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STOCKTON
CITY ATTORNEY'S OFFICE

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425 N. El Dorado
Street Stockton, CA
95202

DENSITY BONUS AGREEMENT
BY AND BETWEEN CITY OF STOCKTON
AND VISIONARY HOME BUILDERS OF CALIFORNIA,
A CALIFORNIA CORPORATION

Dated:

_____, 2016

**DENSITY BONUS AGREEMENT
BY AND BETWEEN CITY OF STOCKTON
AND VISIONARY HOME BUILDERS OF CALIFORNIA,
A CALIFORNIA CORPORATION**

This Density Bonus Agreement (herein the "Agreement") is entered into as of _____, 2016, hereinafter (the "Effective Date") by and between the City of Stockton, a Municipal Corporation (hereinafter the "City") and Visionary Home Builders of California, (hereinafter the "Developer") (City and Developer are collectively referred to as the "Parties"). This Agreement is authorized pursuant to Section 65915 et seq., of the Government Code of the State of California.

RECITALS

A. In order to encourage the private development of lower income housing, the Legislature of the State of California adopted Government Code Section 65915 et seq., (hereinafter referred to as the "Density Bonus Statute"), which authorizes any city, county, or city and county to enter into a density bonus agreement with an applicant for development of a very low income housing project, and provides that any city, county, or city and county may offer certain incentives to encourage the development of such projects;

B. In accordance with Government Code Sections 65915 et seq., the City has adopted Stockton Municipal Code Chapter 16, Sections 16.40.010 through 16.40.100 incorporated herein by this reference as though fully set forth. Said Sections provide rules, regulations, and permissible incentives for the City to utilize when entering into a density bonus agreement (hereinafter the "Enabling Ordinance.") The Enabling Ordinance permits the City to offer certain incentives to encourage the development of lower income housing, including but not limited to, increases in density and reduction of on-site parking requirements.

C. Developer seeks to develop a multi-use infill development consisting of a seventy-four (74) unit low income housing project on an approximately 1.81 acre site located in downtown Stockton (hereinafter the "Project"). The Project is proposed for that certain real property known as 804 North Hunter Street, Stockton, California; APN# 139-055-01 and 139-055-02 and more particularly described in the legal description attached hereto as Exhibit "A" (the "Subject Property.") The Subject Property is zoned Commercial, Office (CO) and the Developer intends to develop the Project with a Use Permit in compliance with the Stockton Municipal Code. A depiction of the Project is provided by Exhibit B" attached hereto. Based on the City's general plan requirement that CO zoned properties be limited to twenty nine (29) units per acre, Developer would be limited to construction of approximately fifty two (52) dwelling units. By and through implementation of this Agreement, Developer will be allowed to construct thirty nine (39) dwelling units per acre, rather than the twenty-nine (29) otherwise allowed, resulting in a total of seventy (70) units. Additionally, one of the State of

California affordable housing incentives approved by Planning Commission included additional density from the 39 units per acre to 41 units per acre to allow for a total of 74 units.

D. The purpose of this Agreement is to facilitate the implementation of the General Plan, which encourages the development of high-quality lower-income housing, through development of the Project, thereby realizing the public benefits to the City as described in these Recitals. The Development of the Project will leverage major investment by the Developer in public facilities, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve the public purposes and benefits of the Project for the City. Developer will be unable to leverage the benefits from such commitment of resources without the benefits, incentives, and assurances provided by this Agreement. The City has determined that the granting of such benefits, incentives, and assurances is necessary to enable Developer to undertake the development and implementation of the Project and thereby achieve the public purposes and benefits of same.

E. The general benefits to be received by the City from the implementation of the Project include, without limitation;

1.Implementation of the General Plan and furthering its goals of diversity of housing types and densities.

2.Creation of an urban environment as envisioned in the General Plan for the City of Stockton residents.

3.Providing Developer with sufficient certainty, predictability and incentives in the development process in order to induce Developer to incur substantial commitments to public infrastructure and amenities and thereby substantially increasing the likelihood that the Project will be developed.

F. City has determined that the project implements the goals and policies of the General Plan applicable to the Project and imposes appropriate standards and requirements with respect to development of the Subject Property as to maintain the overall quality of life and of the environment within the City. As part of the process of approving the Project, the City has, in accordance with CEQA, undertaken the required analysis of the environmental impacts which could be caused by the Project. City has determined that the Project qualifies for a Categorical Exemption under CEQA as an Infill Development (Section 15332).

G. In exchange for providing these benefits to the City, Developer desires to receive the assurance that it may proceed with the development of the Project in accordance with the terms and conditions of this Agreement.

H. The City, by electing to enter into this contractual agreement, acknowledges that the obligations of the Agreement shall survive beyond the terms of the present City Council and that such action will serve to bind the City and future councils to the obligations herein undertaken. By approving this Agreement, the City Council has elected to exercise Governmental powers at the time of entering into this Agreement rather than deferring its action for some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and its Council and have been found to be fair, just, and reasonable, and the City has concluded that the pursuit of the Project will serve the best interest of its citizens, and the public health, safety and welfare will be best served by entering into this obligation.

I. This Agreement is intended to be, and should be construed as a Density Bonus Agreement within the meaning of the Density Bonus Statute and the Enabling Ordinance, as described above. City and Developer have taken all actions mandated by the State of California and have fulfilled all requirements set forth in the Development Bonus Statute and Enabling Resolution.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other considerations, the value and adequacy of which is hereby acknowledged, the City and the Developer hereby agree as follows:

Article 1. Project and Property Subject to and Term of this Agreement

Section 1.1 Incorporation of Recitals

The foregoing Recitals are true and correct and are incorporated herein.

Section 1.2 Project and Property Subject to this Agreement.

All of the Project and Subject Property shall be subject to this Agreement. The density of usable lot area, and the off-street parking requirement as provided by this Agreement, shall govern the development of the Project, as they may be amended from time to time by the Stockton Municipal Code, but only to the extent they are not inconsistent or contradict, or otherwise have an adverse effect on, the incentives provided to Developer through this Agreement.

Section 1.3 Definitions.

As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- a. "Agreement" means this Development Bonus Agreement by and between the City and Developer.
- b. "CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).
- c. "City" means the City of Stockton, California, a Municipal Corporation which is organized and existing under the laws of the State of California.
- d. "City Council" means City Council of City of Stockton, California.
- e. "Developer" means Visionary Home Builder of California, and the permitted successors and assigns of same.
- f. "Effective Date" means the date the ordinance approving this Agreement becomes effective.
- g. "Project" means the mixed use development to be constructed on the Subject Property, as well as the construction of ancillary improvements and infrastructure located within or outside of the Subject Property in accordance with this Agreement.
- h. "Project Approvals" means any existing or necessary land use, zoning, site plan or subdivision approvals and all other approvals and entitlements required for the development of the Project, including, but not limited to, General Plan amendments, zone changes, zone variances, conditional use permits, grading permits, building permits, lot line adjustments, encroachment permits, business licenses, site plan approvals, parcel maps, tentative subdivision maps and subdivision improvement agreements and any accompanying conditions of approval that will accomplish the goals, objectives, policies and plans referenced, described, implied and shown in this Agreement.
- i. "Reserved Discretionary Approvals" means any discretionary land use entitlements which Developer may seek from City after the date of this Agreement, and for

which the City is authorized by law (including, but not limited to, the state Planning and Zoning Law {Government Code Section 65000-66037} and the Stockton Municipal Code) to exercise discretion. Reserved Discretionary Approvals may include, inter alia, General Plan Amendments, zone reclassifications, Specific Plan amendments, and use permits. Reserved Discretionary Approvals does not include Final Maps for all or any portion of the Project.

j. "Subject Property" means that certain real property consisting of approximately one point eighty-one (1.81) acres as described in Exhibit "A".

Section 1.4 Term. The Subject Property shall be subject to the requirements of this Agreement for fifty-five (55) years, commencing upon the date of recordation in the Official Records of San Joaquin County.

Article 2. Consistency with Stockton Municipal Code.

Section 2.1 Purpose of Density Bonus Agreement Ordinance

Stockton Municipal Code Section 16.40.020 to 16.40.030 provides that the Residential Density Bonus Ordinance is intended to provide incentives for the production of housing for very low income, low income, or senior households in accordance with sections 65915 of the California Government Code. The Project will result in the construction of a multi-use development consisting of a seventy-four (74) unit low income housing project on an approximately 1.81 acre site located in downtown Stockton on that certain real property known as 804 North Hunter Street, Stockton, California; APN#'s 139-055-01 and 139-055-02 and more particularly described in the legal description attached hereto as Exhibit "A."

Section 2.2 Income and Rent Restrictions

Income and rent shall be restricted as required by Stockton Municipal Code Section 16.40.020(A)(1) and Health and Safety Code sections 50079.5 and 50105 that indicate lower income households are households whose income does not exceed eighty percent (80%) of the area median income for San Joaquin County, adjusted for household size, at an affordable rent which does not exceed one-twelfth of thirty percent (30%) of eighty percent (80%) of area median income, and very low income households whose income does not exceed fifty percent (50%) of the area median income for San Joaquin County, adjusted for household size, at an affordable rent which does not exceed one-twelfth of thirty (30%) percent of fifty percent (50%) of area median income.

Section 2.3 Thirty-five Percent Density Allowance

In accordance with Section 16.40.040 of the Stockton Municipal Code the City shall provide a Density Bonus and additional incentive(s) for qualified housing developments if the Developer(s) agree to construct twenty percent (20%) of the total units for lower income households, or eleven percent (11%) of the total units for very low income households. Pursuant to the unit matrix provided by the Developer, 72 of the 74 units shall be affordable to lower income

households. Hence, the Project is entitled to a thirty five percent (35%) Density Bonus allowance resulting in Developer being entitled to develop 39 units per acre for seventy (70) units. Additionally, a density incentive is given for housing with onsite child care allowing for an increase in density from 39 to 41 units per acre resulting in a total of seventy-four (74) units. Therefore, the proposed onsite childcare shall be provided consistent with the use permit approved by the Planning Commission (P16-0149).

Article 3. Covenants That Run With The Land.

Section 3.1 Covenants That Run With The Land

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Subject Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property hereunder, or with respect to any the City owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of the Subject Property or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of the Subject Property, or any portion thereof and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in the Subject Property.

Article 4. Obligations of the Parties.

Section 4.1 Obligations of Developer.

a. Developer shall timely construct the Project and fulfill its obligations in connection therewith as required by, and subject to the terms of, this Agreement, Existing Approvals and Reserved Discretionary Approvals, including the payment of any fees, implementation of any mitigation measures, and completion of any conditions to approval.

Section 5. Default, Remedies, Termination.

Section 5.1 General Provisions.

a. Developer shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) If a material warranty, representation, or statement made or furnished by Developer to the City proves to have been false in any material respect when it was made;

(2) A finding and determination by the City Council in its reasonable discretion, made following a periodic review, that upon the basis of substantial evidence, Developer has not complied in good faith with a material requirement of this Agreement;

(3) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the Developer.

b. City shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) City fails to comply in good faith with a material requirement of this Agreement regarding the permitted development standards and density of uses specified herein; or

(2) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the City.

c. In the event of a default and subject to extensions of time by mutual consent in writing:

(1) If a defaulting party does not cure such default within ninety (90) days following written notice of default from the other party, where such failure is of a nature which can be cured within such ninety (90) day period, or;

(2) If such failure is not of a nature which can be cured within such ninety (90) day period, and the defaulting party does not within such ninety (90) day period commence reasonable efforts to cure such default, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such default, after notice and expiration of the ninety (90) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may at its option institute legal proceedings pursuant to this Agreement or give notice of intent to terminate this Agreement in the manner provided herein.

d. During any ninety (90) day period specified in section (1-2) above, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing party claims constitutes the default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement.

e. A copy of any notice of default by Developer shall be sent to Developer's limited partner at the address provided by such limited partner in writing. The limited partner shall have the right, but not the obligation, to cure any Developer default within the time periods set forth above. Any cure tendered by the limited partner shall be accepted or rejected on the same basis as if tendered by Developer.

Section 5.2 Developer Default: City Remedies

In the event Developer is in default under the terms of this Agreement, following expiration of notice and cure periods, the City shall have the right to exercise any of the following remedies:

- a. To waive in its sole and absolute discretion such default as not material;
- b. To refuse processing of an application for, or the granting of any permit, approval, or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including, but not limited to, the withholding of grading, excavation, building, and occupancy permits;
- c. To pursue available legal remedies provided by law;
- d. To terminate this Agreement as provided in Section 5.7;
- e. To delay or suspend the City performance under the Agreement; and
- f. To cure and charge back costs to the Developer in emergency situations imposing, in the good faith determination of the City, an immediate danger to the health or safety of persons or danger to property, with such prior notice to the Developer as is appropriate under the circumstances.

Nothing in this section herein shall be deemed to supersede or preclude the City's rights and remedies under the terms of any permit, approval, or land use entitlement granted for the

development and use of the Subject Property.

Section 5.3 Default by City: Developer Remedies.

In the event the City is in default under the terms of this Agreement, Developer shall have the right to exercise any of the following remedies:

- a. To waive in its sole and absolute discretion such default as not material;
- b. To pursue legal remedies provided for by law.
- c. To terminate this Agreement as provided in Section 5.7 hereof; and
- d. To delay or suspend Developer performance under the Agreement which is delayed or precluded by the default of the City.

Section 5.4 Enforced Delay, Extension of Times of Performance.

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than the City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, new or supplementary environmental regulation, litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement, whether instituted by the Developer, City, of any other person or entity) or similar bases for excused performance. If written notice of such delay is given to the other party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 5.5 Legal Actions.

In addition to any other rights or remedies, a party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreements herein, or to enjoin any threatened or attempted violation hereunder. In no event shall City, or its officers, agents, or employees, be liable for monetary or other damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to

enforce the provisions of this Agreement.

Section 5.6 Applicable Law and Attorneys' Fees.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. For purposes of this Agreement, reasonable attorneys' fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in the County of San Joaquin.

Section 5.7 Events and Manner of Termination.

Because of the substantial reliance of both Developer and the City on the provisions of this Agreement in implementing the development of the Project, both Developer and the City desire to avoid termination of this Agreement when other appropriate remedies or procedures to resolve disputes or problems exist. Prior to termination, the City and Developer will meet and confer with the objective of attempting to arrive at a mutually acceptable alternative to termination, which substantially advances the objectives of both in entering into this Agreement. Accordingly, this Agreement may be terminated by a party only under any one or more of the following circumstances and in each case subject to the condition that the City has been materially deprived of a bargained for public benefit of this Agreement:

- a. By expiration of its term, as provided in Section 1.4 hereof.
- b. By a material default hereunder by a party following expiration of applicable notice and cure periods, for which the non-defaulting party in the good faith exercise of its judgment determines that other remedies hereunder are inadequate or not available to correct such default or provide substantial relief to the non-defaulting party provided, however, that the non-defaulting party desiring to terminate this Agreement shall first give a 30 day written notice to the defaulting party of its intent to terminate this Agreement, and in the case of a default by the Developer, the matter shall be scheduled for consideration and review by the City within sixty (60) days after such notice of intent to terminate is delivered to the defaulting party, and if the default is not then resolved to the mutual satisfaction of the Parties, termination shall be effective upon thirty (30) days following such consideration and determination by the City. Said single ninety (90) day period shall be a final resolution regarding the particular material default for which written notice was given.

Section 5.8 Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing a 30 day written notice thereof to the City.

Section 5.10 Effect of Termination on Developer Obligations.

Termination of this Agreement shall not affect any requirements to comply with the terms and conditions of the applicable zoning, any development plan approvals, approval and acceptance of infrastructure improvements, any applicable permit(s), or any subdivision map or other land use entitlements approved with respect to the Subject Property, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

Section 5.11 Estoppel Certificate.

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. City acknowledges that a certificate hereunder may be relied upon by Permitted Assignees and other persons having an interest in the Subject Property, including holders of mortgages and deeds of trust.

Article 6. Assignments and Transfer of Ownership.

Section 6.1 Right to Assign.

Developer shall have the right to assign (by sale, transfer, or otherwise) its rights, duties and obligations under this Agreement as to any portion of the Subject Property subject to the provisions contained in this Article 6 with the written consent of the City, which consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment. Notwithstanding the foregoing, Developer may assign this Agreement to a limited partnership of which Developer or an affiliate thereof is the general partner, and may transfer partnership interests in such limited

partnership in accordance with the agreement of limited partnership of such entity, without the City's consent.

Section 6.2 Consent to Assignment: Release Upon Assignment.

Upon assignment, in whole or in part, of Developer's rights and interests under this Agreement, Developer/Assignor shall be released from its obligations with respect to the Subject Property, lot, parcel, or portion thereof so assigned, to the extent arising subsequent to the effective date of such assignment, if: (i) Developer (or Assignor) was not in default under this Agreement at the time of the assignment, and (ii) Developer has provided to the City written request for consent to assignment, if required by Section 6.1 and (iii) except for assignments permitted under 6.2 without the City's consent, the Assignee is a qualified applicant as determined by the City in its sole discretion, and (iv) the Developer and the party to whom the rights are assigned ("Assignee") have signed an Assignment and Assumption Agreement in a form and content acceptable to City Attorney and (v) if required by Section 6.1, the City has consented in its reasonable discretion, to such assignment, and (vi) with respect to assignment of any lot or parcel that is not shown on a duly filed final subdivision map, the Assignee has signed all required agreements and posted required bonds and insurance, to complete all required subdivision improvements.

Section 6.3 Actions by the City.

Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager without further approval by the City Board and any such action shall be in writing.

Article 7. Mortgagee Protection: Certain Rights of Cure.

Section 7.1 Encumbrances on the Subject Property

The parties hereto agree that this Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole and absolute discretion, from encumbering the Subject Property (other than property to be offered for dedication) or any portion thereof or any improvements thereon with any restrictive covenant and/or any Mortgage securing financing with respect to the construction, development, use or operation of the Project. City acknowledges that the mortgagee ("M o r t g a g e e") may require certain modifications to or subordinations of this Agreement, and the City agrees, upon request, from time to time, to meet with Developer and/or representatives of any such Mortgagee to negotiate in good faith any such request for modification or subordinations. City further agrees that it will not unreasonably withhold its consent to any such requested modification or subordinations to this Agreement provided such modifications or subordinations are processed in accordance with the procedures for amendment of this Agreement. Any Mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

Article 8. Hold Harmless and Indemnification: Insurance.Section 8.1 Hold Harmless and Indemnification.

a. To the fullest extent permitted by law (including, without limitation, California Civil Code §§ 2782, 2782.6 and 2782.8), Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify, and hold harmless, the City and its officers, agents and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Sub-consultants), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) arising from, or alleged to have arisen from, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, reckless, or willful misconduct of the Consultant, any Sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities") in the performance of its services under this Contract, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, cost, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Contract. The City's acceptance of the insurance certificates required under this Contract does not relieve the Consultant from its obligation under this paragraph. To the extent that there is an obligation to indemnify under this Section, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, reckless or willful misconduct.

Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent such Liabilities are caused by the sole negligence, active negligence or willful misconduct of such Indemnitee.

Article 9. General ProvisionsSection 9.1 Exhibits.

The following documents are referred to in this Agreement, attached hereto and made a part hereof by this reference:

Exhibit

<u>Designation</u>	<u>Description</u>
"A"	Legal Description of the Project
"B"	Depiction of the Project

References herein to "this Agreement" shall include all of the foregoing exhibits.

Section 9.2 Developer's Interest.

Developer represents that the Developer has ownership and control of the Subject Property described in Exhibits "A" & "B".

Section 9.3 Amendment of Agreement.

This Agreement may be amended in a writing signed by both parties from time to time by mutual consent of the City and Developer, with the City costs payable by Developer, provided that the procedure and findings required for consideration and approval by the City of an amendment to or extension of the term of this Agreement shall be the same as those specified in the Enabling Resolution for consideration and approval of this Agreement in the first instance.

Article 10. Miscellaneous.Section 10.1 Project as a Private Undertaking.

It is specifically understood and agreed by and between the Parties hereto that the development of the Subject Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between the Developer, on the one hand, and the City on the other, is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

Section 10.2 Consistency with Stockton General Plan.

City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety, and general welfare and is consistent with the Stockton General Plan.

Section 10.3 Construction.

This Agreement shall be subject to and construed in accordance and harmony with the Stockton Municipal Code, as it may be amended, provided that such amendments do not alter the rights granted to the Parties by this Agreement.

Section 10.4 Obligations.

All the obligations of this Agreement are the essence of the Agreement.

Section 10.5 Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally, by overnight courier or by registered or certified mail, return receipt requested. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below and any party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address:

If to City:

City of Stockton
425 North El Dorado
Street Stockton, CA 95202
Attn: City Clerk
Telephone: (209) 937-8458
Facsimile: (209) 937-8447

With a Copy To:

City of Stockton
345 North El Dorado Street
Stockton, CA 95202
Attn: Community Development Director
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Developer:

Visionary Home Builders of California
Attn: Carol Ornelas
315 North San Joaquin Street
Stockton, CA 95202

With a Copy To:

Gubb and Barshay, LLP
Attn: Scott Barshay, Esq.
505 14th Street, Suite 1050
Oakland, CA 94612
Telephone: (415) 781-6600
Facsimile: (415) 781-6967

Any notice given to the Developer as required by this Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

Section 10.6 Recordation.

No later than ten (10) days after the Effective Date of this Agreement, the City Clerk shall cause to be recorded, a copy of this Agreement in the Official Records of the Recorder's Office of San Joaquin. The Developer shall be responsible for all recordation fees, if any.

Section 10.7 Construction.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

Section 10.8 Jurisdiction and Venue.

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin, Stockton Superior Court. In the event that a suit, claim, or legal proceeding is filed in federal court, jurisdiction shall be in the Eastern District Court, Sacramento.

Section 10.9 No Obligation to Develop.

It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the housing, commercial and industrial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, once Developer has begun actual construction of the Project, Developer shall diligently pursue completion of the Project.

Section 10.10 Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 10.11 Entire Agreement.

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of 18 pages, inclusive, plus Exhibits A and B, which constitute the entire understanding and agreement of the Parties.

Section 10.12 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.

"CITY"

"DEVELOPER"

CITY OF STOCKTON,
A Municipal Corporation

VISIONARY HOME BUILDERS OF
CALIFORNIA

KURT O. WILSON
CITY MANAGER OF THE CITY OF STOCKTON

CAROL ORNELAS
CHIEF EXECUTIVE OFFICER

(ACKNOWLEDGMENTS ATTACHED)

ATTEST:

BONNIE PAIGE
CITY CLERK OF THE CITY OF STOCKTON

APPROVED AS TO FORM AND
CONTENT:

JOHN M. LUEBBERKE
CITY ATTORNEY

By: _____

EXHIBIT "B"

DEPICTION OF PROJECT



ACKNOWLEDGMENT

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, _____
(insert name and title of the officer)

personally appeared _____

who proved to me on 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 _____

(SEAL)