

**AGREEMENT REGARDING PROJECT FUNDING, PROJECT COMPLETION, AND
INDEMNIFICATION
(HUNTER STREET APARTMENTS PROJECT)**

THIS AGREEMENT ("**Agreement**") is made and entered into this ____ day of ___, 2018, by and between Visionary Home Builders of California, Inc., a California nonprofit public benefit corporation ("**Developer**") for the benefit of the City of Stockton, a municipal corporation ("**City**"), as follows:

RECITALS

1. CITY AND DEVELOPER desire to enter into this Agreement to clarify the parties' obligations regarding project funding, project completion, and indemnification for the Hunter Street Apartments Project.
2. The Strategic Growth Council ("**SGC**") and the California Department of Housing and Community Development ("**HCD**") issued a Notice of Funding Availability dated January 29, 2016 as amended June 17, 2016 (the "**AHSC NOFA**"), under the Affordable Housing and Sustainable Communities ("**AHSC**") Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.
3. For strategic reasons beneficial to Developer, City and Developer jointly submitted an application as "Sponsors" for AHSC program funding in response to the AHSC NOFA to provide funding for, among other things:
 - (A) the development of an affordable housing project (the "**Housing Project**"); and
 - (B) sustainable transportation infrastructure, transportation-related amenities and transportation programs (the "**Transportation Element**" and collectively with the Housing Project the "**Project**").
4. HCD awarded Developer and the City an aggregate amount of \$8,941,370 in AHSC funds consisting of:
 - (A) \$8,228,370 of AHSC loan funds for a permanent loan ("**AHSC Housing Loan**") which will be utilized by the Developer for construction of the Housing Development;
 - (B) \$449,000 of AHSC grant funds (the "**AHSC STI Grant**") for a grant which will be utilized by the Developer for sustainable transportation infrastructure as described in the AHSC Application;

(C) \$239,000 of AHSC grant funds (the “**AHSC TRA Grant**”) which will be utilized by the Developer for transit related amenities as described in the application; and

(D) \$25,000 of AHSC grant funds (the “**AHSC Program Grant**” and together with the AHSC STI Grant, and AHSC TRA Grant, the “**AHSC Grant**”) for a grant which will be utilized by the Developer for transit related programs as described in the AHSC Application.

The AHSC Housing Loan and AHSC Grant are collectively referred to herein as the “**AHSC Financing**.” The AHSC Financing will be disbursed to the Partnership (as described in Recital 5 below).

5. The Developer, City, and Vision 17, L.P., a California limited partnership (collectively the “**Partnership**”) are required to enter into a Standard Agreement for the AHSC Loan (the “**AHSC Loan Standard Agreement**”).
6. The Developer and City are required to enter into the “**AHSC Grant Agreements**,” which consists of:
 - (A) A Standard Agreement for the AHSC Grant (the “**AHSC Grant Standard Agreement**”); and
 - (B) An AHSC Program Disbursement Agreement regarding the AHSC Grant (the “**AHSC Grant Disbursement Agreement**.”)

The AHSC Loan Standard Agreement and AHSC Grant Agreements are sometimes referred to collectively herein as the “**AHSC Agreements**”.

The Partnership shall be responsible for constructing to completion the Housing Development and the Transportation Project.

The Partnership, City and Developer will be jointly and severally liable pursuant to the AHSC Loan Standard Agreement for the full and timely performance thereunder by the Partnership as required by the State. The City and Developer will be jointly and severally liable pursuant to the AHSC Grant Standard Agreement and AHSC Grant Disbursement Agreement for the full and timely performance thereunder by the Partnership as required by the State.

7. Developer acknowledges and agrees that the inability or failure by Developer to fully and timely complete the improvements required under the AHSC Agreements, could result in liability by the City for such inability or failure.
8. Notwithstanding the language and obligations in the AHSC Agreements requiring joint and several liability, City and Developer desire to further restrict the City’s potential exposure by entering into this Agreement where Developer shall incur all

liability, economic or otherwise, should the requirements under the AHSC Agreements not be fulfilled.

NOW, THEREFORE, in consideration of the recitals set forth herein, which are incorporated into the Agreement by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Project Funding. Notwithstanding the language and obligations contained within the AHSC Agreements regarding the disbursement and potential repayment of funds, Developer agrees to assume full and sole legal responsibility, financial or otherwise, for failure to meet State obligations including use of the disbursed funds and repayment should the State require a return of funds.

2. Project Completion. Notwithstanding the language and obligations contained within the AHSC Agreements regarding Project Completion and timely performance, Developer agrees to assume full and sole legal responsibility, financial or otherwise, for failure to complete construction of the project pursuant to the State obligations contained within the AHSC Agreements.

3. Correspondence with SGC and HCD. Developer agrees to provide City with copies of any and all correspondence received from HCD or SGC pursuant to or related to the AHSC Agreements. Additionally, Developer shall provide the City with copies of any and all correspondence and/or reports delivered by the Developer or the Partnership to HCD or SCG pursuant to or related to the AHSC Agreements.

4. Indemnity and Hold Harmless. Developer shall, indemnify, protect, defend with counsel approved by City and at Developer's sole cost and expense, and hold harmless, the City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under the AHSC Documents, or from any violation of any federal, state, or municipal law or ordinance, or City Policy, by Developer or Developer's officers, agents, employees, volunteers or subcontractors.

Developer shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Developer to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Developer under

the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of the AHSC Documents.

The parties agree that Developer's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Developer or Partnership or Developer's or Partnership's officers, agents, employees, volunteers or subcontractors.

Developer's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of the AHSC Documents, or other obligation or fault has been determined. Developer shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Developer for amounts paid in excess of Developer's proportionate share of responsibility for the damages within 30 days after Developer provides City with copies of all bills and expenses incurred in the defense of the claim(s).

Developer's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer or Partnership under workers' compensation acts, disability acts, or other employee benefit acts.

5. City Obligations. City agrees to provide any information required by HCD or SGC in connection with the AHSC Funds which in the sole possession of the City.

6. Cooperative Agreement. By mutual agreement between Developer and City, that certain cooperative agreement authorized May 24, 2016, including any and all previous revisions, is hereby rescinded and superseded by this Agreement and the AHSC Agreements.

7. Notices. Formal notices, demands, and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

CITY

Kurt Wilson, City Manager
Attn: Gordon MacKay, Public Works Director
City of Stockton

22 E. Weber Avenue, Room 301
Stockton, CA 95202

DEVELOPER

Carol J. Ornelas, Chief Executive Officer
Visionary Homebuilders of California, Inc.
315 N. San Joaquin Street
Stockton, CA 95202

City or Developer may subsequently designate other individuals or entities for receipt of notice, or provide an alternate location, provided that 10-days' written notice of such designation is provided to all other Parties in accordance with the terms of this Section.

8. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

- (a) Developer fails to perform any of its obligations under this Agreement, and does not cure such failure within 30 days after written notice of such failure has been delivered to Developer; or
- (b) Developer attempts to revoke this Agreement.

9. Termination. This Agreement shall terminate upon the earlier of:

- (a) Termination or expiration of the AHSC; or
- (b) Mutual written agreement of the parties hereto.

10. Miscellaneous.

(a) Other Claims. Nothing in this Agreement shall be construed to limit any claim or right which any party may otherwise have at any time against any other party or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal or state environmental law or any other applicable law, regulation, or ordinance.

(b) Waiver. If City delays in exercising or fails to exercise any right or remedy against Developer, that alone shall not be construed as a waiver of such right or remedy. All remedies are cumulative.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective representatives, heirs, executor,

administrators, successors, and assigns. This Agreement may not be amended except by a written instrument executed by the parties hereto.

(d) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise. Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the Superior Court of the County of San Joaquin, Stockton Branch, or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division, which shall have exclusive jurisdiction over such lawsuits.

(e) Third-Party Beneficiary. Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto.

(f) Counterparts. This Agreement may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Agreement.

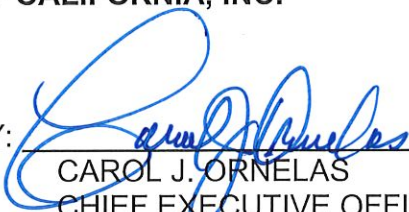
[Signatures on following page]

IN WITNESS WHEREOF, this agreement has been executed by the respective parties hereto through their respective authorized officers at Stockton, California, the day and year first above written.

CITY OF STOCKTON

**VISIONARY HOME BUILDERS
OF CALIFORNIA, INC.**

BY: _____
KURT O. WILSON
CITY MANAGER

BY:  _____
CAROL J. ORNELAS
CHIEF EXECUTIVE OFFICER

ATTEST:

BY: _____
CHRISTIAN CLEGG
DEPUTY CITY MANAGER/
INTERIM CITY CLERK

APPROVED AS TO FORM:

JOHN M. LUEBBERKE
CITY ATTORNEY

BY: _____