

CITY OF VISALIA

**REIMBURSEMENT AGREEMENT
FOR LAND DEDICATED TO CITY OF VISALIA FOR PUBLIC PARK AND RECREATION
FACILITIES PURSUANT TO VISALIA MUNIICIPAL CODE**

This Agreement, dated as of the ____ day of _____, 2024, is entered into by and between the City of Visalia, a municipal corporation (the “City”), and VOV CAPITAL LP, A CALIFORNIA LIMITED PARTNER. (the “Developer”).

RECITALS:

WHEREAS, Chapter 12.36 of the City of Visalia Municipal Code establishes a process for the construction of park and recreation facilities and the payment of fees by to construct such facilities when new dwelling units are built in the City pursuant to provisions of this Chapter. (the “Park and Recreation Development Fee Program”); and

WHEREAS, Section 12.36.080 of the City of Visalia Municipal Code authorizes the City to provide a credit based on the fair market value of property dedicated to the City for public park and recreation facilities that are provided in conformance with the City of Visalia General Plan; and

WHEREAS, City and Developer, as a condition for approval of **Victory Oaks Phase 1**, pertaining to real property identified therein (the property and entitlements so described hereafter referred to as the Project”) required the Developer to dedicate 1.99 acres of property for use as a park facility. (hereafter collectively referred to as the “Park Property”); and

WHEREAS, dedication of the Park Property qualifies the Developer for applicable reimbursement under the Visalia Municipal Code; and

WHEREAS, City and Developer desire to set forth their mutual understandings regarding the manner in which the City shall reimburse Developer for the Park Property that will be dedicated with the recording of the final parcel map for the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Developer hereby agree as follows:

Section 1. Dedication of Park Property

Developer shall dedicate the 1.99 acres of Park Property to the City of Visalia in accordance with the requirements set forth in the approval of the Victory Oaks Tentative Subdivision Map No. 5586. This dedication and acceptance shall occur with the filing the final map for the Project, which is required to be completed and recorded prior to any fee credit or reimbursement from the City under this Agreement.

Section 2. Reimbursement Amounts

The City shall reimburse, through fee credits or cash payments as provided herein, the Developer for the planned Park Property an acquisition fee credit based on the schedule of costs and land values described in Visalia Municipal Code section 12.36.060, and this amount is stated in Exhibit 1 to this Agreement, which lists the agreed upon per acre value of the 1.99 acres of land dedicated

to the City eligible for reimbursement.

Section 3. Right to Reimbursement

Developer shall be reimbursed the amount listed in Exhibit 1 as an acquisition fee credit for the dedication of park property in the manner as set forth in Section 4 below. It is acknowledged by the Parties that the applicable impact fees will still be charged on all building permits issued for the Project. Developer also acknowledges that maintenance of the Park Property will be the responsibility of the Developer for the one-year maintenance period following the recording of the Notice of Completion issued after completion of the improvements identified in the Subdivision Improvements Agreement between City and Developer for the Project.

Section 4. Reimbursement Method

Upon recording of the final map, the dedication and acceptance of the Park Property in compliance with this Agreement the dedication shall be considered complete, and Developer shall be reimbursed in the following manner(s) for the acquisition fee credit under Visalia Municipal Code section 12.36.080 as follows:

4.1. Credit Applied Towards Future Fees. The Developer shall be credited with a total fee credit of **\$83,072** ("Fee Credit") for Phase 2 of the Project. Such Fee Credit shall be available for offsetting impact fees associated with development of the Project and the Credit Total shall be distributed among the lots or pads that constitute the Project as identified in Exhibit 1. The Fee Credit shall be recognized at the time of building permit issuance for Phase 2. The Credit Total shall be deemed to attach to property constituting Phase 2 of the Project as identified herein, and should Developer transfer such property or any portion thereof, the credit or appropriate portion thereof shall transfer automatically with such property. Applicable City impact fees, including but not limited to Park and Recreation Development Fees, will continue to be charged on all building permits issued for the Project.

4.2. Cash Reimbursement from Park and Recreation Development Fees Collected City Wide. City shall pay the remaining balance of **\$216,056.79** of the acquisition fee credit in cash, following fiscal year 2025-2026 or when funds are available. The City shall establish respective priorities to payments from such fund by reference to the date the dedication of qualifying property was dedicated to the City. The City will reimburse this remaining balance to the Developer without interest.

Section 5. Transfer of Reimbursement Rights

Rights to cash payment reimbursements or fee credit granted to Developer pursuant to this Agreement may be transferred to other owners, builders, or developers only with the written consent of City, which shall not be unreasonably withheld. The written consent confirming the assignment of reimbursement rights must be signed by the Developer and the City, and an executed copy of the form shall be kept on file at the City.

Section 6. Limited City Obligation

The obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the fees collected for the Facilities. Neither the General Fund nor any other

fund of the City, except the applicable fund(s) associated with the Park and Recreation Development Fee Program, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. No Developer shall compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

Section 7. Liens, Claims, and Encumbrances

Prior to dedication of the Park Property to the City, the Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or encumbrances on the Park Property. Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to make any reimbursement payments until the Developer has cleared any and all liens, claims and encumbrances from the Park Property and provided the required documentation, including but not limited to title reports showing clear title, and assurance in writing, to the satisfaction of the City.

Section 8. No Third Party Beneficiary

City does not assume any liability, duty or obligation to Developer or Developer's agents by execution or performance of this Agreement and no contractors, subcontractors, agents or any other parties are third party beneficiaries of this Agreement.

Section 9. Attorney's Fee

If any suit, action or proceeding in law or equity is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable costs and attorneys' fees.

Section 10. Notices

Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services, each of which is hereinafter called an "Express Courier," shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received confirmation of successful transmission by the sending fax machine), and upon receipt, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

City:

City of Visalia
Community Development Department
315 E. Acequia Ave.
Visalia, CA 93291
Attn: City Engineer

With a copy to:

City of Visalia
Finance Department
707 W. Acequia Ave.
Visalia, CA 93291
Attn: Finance Administrator

Developer:

VOV CAPITAL LP, A CALIFORNIA LIMITED PARTNERSHIP
BY: AHA DEVELOPMENT GROUP, INC., A CALIFORNIA CORPORATION
ITS: GENERAL PARTNER
Attn: Matthew Watson
1170 N Coast HWY,
Laguna Beach, California 92651-1373

Either party may change its mailing address at any time by giving written notice of such changes to the other party in the manner provided herein.

Section 11. Term

The term of this Agreement shall start on the day and year duly executed by all parties and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

Section 12. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

Section 13. Binding on Successors and Assigns

Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, in the same manner as if such parties had been expressly named herein.

Section 14. Governing Law; Venue

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Tulare, State of California.

Section 15. Exhibits

The Exhibits attached hereto are hereby incorporated herein by this reference.

Section 16. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

EXHIBIT 1

	<u>ITEM</u>	<u>QUANTITY</u>	<u>UNITS</u>	<u>UNIT COST</u>	<u>AMOUNT REQUESTED</u>
IMPROVEMENTS (CP 0424 PROJECT)					<u>City</u>
A.	PARK LAND ACQUISITION (Supplemental)				
	Lot C - Property for Park and Recreation Facilities	1.99	AC	\$ 150,000.00	\$ 299,128.79
B.	SUPPLEMENTAL IMPROVEMENTS (TIF PROGRAM)				
	N/A			\$ -	\$ -
SUMMARY OF REIMBURSEMENT					
	Total Credits For Impact Fees (Park Acquisition Phase 2)				\$ (83,072.00)
TOTAL CASH REIMBURSEMENT					\$ 216,056.79