

## **LIEN FORGIVENESS INCENTIVE AGREEMENT**

This agreement ("Agreement") is entered into and effective on \_\_\_\_\_, by and between the City of Stockton ("City"), a municipal corporation, and Raul Aguirre, an individual ("Applicant"); on the terms and conditions set forth below:

### **RECITALS**

Applicant is in the process of transferring the property known as 941 North Madison Street, Stockton, California (the "Property") described more particularly in Exhibit "A" attached hereto and incorporated by this reference;

City has imposed on the Property numerous code enforcement charges due to the prior substandard condition of the Property which total \$94,038.70 (the "Code Enforcement Charges"), the entirety of which remains due and owing.

City desires that the Property be redeveloped in a manner consistent with City standards and codes, and that the Property remain free of blight. Certain delinquent taxes and assessments that are a lien against the Property, including the Code Enforcement Charges, presently limit the marketability of the Property.

This Agreement is intended to facilitate the marketability of the Property and does not obligate City to take any actions or incur any obligations other than those specifically contained herein.

The parties hereto acknowledge that they are not partners or involved in a joint venture and, other than as specifically set forth herein, City is not contractually involved with this Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **TERMS AND CONDITIONS**

1. Applicant shall successfully invest in, improve, and/or perform blight abatement on the subject property in accordance with applicable City standards and agrees to keep the Property in acceptable condition for no less than five (5) years following project completion ("Five-Year Monitoring Period"). For purposes of this Agreement, the Five-Year Monitoring Period shall commence on the date Applicant received and passed final inspection on the Property as determined by the City Building Division.

2. If Applicant fails to successfully invest in, improve, and/or perform blight abatement on the subject property within the project schedule (Exhibit B) approved by the City, Applicant shall be considered in default and the Note, with retroactively applied interest and penalties, shall be immediately due and payable.

3. Applicant shall properly maintain the subject property, as determined by the City, during the Five-Year Monitoring Period following the successful investment, improvement, and/or blight abatement of the subject property. Failure to do so shall be considered a default and the City will reinstate the subordinated liens and retroactively apply all applicable interest and penalties.

4. Upon execution of this AGREEMENT, Applicant shall pay to the City the amount of \$8,802.91 which represents the "Hard Costs" portion of the Code Enforcement Charges levied on the Property (the "Hard Costs").

5. Upon receipt of \$8,802.91, "Hard Costs", City agrees to request that the San Joaquin County Treasurer/Tax Collector remove the Hard Costs from the Property's liability stated on the tax roll. City shall hold in abeyance the remainder of the Code Enforcement Charges (the "Soft Costs"), until such time as those charges are forgiven pursuant to this agreement or are rendered due and payable by Applicant's default.

6. Applicant shall pay any and all other amounts required to bring all taxes current on the Property, including but not limited to current property taxes, general and special taxes, assessments and supplemental taxes (if any), delinquent taxes and interest, fines and penalties assessed by San Joaquin County on said delinquent taxes, and any processing charges required by San Joaquin County.

7. Applicant shall execute a Promissory Note (the "Note") (in the form provided herein as Exhibit "C" which is attached hereto and incorporated by this reference), payable to City in the amount of \$85,235.79 which shall be secured by a Deed of Trust on the Property and be recorded in the Office of the San Joaquin County Recorder. City shall suspend the accrual of any interest on the Soft Costs during the term of the Note.

8. If the subject property meets all of the requirements specified in this Agreement following the successful investment, improvement, and/or blight abatement of the Property, at the end of the Five-Year Monitoring Period, the Applicant may request that the City remove the applicable lien from the property. If the City determines that the Applicant has met all applicable requirements such that there are no code violations against the Property, the City shall forgive the Promissory Note and re-convey the Deed of Trust. If Applicant fails to meet all applicable requirements, the Note shall be called and the lien amounts reinstated, including the retroactive application of all applicable interest and penalties.

9. Before commencement of any work on the Property, Applicant shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by City or any other governmental agency. Applicant shall pay such fees as may be required in connection therewith and nothing in this Agreement shall be interpreted in such a way as to hinder, limit or condition any permit, approval or review processes applicable thereto.

10. City will cease the assessment of Civil Penalties on the Property, as of the date of this executed Agreement.

11. Applicant agrees to comply with all insurance requirements contained in the Deed of Trust, attached hereto as Exhibit "D" and incorporated by this reference.

12. Miscellaneous

a. Applicable Law. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of California.

b. Entire Agreement. This Agreement supersedes any prior agreement, oral or written and, together with the exhibits hereto, contains the entire agreement between City and Applicant on the subject matter. No subsequent agreement, representation or promise made by either party, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof City and Applicant acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no agreement, statement, representation or promise made by any such person that is not contained herein shall be valid or binding on City or Applicant.

c. Modification. This Agreement may be supplemented, amended or modified only by the mutual written agreement of both parties. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by both parties.

d. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto. The Note can be assumed or be subordinated, however, Applicant has not made or created, and shall not, prior to the completion of the project as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, of the property, without the prior written consent of City. City shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) Applicant is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of Applicant imposed by the Loan Documents; (c) the transferee demonstrates to City's sole satisfaction that it is capable of and intends to maintain the property in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize City's security interest in the property and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the project and the Loan.

e. Interpretation and Construction. The parties agree that each party has reviewed Agreement and that each has had the opportunity to have their counsel and real estate advisors review and revise this agreement and that any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of Agreement or any amendments or exhibits thereto.

f. Severability. Should any provision of this Agreement or portion thereof be rendered or declared invalid, illegal, or unenforceable by a Court of competent jurisdiction in the State of California, the remainder of the Agreement's provisions shall remain valid and in full force and effect.

g. Attorneys' Fees. If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement, or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement shall be entitled to recover reasonable attorneys' fees from the other party.

13. The undersigned represent and warrant that they are each authorized to execute this Agreement by the party on whose behalf they have signed.

IN WITNESS WHEREOF, the parties hereto have executed Agreement as of the day and year first written above.

**CITY OF STOCKTON,**  
a Municipal Corporation

**APPLICANT:**

By: \_\_\_\_\_  
KURT O. WILSON  
City Manager

\_\_\_\_\_  
RAUL AGUIRRE

ATTEST:

By: \_\_\_\_\_  
BRET HUNTER, CMC  
City Clerk of the City of Stockton

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE, CITY ATTORNEY

By: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT ELEVEN (11), IN BLOCK FIFTY-EIGHT (58), AS SHOWN UPON MAP ENTITLED, WEST OF CENTER STREET, IN THE SAID CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

**APN: 137-140-26**

EXHIBIT "B"

PROJECT TIMELINE

Project: Performance and completion of blight abatement including improvements identified in the below Scope of Work.

Project Commencement: November 1, 2017

Project Completion: February 20, 2018

Scope of Work: Bring the entire property up to Code, including but not limited to plumbing, electrical, roof, siding, dry rot, new flooring, new bathrooms, replacement and repair of all broken windows, pull new permits for all previous work completed without required permits.

## Exhibit "C"

**PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned ("BORROWER") promises to pay to the City of Stockton ("LENDER"), a municipal corporation, or its successors, the principal sum of \$85,235.79 with interest at the annual rate of ten percent, with payment in full due on \_\_\_\_\_ (the "Payment Due Date"), unless otherwise forgiven as provided herein.

All principal and interest shall be payable to the City at: City of Stockton Economic Development Department, City Hall, Room 317, Stockton, CA 95202 or at such other place as shall be designated by LENDER.

This Note evidences a debt by BORROWER to LENDER, which may be forgiven if BORROWER engages in certain conduct that will result in the preservation and maintenance of certain real property (the "Property") located at and commonly known as:

**931 NORTH MADISON STREET, STOCKTON, CALIFORNIA**

This Note is secured by a Deed of Trust on the Property in favor of LENDER.

The parties hereto have entered into a Lien Forgiveness Incentive Agreement dated \_\_\_\_\_ (the "Agreement"). The Agreement contains various terms and conditions upon which LENDER has conditioned the forgiveness of the debt evidenced by this Note.

Unless the debt evidenced by this Note is forgiven pursuant to the terms of the Agreement, the debt shall be paid in full, together with all interest and penalties, on the Payment Due Date.

In the event of any transfer, sale or assignment of the Property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWER. Any successor(s) to or assignee(s) of BORROWER shall execute and deliver to LENDER a Deed of Trust on the Property to secure repayment of this Note.

In the event the undersigned fails to comply with the terms of the Agreement, the debt evidenced hereby, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.

If suit is initiated by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER'S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:

LENDER: City of Stockton  
Economic Development Department  
City Hall, Room 317  
Stockton, CA 95202

BORROWER: Raul Aguirre  
422 Curran Ave  
Sacramento, CA 95833

This Note shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

BORROWER reserves the right to prepay at any time all or any part of the remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of its date.

Approved as to form and content:

BORROWER:

JOHN M. LUEBBERKE  
CITY ATTORNEY

By:\_\_\_\_\_

\_\_\_\_\_  
RAUL AGUIRRE