

**THIRD AMENDMENT TO THE
DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT
AGREEMENT**

OPEN WINDOW PROJECT, LLC, PHASE I

This Third Amendment (the "Third Amendment") is entered into as of _____ by and between Open Window Project, LLC, a California limited liability company, (the "DEVELOPER"), and the City of Stockton, a municipal corporation (the "CITY").

RECITALS

A. In February 2016, CITY approved a Master Development Plan (MDP) and Development Agreement for the Open Window Project (the "Project"), which encompasses 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 s.f. 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, DEVELOPER entered into a Downtown Infrastructure Infill Incentive Reimbursement Agreement (as amended, Agreement) with CITY for up to \$3.8 million to assist with Phase I of the Project.

E. On May 9, 2017, the City Council approved an Amendment to the Reimbursement Agreement authorizing the release of \$760,000 of funding to DEVELOPER and securing said funding with a lien on seven (7) properties owned by DEVELOPER.

F. In 2017 the scope for Phase I of the Project changed significantly with additional residential units and encompassing an additional city block. The change in scope would require considerable infrastructure improvements above the amount Council initially approved in November 2016.

G. On October 3, 2017, the City Council approved a Second Amendment (as amended, Second Amendment) to the Reimbursement Agreement authorizing an additional \$2.38 million in Downtown Infrastructure Infill Incentive funding for a total of \$6.18 million.

H. The scope for Phase I of the Project has changed with a decrease in the overall number of market-rate residential units and reduction of commercial space. The revised project scope will now include 129 market-rate residential units and 54,263 s.f. of commercial/retail space. This change in scope will require fewer eligible infrastructure

improvements. As such, the CITY will reduce the amount in Downtown Infrastructure Infill Incentive funding from \$6.18 million to a Third Amendment total of \$4.95 million.

AMENDMENT

The Downtown Infrastructure Infill Incentive Reimbursement Agreement is hereby amended as follows:

1. The CITY and DEVELOPER agree to amend Section 2.A and 2.C decreasing the maximum reimbursement of funds to DEVELOPER from \$6.18 million to \$4.95 million.

2. The CITY and DEVELOPER agree to amend Section 2.A as follows: “Pursuant to the guidelines and regulations herein defined, and subject to the satisfaction of the conditions in this Section 2, CITY agrees to reimburse DEVELOPER for the cost of improvements in the total amount of \$4.95 million.”

3. The CITY and DEVELOPER agree to amend Section 2.B.ii decreasing the minimum number of new market-rate residential units from 231 to 129 and minimum square footage of new/newly renovated commercial space from 90,000 s.f. to 55,299 s.f..

4. The CITY and DEVELOPER agree to amend Section 2.C as follows: “Once the conditions in 2.B above have been satisfied as determined by CITY and subject to the limitations in 2.A above, CITY shall provide reimbursement payments to DEVELOPER, in the total amount of \$4.95 million, in progress payments as follows.” The percentages of the progress payments identified in Section 2.C.i through 2.C.v will remain the same, with the actual dollar amount of each progress payment revised to reflect the new reimbursement total of \$4.95 million.

5. All other terms and provisions of the Downtown Infrastructure Infill Incentive Reimbursement Agreement are unchanged and remain in full force and effect.

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IN WITNESS WHEREOF, the CITY and DEVELOPER have executed this Third Amendment as of the date first above written.

“DEVELOPER”

OPEN WINDOW PROJECT, LLC
a California limited liability company

By: _____
ZACHARY CORT, PRESIDENT

“CITY”

CITY OF STOCKTON
a municipal corporation

By: _____
HARRY BLACK, CITY MANAGER

ATTEST:

By: _____
ELISA R. GARZA, CMC
CITY CLERK

APPROVED AS TO FORM:

By: _____
RYAN J. MEYERHOFF
DEPUTY CITY ATTORNEY