force and effect except to the extent that any obligations expressly survive such termination pursuant to the terms of such documents.

5. Viale Storm Drain Improvements. Upon recordation of the Grant Deed, City shall terminate the Subdivision Improvement Agreement, and upon such termination, South County shall no longer be obligated to maintain the Subdivision Bonds and shall have no further obligation to install or maintain the South County Storm Drain Improvements.

6. Release. In consideration of receipt of the Settlement Payment and the conveyance of the Villa Ciolino Parcel B Property to City or City's designee, the City hereby

waives and releases all claims that the City has or could have made against South County arising out of the South County Storm Drain Improvements, including any claim related to the failure of the storm drain system installed at the Viale development to adequately drain storm water, or arising in connection with any default by South County under the South County Loans (the "Release").

The City acknowledges that it may hereafter discover facts or law different from, or in addition to that which the City now believes to be true with respect to the Release, and understands that by executing this Agreement, the City is waiving any rights or claims for any other or future compensation, benefits or damages to which the City might be entitled as a result of the matters for which the City is releasing South County. In giving this Release, the City expressly waives the protection of Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

7. Representations. Each Party represents and warrants that it has had a reasonable opportunity to receive independent legal advice regarding this Agreement, the meaning of its terms, and the advisability of entering into this Agreement. Each Party represents and warrants that it has full authority to enter into this Agreement and to undertake all obligations of such Party hereunder, and that the persons executing this Agreement on its behalf are duly authorized to do so.

8. Invalidity. If any provision of this Agreement shall be invalid or unenforceable the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Entire Agreement. The terms of this Agreement are intended as a final expression of the agreement of the Parties, and may not be contradicted by evidence of any prior or contemporaneous agreements or statements.

10. Amendment. No provision of this Agreement may be amended except by an agreement in writing signed by the Parties hereto or their respective successors in interest.

11. Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

12. Governing Law. This Agreement shall be governed by the laws of the State of California without regard to principles of conflicts of laws. The venue for any dispute arising under this Agreement shall be in Santa Clara County, California.

13. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall constitute one

and the same instrument. The Parties further agree that signatures to this Agreement transmitted electronically shall have the same force and effect as original signatures.

14. No Admission. Nothing in this Agreement constitutes or is intended by the Parties to operate as any admission of liability. This Agreement is made for the purpose of compromise and settlement only.

15. Interpretation. This Agreement has been reached as the result of negotiations by the Parties. Each Party expressly acknowledges that this Agreement shall not be deemed to have been prepared by, or drafted by any particular Party, and that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF MORGAN HILL, a municipal corporation

By: \_\_\_\_\_  
Steve Rymer, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Renee Gurza, City Attorney

SCH:

SOUTH COUNTY HOUSING, a California nonprofit public benefit corporation

By: John Cesare

Name: John Cesare

Its: CFO

SCCB:

SOUTH COUNTY COMMUNITY BUILDERS, a California nonprofit public benefit corporation

By: John Cesare

Name: John Cesare

Its: CFO

**EXHIBIT A**

VILLA CIOLINO PARCEL B PROPERTY

LEGAL DESCRIPTION

Real property in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON DECEMBER 3, 2002 IN BOOK 755 OF MAPS AT PAGES 31 AND 32.

APN: 767-09-029

ARB: 770-11-66.04.02

**EXHIBIT B**

GRANT DEED

(Attach form of Grant Deed.)