

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

City of Fresno  
2600 Fresno Street  
Fresno, Ca. 93721  
Attention: City Manager

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO, a municipal corporation

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

Wilma Quan

Its: City Manager

Dated: \_\_\_\_\_

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF FRESNO  
a municipal corporation

and

Upside Enterprises, LLC, a Nevada limited liability company

Stanislaus and L Street  
Mixed Use Residential Rental Project  
Fresno, California 93721

## ATTACHMENTS

- Exhibit A Site Map
- Exhibit A-1 Legal Description
- Exhibit B Scope of Development and Basic Design
- Exhibit C Performance Schedule
- Exhibit D Certificate of Completion

## AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

This Amended and Restated Disposition and Development Agreement (DDA or Agreement) is entered into as of the Effective Date (defined below), between CITY OF FRESNO, a municipal corporation (City) and Upside Enterprises, LLC, a Nevada limited liability company (the Developer).

### RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. The City previously transferred certain real property at Stanislaus and L Streets, Fresno, California, more particularly described in Exhibits "A" (Site Map) and "A-1," (legal description) attached (the Property) to Developer.

B. Developer acquired the Property from City at fair market value and proposes to develop it privately with mixed uses consisting of approximately 58 multi-family residential units, and approximately 16,000 square feet of commercial and community space, as more particularly described in the Scope of Development, attached as Exhibit "B" (the Project).

C. Developer agrees to undertake improvements in accordance with the combined Performance Schedule described in Exhibit "C" attached hereto and incorporated herein (the Performance Schedule).

D. This project has been environmentally assessed under the California Environmental Quality Act (CEQA) and found to be categorically exempt pursuant to CEQA Guidelines section 15332 (Class 32).

E. The City and Developer previously executed a Disposition and Development Agreement recorded on January 19, 2016, (the Original DDA). The parties desire to supersede, replace and restate the Original DDA by this DDA.

### AGREEMENT

In consideration of the mutual promises and covenants and upon the terms and conditions set forth in this Agreement, the parties agree as follows:

1. Definitions. Besides definitions contained elsewhere in this Agreement, the following definitions will govern the construction, meaning, application and interpretation of the defined terms, as used in this Agreement.

1.1 ADA. "ADA" means the Americans with Disabilities Act of 1990.

1.2 Agreement. "Agreement" means this Amended and Restated Disposition and Development Agreement between City and Developer.

1.3 Certificate of Completion. "Certificate of Completion" means that Certificate issued in the form attached as Exhibit D to Developer by City evidencing completion of the Project for purposes of this Agreement.

1.4 City. "City" means the City of Fresno, a municipal corporation, having its offices at 2600 Fresno Street, Fresno, California 93721-3605, and operating through its Council and its various departments.

1.5 Day. “Day,” whether or not capitalized, means a calendar day, unless otherwise stated.

1.6 Default. “Default” means a party’s failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.7 Developer. “Developer” means Upside Enterprises, LLC, a Nevada limited liability company.

1.8 Effective Date. “Effective Date” means the date that City and Developer sign this Agreement following City Council approval.

1.9 Environmental Laws. “Environmental laws” means any federal, state, or local law, statute, ordinance or regulation concerning environmental regulation, contamination or cleanup of any Hazardous Materials or Waste including, without limitation, any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

1.10 Hazardous Materials. “Hazardous Materials” means any substance, material, or waste, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance, which is: (a) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, (c) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, (d) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyl, (h) listed under Article 9 or defined as “hazardous” or “extremely hazardous” under Article 11 of Title 22, California Administrative Code, (i) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as “hazardous substances” pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing, mixed-use, or commercial developments or associated buildings or grounds, or typically used in household activities in a manner typical of other residential, mixed-use or commercial developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Section 25249, *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet, and saccharine.

1.11 Improvements. “Improvements” means the construction of the Project on the Property.

1.12 Performance Schedule. “Performance Schedule” means the schedule attached as Exhibit C, setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Schedule from time to time on mutual written agreement of Developer and City, but any delay or extension of the completion date is subject to the requirements in this Agreement.

1.13 Phase. “Phase” means a stage or portion of the Project designated by Developer for construction. A Phase may not consist of less than an entire residential, mixed-use, or commercial structure.

1.14 Project. “Project” means the development that Developer is to complete on the Property and any off-site improvements, as generally described in the Scope of Development, attached as Exhibit B. The Project includes, without limitation, mixed uses consisting of 58 residential units, ground-floor commercial and community space, and the associated landscaping, parking improvements, on-site improvements, and any off-site improvements that the City may require as a condition to approving the Project. The Project may be developed and constructed in one or more Phases.

1.15 Project Completion Date. “Project Completion Date” means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Development Schedule, as evidenced by City’s issuance of a Certificate of Completion.

1.16 Property. “Property” means the real property described in Exhibits A and A-1.

1.17 Security Financing Interest. “Security Financing Interest” means a security interest, which Developer grants in its interest in the Property, before City issues and records a Release of Construction Covenants, to secure a debt, the proceeds of which Developer uses to construct the Project.

2. RESTATEMENT OF ORIGINAL DDA. This DDA completely supersedes, replaces and restates the Original DDA. The parties agree the Original DDA is hereby terminated and replaced by this DDA.

### 3. PROJECT DEVELOPMENT

3.1 Private Development Project; Revision of Project. Developer will complete the Project as described in the Scope of Development using contractors licensed to do business in California. Except as set forth in this Agreement, before Developer begins constructing the Improvements or undertakes any other work of improvements on the Property, Developer, at its own cost and expense, will independently secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Project requires for construction of the Project.

3.1.1 Design Approval. Developer shall obtain the City’s approval of the completed and final design development drawings. Within 30 days after

receiving a completed final set of design development drawings, the City, through its City Manager, will review the drawings, and acting in a commercially reasonable manner, will approve or disapprove. If the City disapproves the drawings, it will specify the reason for disapproval and ask Developer to provide any additional information the City may need to approve the drawings. If the City fails to either approve or disapprove the design and development drawings within the 30-day period, the City shall be deemed to have approved the design and development drawings. The parties intend this process shall be in addition to, but shall occur concurrently with, the approval process by the Development and Resource Management Department of the City.

3.2 Time for Completion of the Project. City conveyed the Property to Developer for construction of the Project, and not for speculation in real estate. Therefore, the Developer will begin construction by the date provided in the Performance Schedule, and will diligently complete the Project according to the Performance Schedule, or by any other date as the parties may agree in a written extension signed by the parties and subject to any extension of time provided for in Section 3.3.

3.3 Extension of Time for Completion. In addition to the 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; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by City and the Developer. City Manager, on behalf of City, may grant extension(s) which cumulatively do not exceed one hundred eighty (180) days, any additional extension shall require City Council approval.

3.4 Certificate of Completion. After Developer has satisfactorily completed a Phase of the Project according to this Agreement and after the completion of the final Phase of the Project, Developer may ask City to record a Certificate of Completion indicating that a Phase or that all Phases are complete, substantially in the form attached as Exhibit D. For purposes of this section, Developer's submission of a "Safe to Occupy" Certificate or Certificate of Occupancy for the Improvements within the subject Phase of the Project shall be conclusive evidence that Developer has satisfactorily completed those Improvements. Subject to the satisfaction of the conditions to its issuance (see next subsection) and within ten

days of such request, City shall provide an instrument certifying Developer's completion of the Project, or any Phase thereof, by preparing and recording the Certificate of Completion. This release, when recorded, will evidence City's conclusive determination that Developer has satisfied the construction covenants in this Agreement as to the subject Phase of the Project. The release will not be evidence that Developer has complied with or satisfied any obligation to any person holding a deed of trust or Security Financing Interest. The release shall not terminate Developer's indemnification or other obligations, which by their nature are intended to survive Project completion. After the release is recorded in the Official Records of Fresno County, any party then owning or after that purchasing, leasing or otherwise acquiring any interest in the applicable portion of the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding the construction requirements or Project development of the completed Project.

3.5 Conditions to Issuing the Certificate of Completion. The following are all conditions precedent to City issuing the Certificate of Completion for the Project, or any Phase thereof, and each submission will be in a form and substance satisfactory to City:

A. Evidence that all mechanics' liens or material men's liens and claims recorded against the Property, or any Phase thereof, and the Project Improvements that are the subject of the Certificate of Completion have been unconditionally and finally released or, if not released, sufficiently bonded against as required by law or insured against by appropriate title insurance endorsement.

3.6 Liens and Stop Notices. If a claim of lien or bonded stop notice is recorded against the Property or any Project improvements, the Developer, within 91 days after that, or within five days after City's demand, whichever last occurs, will do the following:

A. Pay or discharge the same; or

B. Effect the release of it by recording and delivering to City a surety's release bond in sufficient form and amount, or otherwise; or

C. Give City other assurance that City, in its sole discretion, deems satisfactory to protect City from the effect of the lien, claim or bonded stop notice.

3.7 Annual Proof of Insurance. Annually, beginning with commencement of construction of the Project, and continuing until the issuance of a Certificate of Completion for the Project, Developer shall submit proof of insurance as required by this Agreement.

3.8 Taxes and Assessments. The Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Developer's right to contest any taxes or assessments in good faith. The Developer will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Except as to property in public use and subject to the following sentence, Developer and those

tenants/others holding or using the Property under Developer by lease or otherwise, shall not apply for or take advantage of or otherwise enable any exemption from property/possessory taxes. The Developer shall not allow a use, transfer or sale of the Property/portion thereof, whether prior to or following completion of the improvements hereunder, to an entity that is exempt from property/possessory tax and/or which would allow a removal from the tax roll, absent prior notice to and written consent of City.

3.9 Compliance with Laws. In performing its obligations hereunder, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction, including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not City, is responsible for determining applicability of and compliance with all local, state and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. City makes no representations regarding the applicability of any such laws to this Agreement, the Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether City knew or should have known of the need for Developer to comply, or whether City failed to notify Developer of the need to comply.

3.10 Entitlements. Certain planning, land use, zoning, conditional use permits, and public actions required in connection with the Project are discretionary government actions. Nothing in this Agreement obligates City or any other governmental entity to grant final approval of any matter described herein. Such actions are legislative, quasi-judicial, or otherwise discretionary in nature. City shall not be liable, in law or equity, to Developer or any of its executors, administrators, transferees, successors-in-interest, or assigns for any failure of any governmental entity to grant approval on any matter subject to discretionary approval. City agrees to use best efforts to cooperate with Developer to timely review and consider all complete applications for necessary entitlements; provided, however, City shall retain its full governmental discretion to consider any such applications on their merits and in accordance with applicable law.

#### 4. INDEMNITY; INSURANCE.

4.1 Indemnity. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend, with qualified counsel of Developer's choice, the City, and each of its officers, officials, employees and agents from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability including, without limitation, personal injury, death at any time and property damage) incurred by the City, Developer or any other person, and from any claims, demands and actions in law or equity (including reasonable attorneys' fees, litigation and legal expenses incurred by the City or held to be the liability of the City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the

making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or Improvements by the Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation and removal or maintenance of the work and Improvements; or (v) City's granting, issuing or approving use of this Agreement.

Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

**This indemnity shall also cover, without limitation the following: (i) any act, error or omission of Developer as to the City or any of their officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Project or the Property; (ii) any use of the Property, the Project by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance of the Project; or (iv) failure of Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement or the Project, including, but not limited to, claims based upon failure to comply fully with prevailing wage laws as may be determined by any court or agency of the State of California or United States Government; with respect to any and all claims related to prevailing wage, Developer, as provided herein and otherwise in this Agreement, assumes all responsibility for payment of prevailing wage and complying with prevailing wage laws, if required, and specifically waives any and all rights against the City, as well as City agents, employees, agencies, and consultants, pursuant to California Labor Code section 1726(c) and analogous federal law, if any, and agrees to defend and fully indemnify the City, as well as City agents, employees, agencies, and consultants, for any claims based upon failure to pay prevailing wage, including, without limitation, claims for damages, fines, penalties, litigation expenses, costs, attorneys' fees, and interest. Developer and/or City have the right to contest or challenge any finding that prevailing wage applies.**

This section shall survive termination or expiration of this Agreement and the potential recordation of the Grant Deeds.

**4.1.1 Action Arising Out of Approval of This Agreement.** The Developer shall indemnify, defend and hold the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the City by any third party arising out of the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The City will promptly notify the Developer of the action. Within fifteen (15) days after receipt of the notice, the Developer shall take all steps necessary and

appropriate to assume defense of the action. The City will cooperate with the Developer in the defense of the action (at no cost to the City). Neither the Developer nor the City will compromise the defense of such action or permit a default judgment to be taken against the City without the prior written approval of the other party(ies).

4.1.2 Survival of Indemnification Provisions. Except as otherwise specifically stated herein, the indemnification provisions in this subsection and every other indemnification in this Agreement will survive any termination of this Agreement, will survive the expiration of any covenant herein and will not merge with any other document evidencing an interest in real property.

4.2 Insurance. Until City issues the Certificate of Completion and records it in the Official Records of Fresno County, Developer shall pay for and maintain, or cause to be paid and maintained, in effect all insurance policies required hereunder with insurance companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. The following policies of insurance are required, and Developer will deliver proof of these policies before starting construction:

4.2.1 Commercial General Liability Insurance. Commercial general liability Insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$5,000,000 aggregate for products and completed operations, and \$10,000,000 general aggregate.

4.2.2 Commercial Automobile Liability Insurance. Commercial automobile liability insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 (Section 1, subsection A.1 entitled "Any Auto"), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

4.2.3 Workers' Compensation Insurance. Workers' compensation insurance, as required under the California Labor Code.

4.2.4 Employer's Liability. Employer's liability coverage with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

4.2.5 Property Insurance. Property insurance is required to include extended coverage insurance for at least the full replacement cost of the

Developer Improvements on the Property, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

4.2.6 Builders Risk Insurance. Builders risk insurance sufficient to cover one hundred (100) percent of the replacement value of all improvements made on the Property including, without limitation, terms of labor and materials in place or to be used as part of the permanent construction (including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by Developer, the cost of which is not included in the cost of work).

4.2.7 Umbrella or Excess Insurance. In the event DEVELOPER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty-(30) calendar day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy that shall provide a thirty (30)-calendar day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing policy renewal prior to the expiration date of the policy. When an insurer, broker, or agent issues a notice of cancellation, change or reduction in coverage, Developer shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the City.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City and the officers, officials, agents and employees as an additional insured. Each policy shall be endorsed so that Developer's insurance is primary and no contribution is required of the City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall furnish the City with copies of the actual policies upon the request of its designee, or the City's Risk Manager.

The fact that insurance is obtained by Developer or its subcontractors shall not be deemed to release or diminish the liability of Developer or its subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City, and their officers, officials, agents, employees and volunteers, shall apply to all claims

and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer or its subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, its principals, officers, agents, employees, persons under the supervision of Developer, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If Developer fails to maintain the required insurance in full force and effect, Developer shall immediately discontinue all work under this Agreement, and take all necessary actions to secure the work site to insure that public health and safety is protected, until the City receive notice that the required insurance has been restored to full effect and that the premiums for the insurance have been paid for a period satisfactory to City. Developer's failure to maintain any required insurance shall be sufficient cause for the City to terminate this Agreement after notice and the right to cure as provided in Section 7.4.

If Developer subcontracts any or all of the services to be performed under this Agreement, Developer shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, Developer will be solely responsible for ensuring that its subcontractor maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

4.2.8 Insurance for Project Design Work. Developer shall maintain for its Project design work, or if Developer subcontracts any of the Project design work Developer shall require each design subcontractor to maintain, professional liability insurance (errors and omissions) with a limit of not less than one million dollars (\$1,000,000) per occurrence.

If claims made forms are used for any Professional Liability Coverage, either (i) the policy shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years after the Release of Construction Covenants is recorded. The requirements of this section relating to such coverage shall survive termination or expiration of this Agreement.

4.2.9 Performance and Payment Bonds. Developer will obtain and deliver labor and material bonds, payment, and performance bonds, issued by an insurance company meeting the criteria for Developer's other insurance under this Agreement. The bonds will each contain a penal sum at least equal to forty percent (40%) of Developer's estimated construction costs of any particular Phase of the Project then under construction and shall remain in full force until the issuance of a "Safe to Occupy" Certificate or

Certificate of Occupancy, or the recording of a Certificate of Completion for that Phase, whichever is earlier. The bonds will name City as co-obligee. Instead of requiring performance and payment bonds, City may consider and accept other evidence of Developer's ability to complete the Project.

5. SECURITY FINANCING INTERESTS AND RIGHTS OF HOLDERS.

5.1 Prohibition Against Transfer of Property, the Buildings or Structures Thereon and Assignment of Agreement. Prior to the issuance by City of a Certificate of Completion for the Project, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign, or lease the whole or any part of the Property or the buildings or improvements thereon without the prior written approval of City, except Developer may transfer the Property to Uptown, L.P., a California limited partnership (Uptown), which is an entity in which the principals of Developer have an ownership interest. Upon such assignment, Uptown will assume and perform all obligations and duties imposed on Developer under this DDA. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

5.1.1 Permitted Transfers. Notwithstanding the foregoing, the following events (Permitted Transfers) shall not be deemed a transfer for the purposes of requiring City's consent:

- A. Creation of Security Financing Interests;
- B. A sale, conveyance, or transfer of the Property at foreclosure (or a deed in lieu of foreclosure) resulting from a Security Financing Interest;
- C. The conveyance or dedication of parts of the Property to the City or the grant of easements or permits solely to facilitate the development of the Property before the Certificate of Completion is recorded;
- D. Sale or rental of Project units/space in accordance with this Agreement;
- E. Sale or assignment to an entity owned (in part or whole), controlled by or in common control with Developer (including Uptown, L.P.);
- F. Assignments resulting from the death or mental or physical incapacity of an individual;
- G. Assignments in trust for the benefit of a partner's spouse, children, grandchildren or other family members.

5.2 Approval or Consent of City. Except in the case of Uptown, L.P., when a request for transfer or assignment is submitted to City for consideration, approval will be conditioned on the following:

A. Financial Strength and Business Experience. The proposed transferee will demonstrate to City's reasonable satisfaction that the proposed transferee has sufficient financial strength and the business experience in planning, financing, development, ownership, and operation of similar projects to complete the Project, or portion thereof, competently.

B. Assumption Agreement. Any transferee, by recordable instrument acceptable to City, shall expressly assume all the unfulfilled or ongoing obligations of the Developer under this Agreement, and agree to be subject to all the conditions and restrictions to which the Developer is subject with respect to the Property or applicable portion thereof.

C. Transfer Documents. The Developer or its successors shall submit all documents, proposed to effect any transfer or assignment, to City for review and approval.

D. Other Information. Developer or its successors shall deliver all information to City that City may reasonably request to enable it to evaluate the proposed transfer or assignment. City shall approve, conditionally approve, or disapprove a request for assignment within 15 days after receiving the request and all supporting documentation.

E. Developer's Release. City's approval of any transfer, assignment, or sale will not relieve the Developer or any successor from any unfulfilled or ongoing obligations of Developer under this Agreement with respect to any portion of the Property not transferred. The provisions of this subsection are intended to discourage land speculation, and these provisions shall be liberally interpreted to accomplish that end.

### 5.3 Security Financing; Rights of Holders

5.3.1 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Back or Other Financing for Development. Notwithstanding Section 5.1 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the construction of improvements on the Property and any other expenditures necessary and appropriate to develop the Property under this Agreement. The Developer shall promptly notify City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on the Property whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

5.3.2 Holder Not Obligated To Construct Improvements. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement

to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for the Property be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

5.3.3 Notice of Default to Mortgage, Deed of Trust, or Other Security Interest Holders; Right to Cure. Whenever City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust, or other security interest authorized by this Agreement who has previously made a written request to City therefor default of the Developer under this Section 5.3.3. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to City by written agreement reasonably satisfactory to City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

5.3.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, City may purchase the mortgage, deed of trust, or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Property has vested in the holder, City, if it so desires, shall be entitled to a conveyance of the Property from the holder to City upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, deed of trust, or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

B. All expenses with respect to foreclosure;

C. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property;

D. The costs of any authorized improvements made by such holder; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by City.

5.3.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by the Developer on a mortgage, deed of trust or other security interest with respect to the Property prior to the completion of the Project, and the holder has not exercised its option to complete the Project, City may cure the default prior to completion of any foreclosure. In any such event, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing the default. City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

5.3.6 Subordination of DDA to Financing and Security Interests. Notwithstanding any provision herein to the contrary, this DDA will be subject to and subordinate to all mortgages, deeds of trust or other security interests with respect to the Property for construction or permanent financing of the Project. City agrees to promptly execute all commercially reasonable forms required by Project lenders to evidence the subordination of this DDA to Project financing. In addition, if reasonably required by Project lenders in connection with Project financing, City will agree to modify the terms of this DDA provided such modification will not materially reduce or impair the rights of City hereunder.

## 6. REPRESENTATIONS AND WARRANTIES.

### 6.1 Developer Representations and Warranties.

A. Representations and Warranties of Developer. Developer represents and warrants that:

1. Developer is a Nevada limited liability company duly formed and existing under the laws of the State of Nevada, in good standing, and authorized to do business in the State of California, County of Fresno, and City of Fresno.

2. Developer has all requisite power and authority to carry out its business as now and hereafter conducted and to enter and perform its obligations under this Agreement.

3. The person or persons signing this Agreement for Developer have been duly authorized to execute and deliver this Agreement and to legally bind Developer to its terms and conditions.

4. Developer's execution and performance of this Agreement does not violate any provision of any other agreement to which Developer is a party.

5. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary to Developer's execution of this Agreement.

6. Developer has or will have sufficient funds available to fund the Project and to pay all costs assumed by Developer hereunder.

7. This Agreement is valid, binding, and enforceable against Developer in accordance with its terms, except as such enforceability may be limited by principals of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules of law governing specific performance, injunctive relief or other equitable remedies.

8. Developer has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property.

6.2 Survival of Representations and Warranties. The parties are relying upon the above representations and warranties in entering this Agreement. The foregoing representations are and shall be continuing in nature and shall remain in full force and effect until all obligations under this Agreement are met or this Agreement is terminated in a manner provided herein.

## 7. DEFAULT, REMEDIES AND TERMINATION.

7.1 Default. Failure or delay by either party to perform any term of this Agreement shall be a default under this Agreement if not cured within the time set forth herein. Any failure or delay by a party in asserting any right or remedy will not constitute a waiver, and will not deprive the party of its right to institute and maintain any action or proceeding necessary to protect or enforce any right or remedy.

7.2 Legal Actions. A party may institute a legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal action shall be brought in the Fresno County Courts, or the Fresno Division of the Federal District Court for the Eastern District of California.

7.3 Rights and Remedies are Cumulative. Except as may be expressly stated otherwise in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other rights or remedies for the same default or any other default. In addition to the specific rights and remedies herein, the parties may resort to any other rights or

remedies available at law or in equity, including, without limitation, specific performance.

7.4 Notice and Cure Periods. If either party fails to perform under any provision of this Agreement including documents incorporated herein, the non-defaulting party shall serve written notice of the default on the defaulting party, describing the default, and the actions necessary to cure the default. A defaulting party will have 30 days from the date of the notice to cure the breach or failure unless a different time period is provided in this Agreement in which case the latter shall apply. If the default is not susceptible to cure within the 30 days, the defaulting party shall begin to cure the default within the 30 days and after that diligently prosecute the cure to completion. Failure of the defaulting party to cure within these times shall entitle the non-defaulting party to enforce any right or remedy provided in this Agreement, at law, or in equity. This provision is not intended to modify or extend any other notice or cure period specifically provided for in this Agreement. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

7.5 Right of Re-entry (Power of Termination) and Reverter. City may reenter and take possession of the Property, or part of it, and all improvements on it, terminate the estate conveyed to Developer by the Grant Deed which previously transferred title to the Property to Developer and revest the estate in City if, before recording a Certificate of Completion, any of the following occurs:

- A. Developer does not begin and complete construction of the Project within the time specified in the Performance Schedule or this Agreement; or
- B. Developer abandons or substantially suspends construction of the Project for 30 days after City gives written notice of the abandonment or suspension; or
- C. Developer assigns or transfers, or suffers an involuntary transfer of, any rights or obligations under this Agreement, or in the Property, in violation of the assignment provision of this Agreement.

7.6 Effect on Security Holders. City's right to reenter, repossess, terminate and revest are secured by the provisions of the Grant Deed which previously conveyed title to the Property to Developer. Such right to reenter, repossess, terminate and revest shall be subject to, limited by, and shall not defeat, render invalid, or limit: (i) any Security Financing Interest permitted by this Agreement; or (ii) any provision of this Agreement protecting the holder's Security Financing Interest.

7.7 Resale of the Property. When title to the Property reverts in City, City may, but is not required to, use its best efforts to resell the Property to a qualified and responsible party (as determined by City), who will assume the obligation of completing the Project or constructing the improvements other than the Project, satisfactory to City. Upon any resale of the Property, or part of it, the proceeds shall be applied as follows:

A. First, to reimburse City for (a) all costs and expenses incurred (including, without limitation, salaries of personnel) in connection with the recapture, management, and resale of the Property, or part of it, less any income City derived from the property in connection with the management; (b) all taxes, assessments, and water and sewer charges respecting the Property (or, if any of the Property is exempt from taxation or assessment or such charges during City's ownership, then such taxes, assessments or charges as would have been payable if the Property were not so exempt); (c) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees from attaching or being made; (d) any expenditures made or obligations incurred to complete the Project or other improvements on the Property; and any amounts otherwise owing to City from Developer or by its successor or transferee; and

B. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the purchase price paid to City for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Developer from the Property, the Project or other improvements on it. Notwithstanding the foregoing, the amount calculated pursuant to this Section shall not exceed the price that Developer paid City for the Property, and the fair market value of the improvements on it when the default or failure occurred, which led to City's exercise of the right of reverter.

C. Any balance remaining after such reimbursements shall be retained by City.

7.8 No Speculation in Land. The rights established in this Section 7 shall be interpreted considering City's intent to convey the Property to Developer for development of the Project, and not for speculation in undeveloped land or any other purpose.

## 8. GENERAL PROVISIONS.

8.1 Notice, Demands and Communication. All notices, elections, requests, acceptances, demands, instructions or other communications ("notice" or "notices") to be given to any party under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) within forty-eight (48) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid, return receipt requested; (iii) within twenty-four (24) hours after being deposited with a recognized private courier service (e.g. Federal Express), if delivered by a private courier service to the party to whom notice is to be given, all charges prepaid; or (iv) when sent, if given by electronic format that provides verification of successful transmission. All notices shall be properly addressed to the party receiving notice as follows:

**CITY:**  
City of Fresno  
Attention: City Manager  
2600 Fresno Street  
Fresno, CA 93721

**WITH COPIES TO:**  
City Attorney  
2600 Fresno Street  
Fresno CA 93721-3602  
Facsimile No.: (559) 498-1815

**DEVELOPER:**  
Upside Enterprises, LLC  
Attention: Mark Astone  
1466 Van Ness Avenue  
Fresno, California 93721

A party may change its address by notice given according to this subsection.

8.2 Conflict of Interests. No member, official, officer or employee of the Developer or City shall have any direct or indirect interest in this Agreement, or shall participate in any decision relating to this Agreement where such interest or participation is prohibited by law. No officer, employee, or agent of City who exercises any function or responsibility concerning the planning and carrying out of the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.

8.2.1 Developer represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

8.2.2 No contractor, subcontractor, mechanic, material man, laborer, vendor or other person hired or retained by Developer shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Developer as their sole source of recovery if not paid; and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and any such person, each such person shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.

8.3 Nonliability of Officials, Employees and Agents. No member, official, officer, employee or agent of City shall be personally liable to the Developer, or any successor in interest, for any default or breach by City.

8.4 Counterparts. This Agreement may be executed in counterparts, and together each executed counterpart shall constitute one Agreement.

8.5 Waiver. A party's waiver of the other's breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No provision of this Agreement may be waived except in a writing signed by all the parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

8.6 Attorneys' Fees. If a party initiates or defends litigation or any legal proceeding regarding the enforcement of this Agreement, the prevailing party in such litigation or proceeding, in addition to any other relief that may be granted, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal. A party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating the action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to the action. All such fees shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not such action is prosecuted to judgment.

8.7 Governing Law. This Agreement shall be interpreted and enforced, and the rights and duties of the parties under this Agreement (both procedural and substantive) shall be determined according to California law.

8.8 Further Assurances. Each party will take any further acts and will sign and deliver any further instruments required to carry out the intent and purposes of this Agreement.

8.9 Entire Understanding of the Parties. The exhibits referenced as attached are by such references incorporated into this Agreement. This Agreement, including exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings, and written agreements are superseded by this Agreement. This Agreement shall not be modified except by written instrument duly approved as required by law and executed by authorized representatives of the parties. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.

8.10 Consent, Reasonableness. Unless this Agreement specifically authorizes a party to withhold its approval, consent or satisfaction in its sole discretion, any consent, or approval, or satisfaction to be requested or required of a party, shall not be unreasonably withheld, conditioned or delayed.

8.11 Partial Invalidity. If any part of this Agreement is held to be invalid, void or unenforceable in any legal, equitable or arbitration proceeding, the remainder of the Agreement shall continue in effect, unless not giving effect to the invalid or unenforceable part would prevent effecting the purposes of the Project and this Agreement.

8.12 Ambiguity. This Agreement is the result of the combined efforts of the parties. Should any provision of this Agreement be found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against any party,

but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.

8.13 Number and Gender. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates.

8.14 Headings. All headings are for convenience only, are not a part of this Agreement, and are not to be used in construing this Agreement.

8.15 Binding Upon Successors. This Agreement shall bind and inure to the benefit of the successors in interest, personal representatives, and assigns of each party, subject to the limitation on transfer and assignment contained in this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor, representative, or assign of the party who has acquired an interest in compliance with the terms of this Agreement, or under law.

8.16 Relationship of the Parties. Nothing in this Agreement, the Grant Deed, or any other document executed in connection with this Agreement shall be construed as creating a partnership, joint venture, agency, employment relationship, or similar relationship between City and the Developer or any of the Developer's contractors, subcontractors, employees, agents, representatives, transferees, successors-in-interest or assigns. Nothing in this Agreement establishes a principal and agent relationship between the parties.

8.17 Nature of the Project. The Project is a private undertaking of the Developer. After City conveys title or possession of the property to Developer, the Developer shall have exclusive control over the Property, subject to the terms of this Agreement and all applicable Federal, State and local laws, ordinances, codes, regulations, standards and policies.

8.18 Time of Essence. Time is of the essence of each term, condition, and covenant contained in this Agreement.

8.19 Survival of Provisions. Those provisions expressly surviving expiration or earlier termination, including each indemnification provision, shall survive expiration or earlier termination of this Agreement, and shall not merge with any document evidencing any interest in real property.

[SIGNATURES APPEAR ON NEXT PAGE]



# California All-Purpose Certificate of 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 Fresno } s.s.

On Sept. 16<sup>th</sup> 2019 before me, Jessie Roseli Abdullah, Notary Public  
Name of Notary Public, Title

personally appeared Mark Astone  
Name of Signer (1)

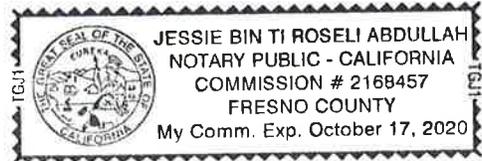
Name of Signer (2)

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.

J. Abdullah  
Signature of Notary Public



Seal

## OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

## Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Amended and restated DDA

containing 1 pages, and dated 9/16/19

The signer(s) capacity or authority is/are as:

- Individual(s)  
 Attorney-in-fact  
 Corporate Officer(s) \_\_\_\_\_  
Title(s)

- Guardian/Conservator  
 Partner - Limited/General  
 Trustee(s)  
 Other: President

representing: \_\_\_\_\_  
Name(s) of Person(s) Entity(ies) Signer is Representing

## Additional Information

### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

form(s) of identification  credible witness(es)

Notarial event is detailed in notary journal on:

Page # 21 Entry # 3

Notary contact: (559) 907-0822

Other

Additional Signer  Signer(s) Thumbprints(s)

\_\_\_\_\_

**EXHIBIT A  
SITE MAP**

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# Exhibit A Site Map



Copyright nearmap 2015  
Date: 7/25/2019



Aerial Imagery by Nearmap March 16th 2019  
Prepared by Planning and Development Department  
Disclaimer: This map is believed to be an accurate representation, however we make no warranties for correctness of this data.



**EXHIBIT A-1**  
**LEGAL DESCRIPTION**

Parcel 1: (APN 466-142-15T)

Lots 14, 15 and 16 in Block 89 of the Town (Now City) of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded June 8, 1876 in Book 1, Page 2 of Plats, Fresno County Records.

Parcel 2: (APN: 466-142-14T)

Lots 12, 13, and Southerly 15 feet of Lot 11 in Block 89, of the Town (Now City) of Fresno, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded June 8, 1876 in Book 1, Page 2 of Plats, Fresno County Records.

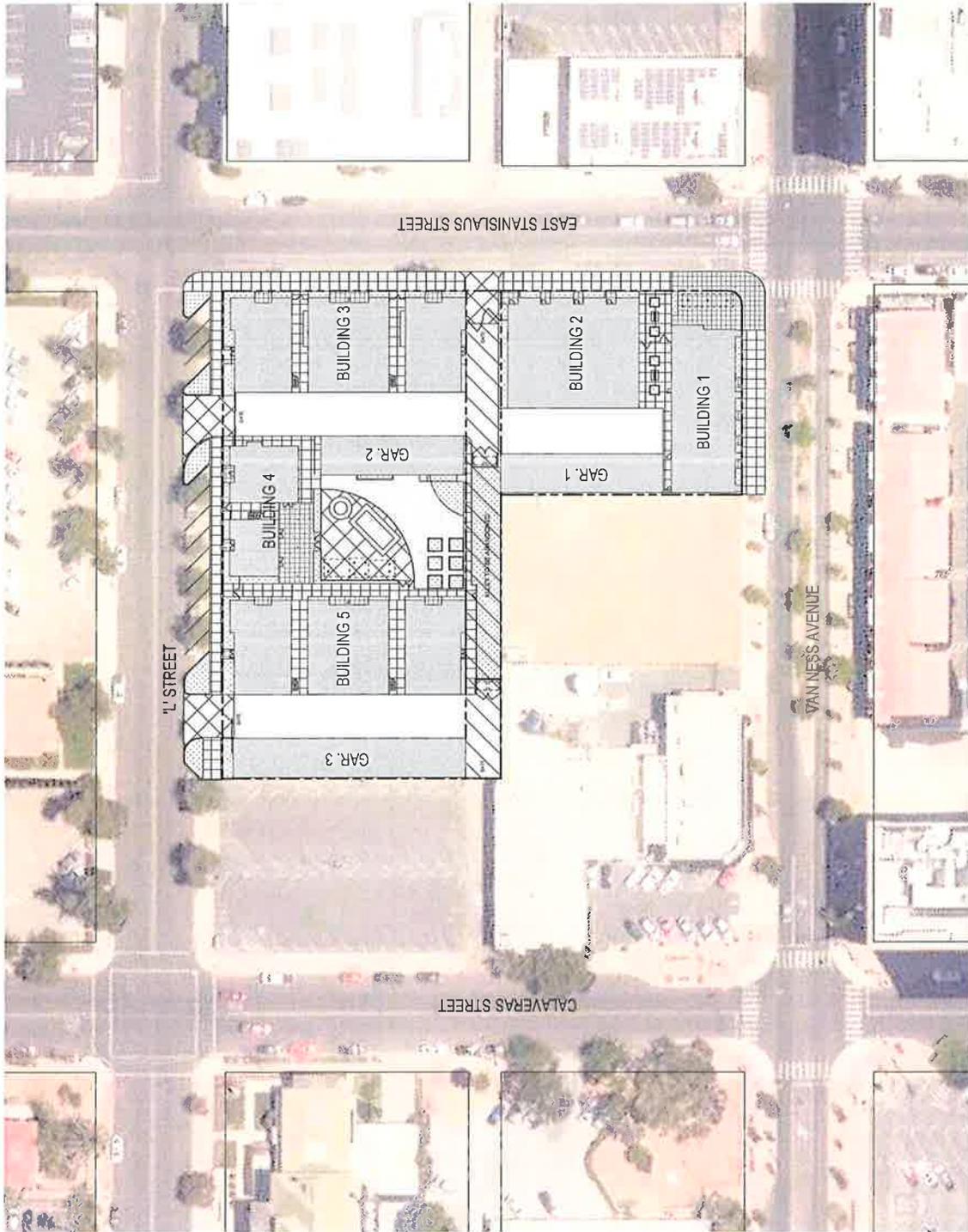
**EXHIBIT B**  
**SCOPE OF DEVELOPMENT  
AND BASIC DESIGN**

---

This High Density 58-unit Mixed Use project will be built on 1.46 acres. It will be a cutting-edge forward thinking living environment that will make a significant difference to the neighborhood of the downtown and creative district. Proposed are two types of living spaces in this community. The first type will be 20 Live/Work loft spaces that will face and engage the street. The ground floor of these units will host ground-floor retail for the practicing artists and small businesses. The second type of living spaces is a courtyard facing living spaces that will have host to an inviting common area.

Furthermore, the project will also feature 1,900 SF of community space that will allow for social and fitness areas. Moreover, the project will also have a common swimming pool and cabana for its residents at the heart of the property. In terms of parking there will be a total of 70 parking stalls including 20 garages and 25 carports. In addition, there will be 7 Guest/Retail stalls for visitors to the community.

Project Basic Designs are attached.



**Project Information**

Site Area  
 (6) Parcels  
 (1) Alley  
 TOTAL  
 69,750 SF  
 6,000 SF  
 69,750 SF  
 1.46 Acres

Dwelling Units  
 Single Floor  
 Townhouse  
 Work/Loft  
 TOTAL  
 58 Units  
 5 Suites

Parking Provided  
 Garages  
 57

Density  
 39.73 DU/AC  
 Garages (Ext.)  
 (Roof Garden)  
 8,093 SF  
 2,384 SF

Bldg. 1  
 Ground Flr. (Retail)  
 Second Flr.  
 Third Flr.  
 Total:  
 3,675 SF  
 3,985 SF  
 3,036 SF  
 10,696 SF

Bldg. 2  
 Ground Flr. (Retail)  
 (Units)  
 868 SF  
 2,581 SF  
 3,449 SF

Second Flr. (Retail)  
 (Units)  
 838 SF  
 2,297 SF  
 3,135 SF

Third Flr.  
 4,288 SF  
 Garage/Utilities  
 1,748 SF  
 10,696 SF

Bldg. 3 & Bldg. 5  
 Ground Flr.  
 Second Flr.  
 Third Flr.  
 3,705 SF  
 7,029 SF  
 7,029 SF  
 17,763 SF

Garage/Utilities  
 Total:  
 3,201 SF  
 20,964 SF

Bldg. 4  
 Ground Flr. (Multi/Ext.)  
 (Fitness)  
 (Units)  
 1,455 SF  
 431 SF  
 1,041 SF  
 2,927 SF

Second Flr.  
 Third Flr.  
 Total:  
 2,076 SF  
 2,089 SF  
 7,089 SF



LANCE-KASHIAN & COMPANY  
 FRESNO UPTOWN APARTMENTS

265 E. RIVER PARK CIRCLE #190  
 FRESNO, CA 93720

**OVERALL SITE PLAN**

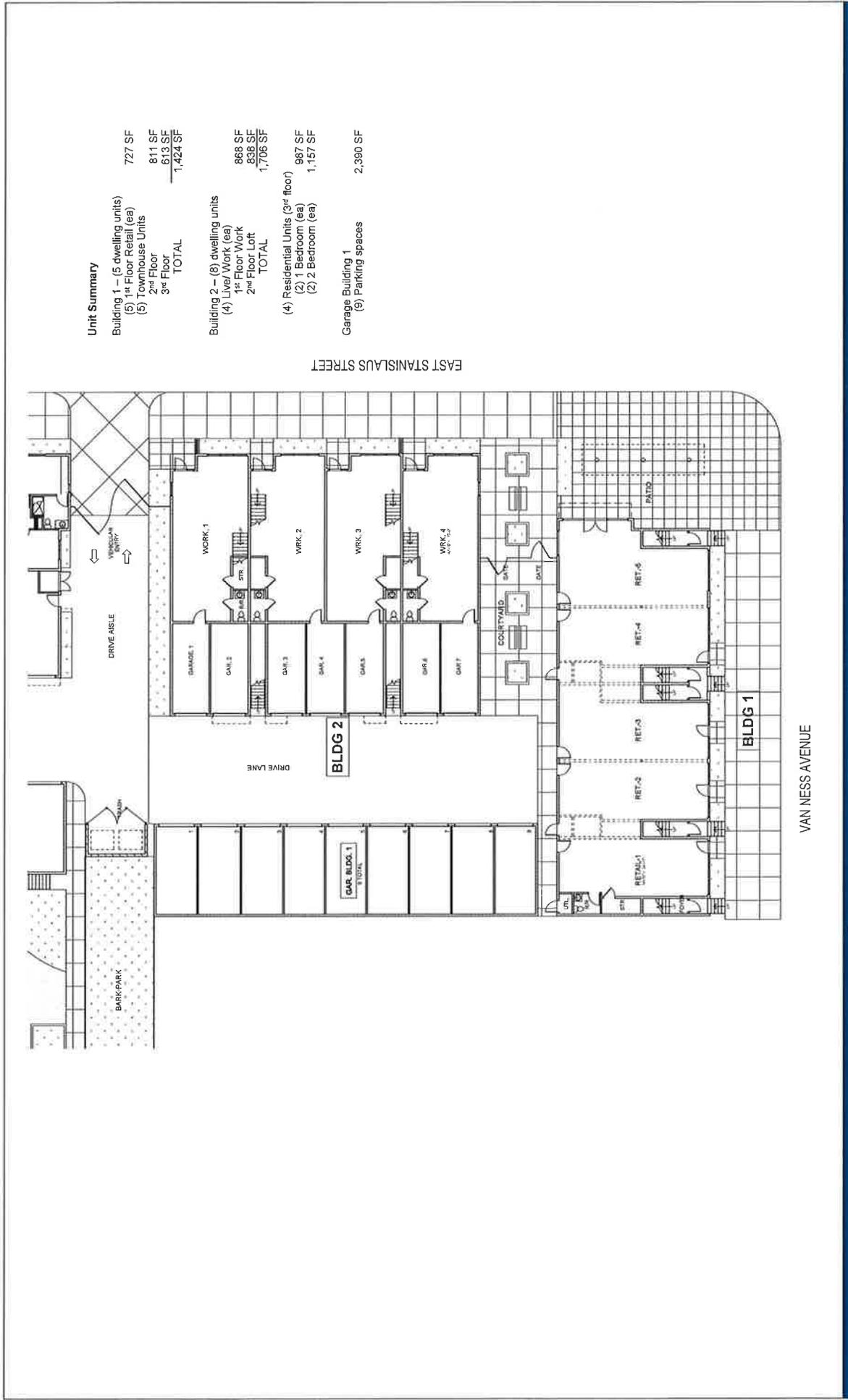


1" = 20' - 0"



ARCHITECTS  
 ENGINEERS  
 CONNECTED

PROJECT NO.  
 19-11218  
 DRAWING DATE  
 09/06/19



**Unit Summary**

|   |                 |
|---|-----------------|
| Building 1 – (5 dwelling units)               | 727 SF          |
| (5) 1 <sup>st</sup> Floor Retail (ea)         | 811 SF          |
| (5) Townhouses Units                          | 613 SF          |
| 2 <sup>nd</sup> Floor                         |                 |
| 3 <sup>rd</sup> Floor                         |                 |
| <b>TOTAL</b>                                  | <b>1,424 SF</b> |
|   |                 |
| Building 2 – (8) dwelling units               | 868 SF          |
| (4) Liver Work (ea)                           | 638 SF          |
| 1 <sup>st</sup> Floor Work                    |                 |
| 2 <sup>nd</sup> Floor Loft                    |                 |
| <b>TOTAL</b>                                  | <b>1,706 SF</b> |
|   |                 |
| (4) Residential Units (3 <sup>rd</sup> floor) | 987 SF          |
| (2) 1 Bedroom (ea)                            | 1,157 SF        |
| (2) 2 Bedroom (ea)                            |                 |
| <b>TOTAL</b>                                  | <b>2,390 SF</b> |
|   |                 |
| Garage Building 1                             |                 |
| (9) Parking spaces                            |                 |
| <b>TOTAL</b>                                  | <b>2,390 SF</b> |

**LANCE-KASHIAN & COMPANY**  
 285 E. RIVER PARK CIRCLE #150  
 FRESNO, CA 93728

FRESNO UPTOWN APARTMENTS  
 FRESNO, CA

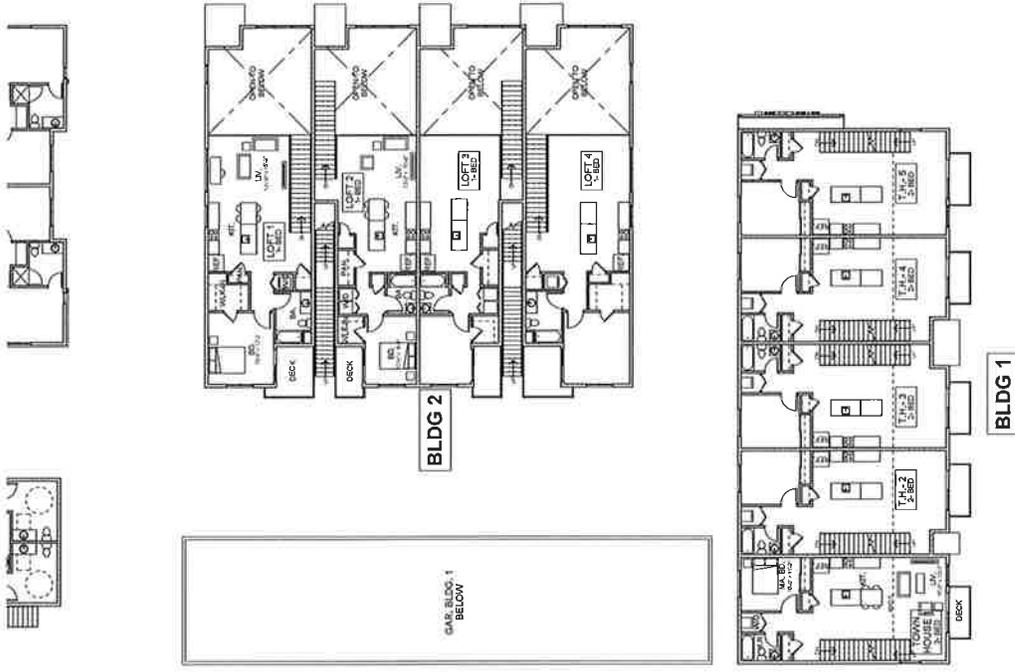
VAN NESS AVENUE

## MXED-USE - GROUND FLOOR

PROJECT NO. 19-11218  
 DRAWING DATE 09/06/19

ARCHITECTS  
 ENGINEERS  
 CONNECTED

**2**



PROJECT NO.  
19-11218  
ISSUANCE DATE  
09/06/19  
3

ARCHITECTS  
ENGINEERS  
CONNECTED



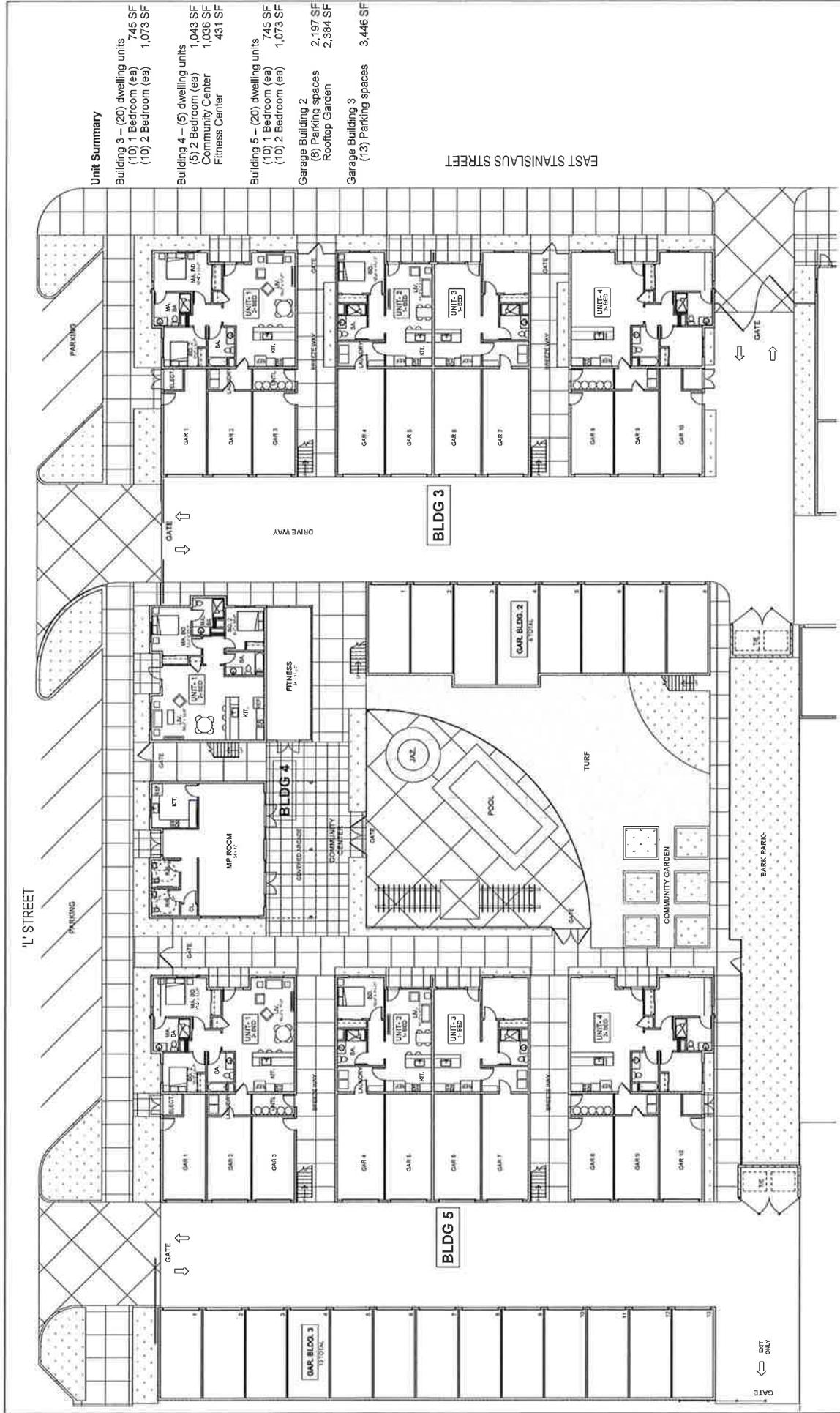
3/32" = 1' = 0"

# MXED-USE - SECOND FLOOR

LANCE-KASHIAN  
& COMPANY  
255 E. RIVER PARK CIRCLE #150  
FRESNO, CA 93720







**Unit Summary**

- Building 3 – (20) dwelling units
  - (10) 1 Bedroom (ea) 745 SF
  - (10) 2 Bedroom (ea) 1,073 SF
- Building 4 – (5) dwelling units
  - (5) 2 Bedroom (ea) 1,043 SF
  - Community Center 1,036 SF
  - Fitness Center 431 SF
- Building 5 – (20) dwelling units
  - (10) 1 Bedroom (ea) 745 SF
  - (10) 2 Bedroom (ea) 1,073 SF
- Garage Building 2
  - (8) Parking spaces
  - Rooftop Garden
- Garage Building 3
  - (13) Parking spaces

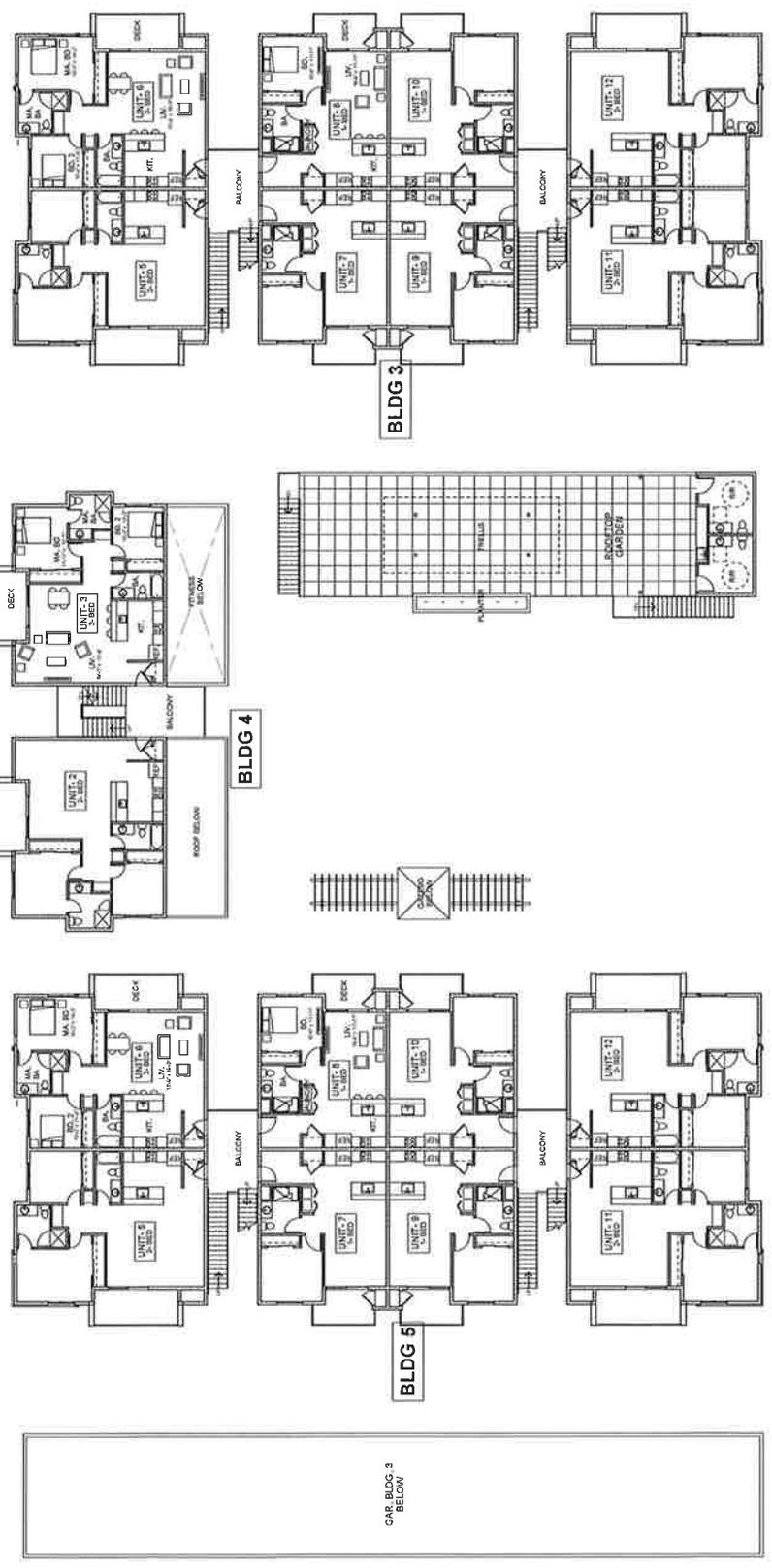
PROJECT NO. 19-11218  
 DRAWING DATE 09/06/19  
 ARCHITECTS  
 ENGINEERS  
 CONNECTED  
**5**



# COURTYARD - GROUND FLOOR

LANCE-KASHIAN FRESNO UPTOWN APARTMENTS & COMPANY  
 285 E. RIVER PARK CIRCLE #150 FRESNO, CA 93720  
 FRESNO, CA





PROJECT NO.  
19-111218  
DRAWING DATE  
09/06/19



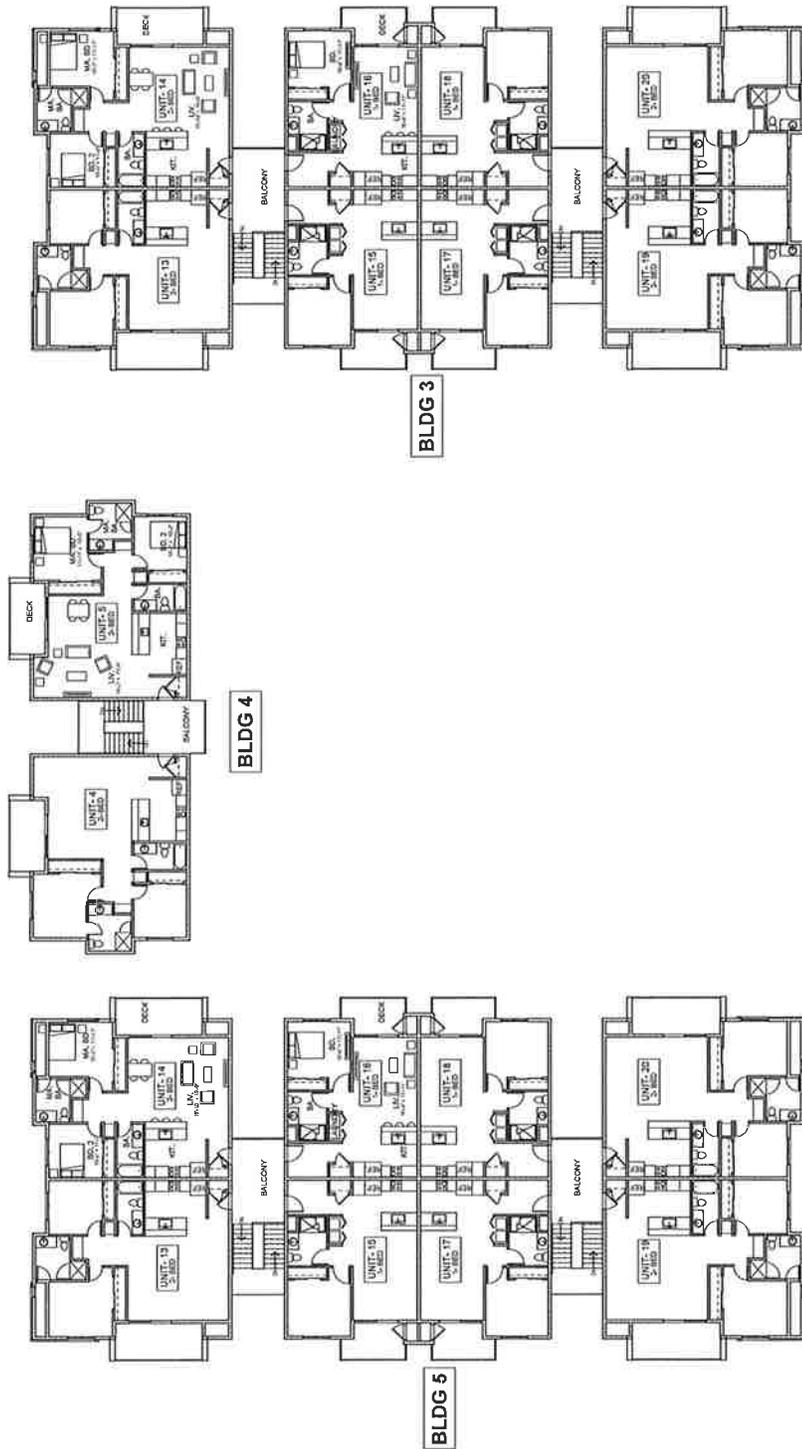
3/32" = 1'-0"  
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# COURTYARD - SECOND FLOOR

LANCE-KASHIAN  
& COMPANY  
255 E RIVER PARK AVENUE #150  
FRESNO, CA 93720

FRESNO, CA  
FRESNO, CA 93720





PROJECT NO.  
19-11218  
DRAWING DATE  
09/06/19

ARCHITECTS  
ENGINEERS  
CONNECTED



3/8" = 1'-0"

7

# COURTYARD - THIRD FLOOR

LANCE-KASHIAN  
& COMPANY  
265 E. RIVER PARK CIRCLE #150  
FRESNO, CA 93725





VAN NESS AVENUE ELEVATION (SOUTH)



EAST STANISLAUS STREET ELEVATION (EAST)



'I' STREET ELEVATION (NORTH)



LANCE-KASHIAN & COMPANY  
 255 E. RIVER PARK CIRCLE #150  
 FRESNO, CA 93720

# EXTERIOR ELEVATIONS

3/2" x 1/4"

ARCHITECTS  
 ENGINEERS  
 CONNECTED

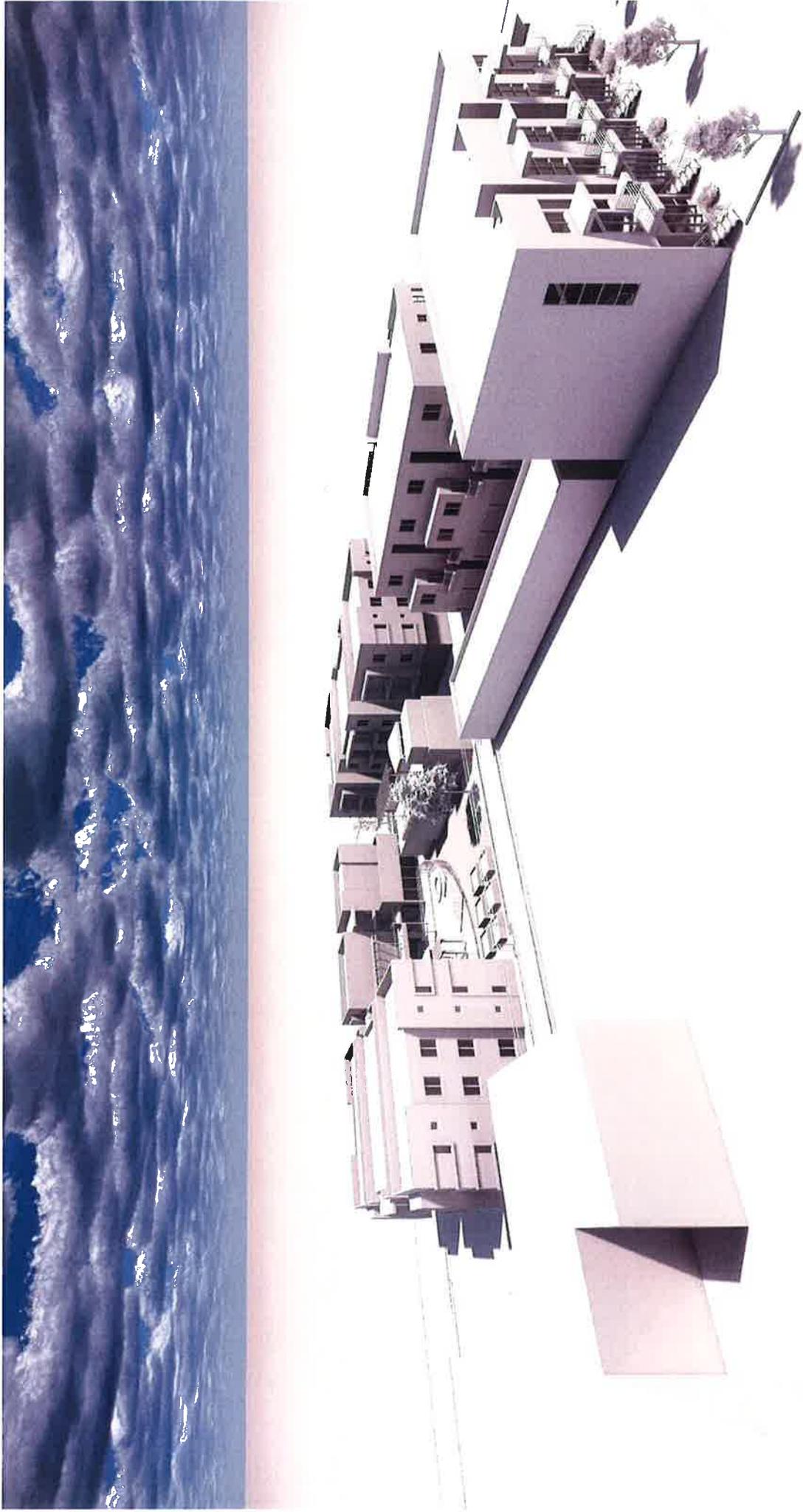
PROJECT NO. 19-11218  
 DRAWING DATE: 09/08/19  
 8



UPTOWN APARTMENTS FRESNO, CA

VIEW OF VAN NESS AVE & STANILAUS ST

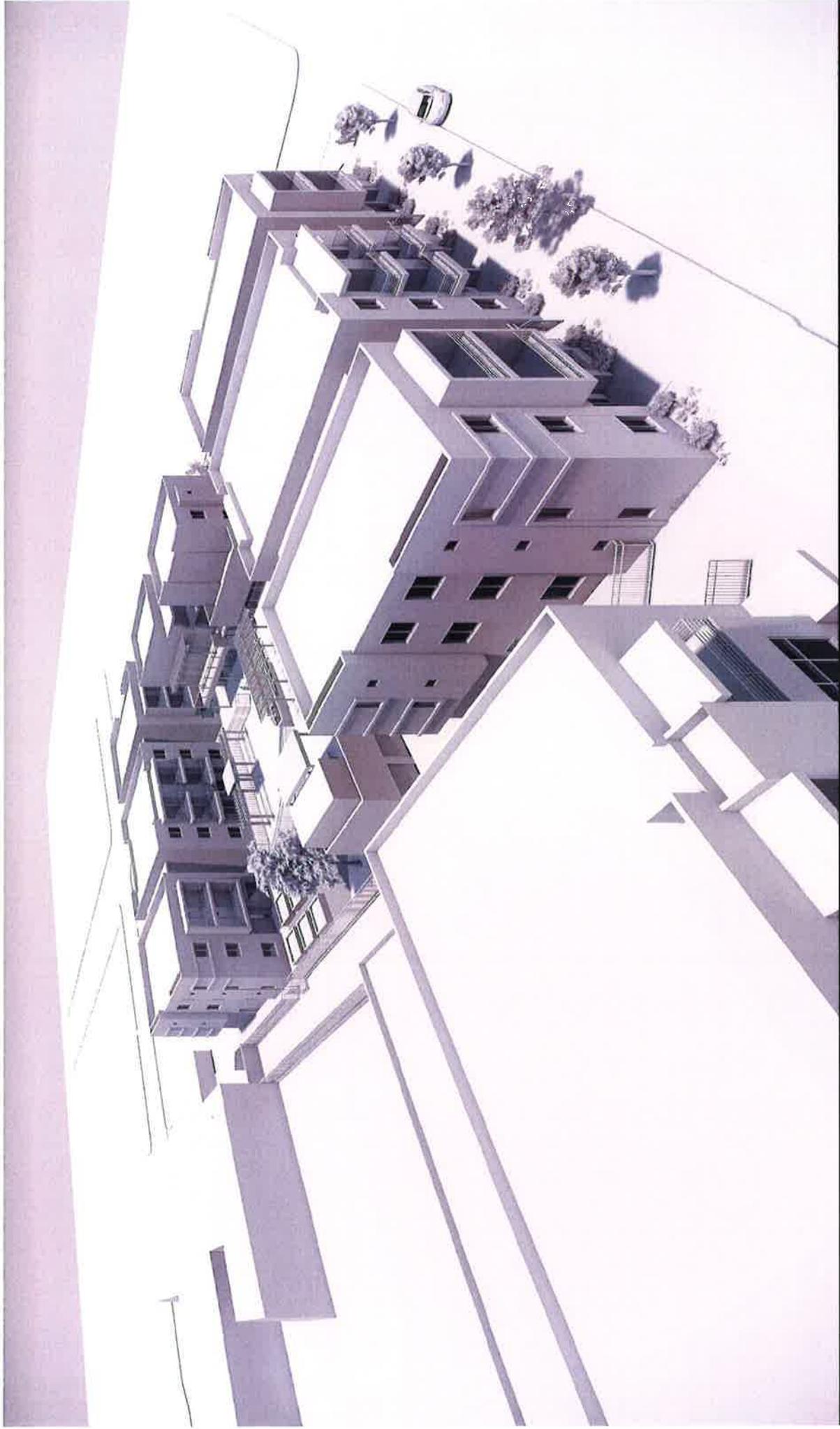




UPTOWN APARTMENTS FRESNO, CA

COURTYARD VIEW FROM VAN NESS AVE





UPTOWN APARTMENTS FRESNO, CA

COURTYARD VIEW FROM STANILAUS ST





UPTOWN APARTMENTS FRESNO, CA

VIEW OF STANILAUS ST & 'L' ST





UPTOWN APARTMENTS FRESNO, CA

COURTYARD VIEW FROM BLDG 5



**EXHIBIT C  
PERFORMANCE SCHEDULE**

| <b>Items Completed</b>   | <b>Time for Performance</b>   | <b>Estimated Date</b>              |
|--|---|------------------------------------|
| Developer prepares and submits to City Concept Drawings and Site Plan, including architectural theme and treatment. Thereafter, final drawings and specifications shall be prepared in accordance with Concept Drawings and Site Plan. |   | On or before<br>October 1, 2019    |
| Developer executes and delivers Agreement to City  |   | On or before<br>September 16, 2019 |
| City approves Disposition and Development Agreement (ODA) with Developer for project.  |   | October 10, 2019                   |
| Submission and Approval - Certificates of Insurance. The Developer furnishes to City appropriate certificates of bodily injury and property damage insurance policies.   | Within 15 days after approval of this Agreement by City.  | October 14, 2019                   |
| City executes Agreement.   | After receipt and approval of insurance certificates and receipt of executed documents from Developer.                                | October 17, 2019                   |
| Developer submits to the City final drawings and Site Plan including architectural theme and treatment.  |   | February 10, 2020                  |
| City issues building permits   | Within 90 days of acceptance of final plans   | May 10, 2020                       |
| Commencement of Construction of Developer's Improvements. Within 30 days after receipt of building permits by the Developer, construction shall commence on improvements to be constructed on the Project Site.                        |   | June 10, 2020                      |
| Completion of Construction of Developer's Improvements. The Developer shall complete construction of the improvements to be constructed on the Project Site.   | Within the specified months after commencement thereof by the Developer, not to exceed 15 months after commencement of construction . | September 1, 2021                  |
| Issuance - Certificate of Completion. City shall furnish the Developer with a Certificate of Completion on the Project.  | Promptly after completion of all construction and upon written request thereof by the Developer.                                      | September 30, 2021                 |

Improvements shall be completed within 24 months of the start of construction.

Construction to commence by: June 10, 2020

Construction to be completed by: September 30, 2021 ("**Construction Completion Date**")

**EXHIBIT D**  
**CERTIFICATE OF COMPLETION**

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RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

City of Fresno  
Attention: City Manager  
2600 Fresno Street  
Fresno, CA 93721

No Fee-Govt. Code Sections 6103-27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APNs: [ ]

This **Release of Construction Covenants and Certificate of Completion** is recorded at the request and for the benefit of the City of Fresno.

- A. As agreed in an Amended and Restated Disposition and Development Agreement including covenants, conditions and restrictions, (DDA) dated [ ], 20\_\_ entered by the CITY OF FRESNO, a municipal corporation, (CITY), and Upside Enterprises, LLC, a Nevada limited liability company (DEVELOPER), CITY conveyed certain real property to DEVELOPER under a Grant Deed, dated [ ], recorded in the Official Records of Fresno County on [ ] as Document No. [ ] (the DEED), and the DEVELOPER agreed to complete/cause the completion of the of construction of certain improvements described therein (the Project) upon the premises described therein as the "Property" according to the terms and conditions of the DDA and the documents and instruments referenced therein, incorporated herein.
- B. The DDA or a memorandum of it was recorded [ ] 20\_\_ as Instrument No. [ ] in the Official Records of Fresno County, California.
- C. Under the terms of the DDA, after DEVELOPER completes/causes completion of construction of a Phase of the Project on the Property/portion thereof, DEVELOPER may ask CITY to record an instrument certifying that DEVELOPER has completed the required improvements for such Phase of development in the form of a Release of Construction Covenants and Certificate of Completion.
- D. DEVELOPER has asked CITY to furnish DEVELOPER with a recordable Release of the DDA for a Phase of development.
- E. CITY'S issuance of this Release of Construction Covenants and Certificate of Completion is conclusive evidence that DEVELOPER has completed the construction on a Phase of development of the Property to terminate and release DEVELOPER from the DDA pertaining to such Phase.

NOW THEREFORE:

1. As provided in Section 3.4 of the DDA, the City does hereby certify that construction of all of the improvements required by the DDA on the portion of the Property

described in Attachment A, attached hereto and incorporated herein by this reference, has been satisfactorily completed.

2. The DDA is therefore of no further force and effect as to such Phase of Development of the Property, and all rights, duties, obligations and liabilities of the City and the Developer thereunder with respect to such Phase of Development shall cease to exist. Any continuing and existing rights, duties, obligations and liabilities of the City and the Developer (and its successors) pertaining such Phase of development are provided in the Grant Deed conveying the Property from the City to the Developer.
3. This Release of Construction Covenants and Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the improvements on the Property. This Release of Construction Covenants and Certificate of Completion, is not a notice of completion as referred to in Section 3093 of the California Civil Code.

IN WITNESS WHEREOF, CITY has executed this Release of Construction Covenants and Certificate of Completion as of this \_\_\_\_ day of [\_\_\_\_\_, 20\_\_.]

CITY OF FRESNO,  
A municipal corporation

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

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: \_\_\_\_\_, 201\_\_

Upside Enterprises, LLC, a Nevada  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:  
CITY CLERK

APPROVED AS TO FORM:  
CITY ATTORNEY

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_