TERMINATION AGREEMENT
FOR
DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT – OPEN WINDOW PROJECT, LLC – PHASE I
AND
DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT – OWP PHASE 2, LP – PHASE II

This termination agreement (the "Termination Agreement") is entered into as of ___________ ____, 2023, by and among Open Window Project, LLC, a California limited liability company ("OWP1"), OWP PHASE 2, LP, a California limited partnership ("OWP2") and the City of Stockton, a municipal corporation (the "City") (collectively, the "Parties" and individually each a "Party").

RECITALS

A. In February 2016, City approved a Master Development Plan and Development Agreement for the Open Window Project (the "Project"), which encompassed approximately 15 square blocks within the downtown Stockton core.

B. Phase I of the Project originally consisted of approximately 200 residential units and 92,000 square feet of commercial space.

C. In July 2015, the City Council approved a Downtown Infrastructure Infill Incentive Program to support infill development in the downtown core.

D. On November 29, 2016, OWP1 entered into a Downtown Infrastructure Infill Incentive Reimbursement Agreement with City for up to $3.8 million to assist with Phase I of the Project (as amended, the "Phase I Agreement").

E. On May 16, 2017, OWP1 and City executed the first amendment to the Phase I Agreement, which caused an early release of $760,000 of funding to OWP1 and securing said funding with a lien on seven (7) properties ("Properties") owned by OWP1: 510, 532, and 544 E. Miner Avenue, 221 North American Street, 617 East Channel Street, 621 East Channel Street, and 210 North American Street (collectively "Liens").

G. On December 19, 2017, OWP1 and City executed the second amendment to the Phase I Agreement, authorizing an additional $2.38 million in Downtown Infrastructure Infill Incentive funding for a total of $6.18 million. The scope for Phase I of the Project increased to 261 residential units, of which 231 would be market-rate units, and 92,000 square feet of commercial space.

H. On August 12, 2019, OWP2 and City executed a Downtown Infrastructure Infill Incentive Reimbursement Agreement for up to $1.8 million to assist with Phase II of the Project (the "Phase II Agreement").

I. On July 16, 2020, OWP1 and City executed the third amendment to the Phase I Agreement, decreasing the Phase I Project scope to 129 market-rate residential units and 54,263 square feet of commercial space. Reimbursable funding was reduced from $6.18 million to $4.95 million.

J. At the January 11, 2022, meeting of the City Council, the Council approved, at the request of OWP1, revocation of the Open Window Project Master Development Plan and termination of the Development Agreement.

K. OWP1 and City now desire to terminate the Phase I Agreement.

L. OWP2 and City now desire to terminate the Phase II Agreement.

For and in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. **Termination of Phase I**. The Phase I Agreement is terminated, effective immediately upon execution of this Termination Agreement (the "Termination Date").

2. **Termination of Phase II**. The Phase II Agreement is terminated, effective on the Termination Date.

3. **Return of Funds**. One hundred ninety-three thousand one hundred sixty-two dollars and ninety cents ($193,162.90) shall be paid by OWP1 to City based on the following schedule ("Payment Schedule"):

(i) $64,387.63 due within 60 days of the Termination Date.
(ii) $64,387.63 due within 180 days of the Termination Date.
(iii) $64,387.64 due within 365 days of the Termination Date.

4. **Release of Liens**. OWP1 and OWP2 intend to develop in whole or in part the Projects despite this Termination Agreement and the Return of Funds resulting from Section 3 herein. The Parties acknowledge that the Project will require OWP1, OWP2, and/or affiliated entities (individually and collectively "Developer") to secure financing from other sources and further acknowledge that such financing will require the Developer to use one or more of the Properties as collateral for such financing ("Collateral"). Recognizing Developers need for the Collateral and the City's need to retain sufficient collateral during Payment Schedule, the Parties agree to cooperate and use best efforts to develop a mutually acceptable plan for the release of the Liens that satisfies the Developer's need to utilize the Collateral and the City's need for security during the Payment Schedule.

5. **Miscellaneous.**

(i) **Governing Law**. This Termination Agreement shall be governed by the laws of the State of California. Venue shall be in San Joaquin County, California.

(ii) **Authority of Parties**. Each Party has full power and authority to execute and deliver this Termination Agreement, and to perform and observe all of the terms and provisions herein.

(iii) **Authority of Persons Executing Documents**. This Termination Agreement is being executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of each respective Party, and all actions required under each Party's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Termination Agreement have been duly taken to the extent such actions are required as of the date of this Termination Agreement's execution and delivery.

(iv) **Counterparts**. The Parties may execute this Termination Agreement in counterparts with the counterparts together constituting a single executed document as if signed by the Parties together. Each Party may sign the Termination Agreement electronically with electronic signatures counting as originals.

(v) **Severability**. The partial or complete invalidity of any one or more provisions of this Termination Agreement shall not affect the validity or continuing force and effect of any other provisions.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as of the date first written above.

[*Signatures on following page*]

CITY OF STOCKTON (“CITY”)
A municipal corporation

By: ________________________________
HARRY BLACK
CITY MANAGER

ATTEST:

By: ________________________________
ELIZA R. GARCA, CMC
CITY CLERK

APPROVED AS TO FORM:

By: ________________________________
LORI M. ASUNCION
CITY ATTORNEY

OPEN WINDOW PROJECT, LLC (“OWP1”)
A California limited liability company

By: ________________________________
ZACHARY CORT
PRESIDENT

OWP PHASE 2, LP (“OWP2”)
A California limited partnership

By: ________________________________
ZACHARY CORT
PRESIDENT