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**FIFTH AMENDMENT
TO THE DEVELOPMENT AGREEMENT
FOR THE EL PASEO MARKETPLACE PROJECT**

This Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project (the "**Fifth Amendment**") is entered into by and between the CITY OF FRESNO, a municipal corporation, organized and existing pursuant to the laws of the State of California and the Charter of the City of Fresno (the "**City**"), on the one hand, and JOHN ALLEN COMPANY, LLC, a California limited liability company ("**JACLLC**") DCTN3 388 FRESNO CA, LLC, a Delaware limited liability company ("**D388**"), and DCTN3 389 FRESNO CA, LLC, a Delaware limited liability company ("**D389**") on the other hand. JACLLC, D388 and D389 are hereinafter sometimes collectively referred to as the "**Developer**". This Fifth Amendment shall have an effective date of February 14, 2018 (the "**Fifth Amendment Date**"). The City and Developer enter into this Fifth Amendment with reference to the following facts:

RECITALS

A. City and JACLLC are parties to that certain Development Agreement, dated as of July 7, 2011, that was recorded in the Official Records of Fresno County, California (the "**Official Records**") on August 4, 2011, as Document No. 20110103082 (the "**Original Development Agreement**") with respect to the Marketplace Project (as defined in the Original Development Agreement) in the Marketplace Project Area (as defined in the Original Development Agreement). The Marketplace Project Area contains approximately 74.38 acres of land. The Marketplace Project Area is legally described on Exhibit "A" hereto.

B. Section 3.3 of the Development Agreement allows City and the Developer to effectuate Minor Changes (as defined in the Original Development Agreement) to the Original Development Agreement through administrative amendments executed by the Developer and the City Manager of the City or its designee, upon receiving a written request from the Developer. The following administrative amendments previously have been entered into by City and JACLLC with respect to the Development Agreement:

B(1) That certain First Administrative Amendment to Development Agreement for the El Paseo Marketplace Project (Phase 1 of the El Paseo Master Plan Project), dated as of June 29, 2012 (the “**First Administrative Amendment**”).

B(2) That certain Second Administrative Amendment to Development Agreement for the El Paseo Marketplace Project (Phase 1 of the El Paseo Master Plan Project), dated as of September 10, 2012 (the “**Second Administrative Amendment**”).

C. Pursuant to Section 12.2.2 of the Original Development Agreement, in conjunction with the prior acquisition by D388 from JACLLC of approximately 43.95 acres of land within the Marketplace Project Area (the “**Marketplace Phase One Area**”), JACLLC and D388 entered into that certain Agreement of Assignment and Assumption, dated as of February 28, 2013 (the “**First Assignment Agreement**”), pursuant to which, from and after the effective date of the First Assignment Agreement: (i) JACLLC transferred and assigned to D388 all of its rights and interests under the Development Agreement, as amended by the First Administrative Amendment and the Second Amendment, but only as to the Marketplace Phase One Area; and (ii) D388 assumed all of the obligations of JACLLC under the Development Agreement, as so previously amended, but only as to the Marketplace Phase One Area. The Marketplace Phase One Area is: (1) legally described on Exhibit “A” to the Fourth Administrative Amendment (as hereinafter defined) and Exhibit “B” to the First Assignment Agreement; and (2) is depicted by the single-hatch area on Exhibit “B” to the Fourth Administrative Amendment. The First Assignment Agreement was recorded in the Official Records on March 13, 2013 as Document No. 2013-0038439. The City executed that certain Consent of City, dated as of February 20, 2013 (the “**First City Consent**”) to acknowledge its consent to the assignment and assumption under the First Assignment Agreement with respect to the Marketplace Phase One Area. All portions of the Marketplace Project Area other than the Marketplace Phase One Area are hereinafter sometimes referred to as the “**Marketplace Phase Two Area**”. The Marketplace Phase Two Area contains an aggregate of approximately 30.43 acres of land and is depicted by the cross-hatch area on Exhibit “B” to the Fourth Administrative Amendment.

D. On or about December 4, 2013, the City and D388 entered into that certain Third Administrative Amendment to Development Agreement for the El Paseo Marketplace Project (Phase 1 of the El Paseo Master Plan Project) with respect to certain matters related the Marketplace Phase One Area (the “**Third Administrative Amendment**”).

E. On or about June 15, 2016, the City, on the one hand, and JACLLC and D388, on the other hand, entered into that certain Fourth Administrative Amendment to Development Agreement for the El Paseo Marketplace Project (Phase 1 of the El Paseo Master Plan Project) (the “**Fourth Administrative Amendment**”). The Fourth Administrative Amendment was recorded in the Official Records on September 21, 2016 as Document No, 2016-0127918. The Original Development Agreement, as amended by the First Administrative Amendment, the Second Administrative Amendment, the Third Administrative Amendment and the Fourth Administrative

Amendment, is hereinafter sometimes referred to as the “**Modified Development Agreement**”.

F. On or about December 8, 2017, D389 acquired from JACLLC fee simple title to a portion of the Marketplace Phase Two Area which is legally described on Exhibit “A” to this Fifth Amendment (the “**Transferred Phase Two Area**”). In connection with the Transfer (as defined in the Amended Development Agreement) of the Transferred Phase Two Area from JACLLC to D389, JACLLC and D389 have entered into that certain Agreement of Assignment and Assumption pursuant to Section 12.2 of the Original Development Agreement for the assignment by JACLLC to D389 of the rights and interest of JACLLC as Developer under the Modified Development Agreement, as amended by this Fifth Amendment (as amended, the “**Amended Development Agreement**”) with respect to the Transferred Phase Two Area, and the assumption by D389 of all obligations of JACLLC as Developer under the Amended Development Agreement with respect to the Transferred Phase Two Area (the “**Assumption Agreement**”), effective as of the Effective Date (as defined in the Assumption Agreement) of the Assumption Agreement.

G. Concurrent with the City’s execution of this Fifth Amendment, the City is executing a written Consent of City, of even date herewith, pursuant to Section 12.2.3 of the Original Development Agreement, granting the City’s consent to: (i) the Transfer of the Transferred Phase Two Area by JACLLC to D389; and (ii) the assignment and assumption between JACLLC and D389 under the Assumption Agreement (the “**City Consent**”). The Assumption Agreement and the City Consent shall be recorded in the Official Records prior to or concurrent with the recordation in the Official Records of this Fifth Amendment.

H. As of the Fifth Amendment Date:

H(1) D388 is the current owner of fee title to all of the legal parcels within the Marketplace Phase One Area, which is 43.95 acres of the original 74.38 acres. As of the Fifth Amendment Date, D388 has not transferred or assigned to any person or entity any of its rights or obligations under the Modified Development Agreement with respect to the Marketplace Phase One Area or any portion thereof.

H(2) D389 is the current owner of fee title to all of the legal parcels within the Transferred Phase Two Area, which is 18.304 acres of the original 74.38 acres. As of the Fifth Amendment Date, D389 has not transferred or assigned to any person or entity any of its rights or obligations under the Modified Development Agreement with respect to the Transferred Phase Two Area or any portion thereof.

H(3) All portions of the Marketplace Phase Two Area, other than the Transferred Phase Two Area, are hereinafter sometimes referred to as the “**Residual Phase Two Area**”, which is 12.128 acres of the original 74.38 acres. As of the Fifth Amendment Date, JACLLC has not transferred or assigned to any person or entity any of its rights or obligations under the Modified Development Agreement with respect to the Residual Phase Two Area or any portion thereof.

I. On August 17, 2011, the Planning Commission of the City of Fresno approved Conditional Use Permit No. C-08-172, referred to in the Development Agreement as the “**Marketplace CUP**”. The Marketplace CUP was approved with Conditions of Approval, dated August 17, 2011 (the “**CUP Conditions of Approval**”), which included various property development standards, ingress and egress points, and elevations of proposed buildings. Consistent with the Development Agreement, a site plan was approved for the Marketplace Phase One area as part of the approval of Marketplace CUP (the “**CUP Site Plan**”). The CUP Site Plan was replaced and superseded by a modified CUP Site Plan which was attached to the Second Administrative Amendment as Exhibit “D” thereto (the “**Modified CUP Site Plan**”). The Modified CUP Site Plan was subsequently replaced and superseded by a second modified CUP Site Plan, which was attached to the Fourth Administrative Amendment as Exhibit “C” thereto (the “**Second Modified CUP Site Plan**”).

J. The City Council of the City approved: (i) the certified Environmental Impact Report (SCH#2008011003) for the Marketplace Project on December 16, 2010 (the “**Original EIR**”); and (ii) an Addendum to the EIR on May 24, 2012 (the “**EIR Addendum**”). The EIR and the EIR Addendum are hereinafter sometimes collectively referred to as the “**EIR**”).

K. Developer has submitted a written request to the City for certain amendments to the Modified Development Agreement that are set forth in this Fifth Amendment. City and Developer desire to enter into this Fifth Amendment in order to set forth and approve: (i) such amendments to the Modified Development Agreement; and (ii) certain acknowledgements, clarifications and understandings with respect to the Modified Development Agreement, the Marketplace CUP, the CUP Conditions of Approval and the Second Modified CUP Site Plan.

L. On June __, 2018, at a duly noticed public meeting and after due review and consideration of (i) the report of City staff, (ii) the recommendations of the Planning Commission of the City (adopted following a duly noticed public hearing before the Planning Commission), (iii) all other evidence heard and submitted at the public hearing, and (iv) all other appropriate documentation and circumstances, the City Council adopted Ordinance Bill No. ____ to approve this Fifth Amendment and any amendments to the Marketplace CUP, the CUP Conditions of Approval and the Second Modified CUP Site Plan set forth herein.

NOW THEREFORE, with reference to the above Recitals, the City and Developer agree as follows:

A G R E E M E N T

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.

2. Acknowledgements. The proposed amendments in this Fifth Amendment: (a) will not increase the aggregate total density and intensity of the Marketplace Project;

(b) will not result in the permitted uses being modified from those in the Marketplace Approvals; and (c) are in accordance with the Existing City Requirements as required by the Development Agreement, or as superseded by this Fifth Amendment.

3. EIR. The proposed modifications in this Fifth Amendment will not necessitate any changes or additions to the EIR. In addition, none of the conditions described in CEQA Guidelines Sections 15162 or 15163 (the “**CEQA Guideline Sections**”) or California Public Resources Code §21166, which govern the need for the preparation of a subsequent environmental impact report, negative declaration or a supplement to the EIR, have occurred.

4. Maximum Marketplace Square Footage.

4.1 Recital C of the Original Development Agreement, provides that the Marketplace Project will consist of not more than 906,788 square feet of retail and restaurant uses. The EIR analyzed a Marketplace Project of 906,788 square feet of retail and restaurant uses. Section 6 of the Project Description in Part A of the CUP Conditions of Approval noted that the application filed for the Marketplace CUP proposed the construction of a Marketplace Project of approximately 666,218 square feet.

4.2 City and Developer agree that: (a) the maximum square footage of the Marketplace Project under the Modified Development Agreement shall be reduced to 850,000 square feet (the “**Maximum Marketplace SF**”); and (b) the Marketplace CUP and Section 6 of the Project Description in Part A of the CUP Conditions of Approval shall be amended concurrent with this Fifth Amendment to reflect and authorize the Maximum Marketplace SF.

5. Extension of Term of Modified Development Agreement.

5.1 The Original Development Agreement provides:

5.1.1 In Recital G, “that the development and construction of the Marketplace Project is a large-scale undertaking involving major investments by Developer, with development occurring over a period of years. Certainty that the Marketplace Project can be developed and used in accordance with the Existing City Requirements as of the Adoption Date of [the Development] Agreement, will benefit the City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the 2025 Fresno General Plan (as amended by the Plan Amendments), the Bullard Community Plan (as amended by the Plan Amendments) and the Existing City Requirements.”

5.1.2 In Recital H, that the “City has determined that [the Development] Agreement furthers the public health, safety and general welfare, and that the provisions of [the Development] Agreement are consistent with the goals and policies of the 2025 Fresno General Plan. For the reasons recited herein, the City and Developer have determined that the Marketplace Project is a development for which [the Development] Agreement is appropriate. [The Development] Agreement will

eliminate uncertainty regarding Marketplace Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Marketplace Project Area. Continued use and development of the Marketplace Project Area is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Laws were enacted: (1) Provide for the development of unused land; (2) Provide increased tax revenues for the City; (3) Provide for jobs and economic development in the City; (4) Provide infrastructure improvements that can be utilized by regional users and future users; and (5) Meet the goals of the 2025 Fresno General Plan to put activity centers in areas that will reduce vehicle trips and serve all segments of the City. It is based upon these benefits to the City, as confirmed by an Economic Benefit Analysis and a Market Study prepared by the Developer and reviewed and approved by the City, that the City is agreeable to proceeding with the proposed Plan Amendments, Zoning Amendments and the Marketplace Approvals to facilitate the Marketplace Project.”

5.1.3 In Recital I, that the “City has further determined that it is appropriate to enter into [the Development] Agreement to: (1) provide certainty to encourage investment in the comprehensive development and planning of the Marketplace Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning for the El Paseo Project Area and neighboring areas; and (3) fulfill and implement adopted City plans, goals, policies and objectives.”

5.2 As of the Fifth Amendment Date, approximately 400,000 square feet of improvements have been developed in the Marketplace Project Area. The City acknowledges that the portions of the Marketplace Project developed prior to the Fifth Amendment Date have achieved the goals and purposes set forth in Recital H of the Development Agreement (collectively, the “**City Goals**”) – (i) provide for the development of unused land; (ii) provide increased tax revenues for the City; (iii) provide for jobs and economic development in the City; (iv) provide infrastructure improvements, consistent with the Original Development Agreement and all subsequent amendments thereto, that can be utilized by regional users and future users; and (v) meet the goals of the 2025 Fresno General Plan to put activity centers in areas that will reduce vehicle trips and serve all segments of the City.

5.3 Developer has advised the City that, from and after the Fifth Amendment Date, Developer desires to continue to develop the balance of the Marketplace Project in the Marketplace Project Area up to the Maximum Marketplace SF for the Marketplace Project Area (i.e. – 850,000 square feet). The City believes that the continued development of the Marketplace Project following the Fifth Amendment Date will further and enhance the City Goals. The City further believes that the terms and conditions of the Modified Development Agreement and the Marketplace CUP should continue to apply to the development of the Marketplace Project in the Marketplace Project Area in order to provide consistency of development and the certainty of the application of development standards for the Marketplace Project.

5.4 Accordingly, the City and Developer agree that the Term of the Modified Development Agreement under Section 2.2 of the Original Development Agreement and the respective terms of the Marketplace CUP, the Modified CUP Site Plan and the Design Guidelines for the Marketplace Project and Marketplace Project Area are hereby extended to February 14, 2028.

6. City Development Fees. Section 6.4.1 of the Original Agreement is deleted in its entirety and amended to read as follows:

“All of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Marketplace project (**collectively, the “Required Development Fees”**), and the timing requirements for the payment of such Required Development Fees are set forth in Part “A” of Exhibit “E” of the Original Agreement, and any amendments thereto, including this Fifth Amendment. The amount of each Required Development Fee that the Developer shall be required to pay with respect to the Marketplace Project up to and including February 14, 2023, shall be the lesser of:(i) the amounts listed for each such Required Development Fee in the Master Fee Schedule in effect as of the Adoption Date of the Original Development Agreement; or (ii) the amount then charged by the City or the applicable City Agency for the Required Development Fee at the time that the Required Development Fee is required to be paid by the Developer. From February 15, 2023 until the termination or expiration of this Fifth Amendment, all of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Marketplace Project shall be the lesser of: (a) the amounts listed for each such Required Development Fee in the Master Fee Schedule in effect as of February 15, 2023; or (b) the amount then charged by the City or the applicable City Agency for the Required Development Fee at the time that the Required Development Fee is required to be paid by the Developer.”

7. Indemnification. Section 7.3.1 of the Original Development Agreement is deleted in its entirety and amended to read as follows:

“Third Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term "Third Party Action" collectively includes but is not limited to any legal action or other proceeding instituted by a third party or parties, or a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of the Original Development Agreement or subsequent amendments inclusive of this Fifth Amendment, the Master Plan Applications and Approvals, the Marketplace Approvals, any subsequent approvals sought by the Developer related to the Marketplace Project, and any and all

amendments to the approvals listed in this subsection (a); (b) claims or alleges a violation of CEQA or another law in connection with the certification of the EIR (SCH No. 2008011003) by the City Council or the grant, issuance or approval by the City of any or all of the Original Development Agreement or subsequent amendments inclusive of this Fifth Amendment, the Master Plan Applications and Approvals, and the Marketplace Approvals, any subsequent approvals sought by the Developer in connection to the Marketplace Project, and any and all amendments to the approvals listed in subsection (a); (c) claims or alleges a violation of CEQA or another law arising from, resulting from, or in connection with any approval sought by the Developer related to the Marketplace Project, including, but not limited to adoption of a determination that no further environmental review is required pursuant to CEQA Guidelines section 15162; and (d) challenges or contests City's adoption of this Fifth Amendment or any of the terms contained herein. Developer's obligations under this Section 7.3.1 shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section 7.3.1 shall apply to any and all amendments to the Original Development Agreement, inclusive of this Fifth Amendment, and shall survive the termination or expiration of this Agreement."

8. Insurance. Section 7.4, inclusive of 7.4.1 through 7.4.4, of the Original Development Agreement is amended in its entirety to read as follows:

"7.4 Insurance Requirements.

(a) At any times during the period commencing on the Fifth Amendment Date and concluding on the expiration date of the Term of this Agreement (and any extensions thereof) in which Off-Site Improvements are being constructed by Developer pursuant to the terms of this Agreement (the "**Insurance Period**"), DEVELOPER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the Insurance Period, DEVELOPER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DEVELOPER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. No action taken by CITY pursuant to this section shall in any way relieve DEVELOPER of

its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DEVELOPER shall not be deemed to release or diminish the liability of DEVELOPER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY 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. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DEVELOPER, vendors, suppliers, invitees, contractors, sub- contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage 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, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

MINIMUM LIMITS OF INSURANCE

DEVELOPER shall procure and maintain for the duration of the Insurance Period, and thereafter until the Off-Site Improvements have been delivered to and accepted by the City, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**
 - (i) \$5,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$5,000,000 per occurrence for personal and advertising injury;
 - (iii) \$5,000,000 aggregate for products and completed operations; and,
 - (iv) \$5,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$5,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.

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.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

DEVELOPER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DEVELOPER shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) DEVELOPER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits during the Insurance Period and thereafter until the Off-Site Improvements have been delivered to and accepted by the City, except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. DEVELOPER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DEVELOPER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the Insurance Period or thereafter until the Off-Site Improvements have been delivered to and accepted by the City, DEVELOPER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. DEVELOPER shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Automobile Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the DEVELOPERS' insurance shall be primary to and require no contribution from the City. The Commercial General and Automobile Liability policies are required to include primary and noncontributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If DEVELOPER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by DEVELOPER.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

- (vi) For any claims related to this Agreement, DEVELOPER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the DEVELOPER'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - DEVELOPER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, DEVELOPER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DEVELOPER shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of the Off-Site Improvements work by DEVELOPER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after the conclusion of the Insurance Period or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the conclusion of the Insurance Period, DEVELOPER must purchase "extended reporting" period coverage for a minimum of five (5) years after the Insurance Period or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.

- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTOR- If DEVELOPER subcontracts any or all of the Off-Site Improvements to be performed by DEVELOPER 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.”

9. Part B of Exhibit “E” to the Original Development Agreement.

9.1 Sections 6.1, 6.2.1 and 6.2.2 of the Original Development Agreement provide that all of the Exactions (as defined in Section 6.2.1 of the Original Development Agreement) required of Developer for the development of Marketplace Project are set forth in Part B of Exhibit “E” to the Original Development Agreement.

9.2 Exactions Nos. 16 and 40 in Part B of Exhibit “E” to the Original Development Agreement is hereby amended to read in full as follows:

16	HERNDON AVENUE BETWEEN BRYAN AVENUE AND HAYES AVENUE: Widen and stripe for three eastbound lanes between Bryan Avenue and Hayes Avenue.	DPW	Prior to occupancy of any buildings in Phase 1E (more than 500,000 SF but less than 600,001 SF of total Gross Leasable Area)	In accordance with the “Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees”, the costs of all of the following work will be eligible for reimbursement or credits against the Citywide Regional Major Street Impact Fee: (i) the widening and striping of the third eastbound and westbound 12’ travel lane and the 5’ shoulder; and (ii) the performance of any necessary relocation of existing utilities, demolition of existing improvements, acquisition of existing right of way and any easements associated with such widening.
40	Refer to Water	DPU	Refer to Water	Refer to Water Requirements For

	<p>Requirements For Conditional Use Permit Application C-17-057 included as Exhibit B to the Fifth Amendment.</p> <p>The applicant shall pay water capacity charges as set forth in Ordinance 2017-19, and as may be amended for new development in the Marketplace Project above the 680,250 SF Threshold.</p>		<p>Requirements For Conditional Use Permit Application C-17-057 included as Exhibit B to the Fifth Amendment..</p> <p>Developer to pay water capacity charges set forth in Ordinance 2017-19 which shall apply to new development in the Marketplace Project from and after the date on which the aggregate square footage of the Marketplace Project exceeds 680,250 square feet (the "680,250 SF Threshold")</p>	<p>Conditional Use Permit Application C-17-057 included as <u>Exhibit B</u> to the Fifth Amendment. Per FMC (UGM Water Supply 201-S) Reimbursement for development in the Marketplace Project under the 680,250 SF Threshold shall be per UGM Water Supply 201-s. Reimbursement for any new development in the Marketplace Project after the 680,250 SF Threshold shall be as provided by Ordinance 2017-19.</p>
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10. Drive-Throughs.

10.1 Condition (b) in Part F of the CUP Conditions of Approval, as previously amended by Section 6.3 of the Fourth Administrative Amendment, provides that:

"A total of four (4) drive-throughs will be allowed in the Marketplace Project. Two (2) drive-throughs shall be allowed on West

Herndon Avenue and two (2) drive-throughs shall be allowed on North Bryan Avenue (Riverside Avenue). In connection with the most westerly drive-through on West Herndon Avenue, Developer shall perform the mitigations attached as Exhibit “E” to the Fourth Administrative Amendment to the Development Agreement.”

As of the Fifth Amendment Date: (a) two drive-throughs have been constructed on Herndon Avenue – (i) the drive-through for McDonalds on Pad 1 of the Second Modified CUP Site Plan along West Herndon Avenue and (ii) the Northwest Drive-Through (as defined in the Fourth Administrative Amendment) on the Northwest Corner Parcel (as defined in the Fourth Administrative Amendment); and (b) one drive through has been constructed on North Bryan Avenue – the drive-through on Pad 8 of the Second Modified CUP Site Plan. Developer has completed all of the Northwest Drive-Through Mitigations (as defined in the Fourth Administrative Amendment) required for the Northwest Drive-Through.

10.2 Developer proposes to modify Condition (b) in Part F of the CUP Conditions of Approval as follows:

10.2.1 Developer shall have the right, but not the obligation, to move the location of the fourth previously permitted drive-through in the Marketplace Phase One Area under Condition (b) in Part F of the CUP Conditions of Approval from North Bryan Avenue to Herndon Avenue.

10.2.2 Three (3) additional drive-throughs will be allowed in the Marketplace Project, at locations designated in a site plan for the for the Marketplace Project delineating the additional drive-throughs that is prepared by Developer and submitted to the City; and approved by the City. A Conditional Use Permit from the City shall be required for each of the three (3) additional drive-throughs, which Conditional Use Permits: (a) may require additional environmental review by the City; and (b) may require a public hearing if an appeal is filed in accordance with applicable City procedures.

11. Conflict. In the event of a conflict between this Fifth Amendment and all or any portion of the Modified Development Agreement, Part B of Exhibit “E” to the Development Agreement, the Marketplace CUP, the CUP Conditions of Approval, the Second Modified CUP Site Plan, the Design Guidelines or the Revised Guideline Pages (as defined in the Fourth Administrative Amendment), the provisions of this Fifth Amendment shall govern and control.

12. Bullard Avenue Extension. The City has delivered to Developer the City Decision Notice pursuant to Section 5.3.2 of the Fourth Administrative Amendment that the City has elected to perform and complete the construction of the Bullard Avenue Extension. Accordingly: (a) Developer shall not be required to construct the Bullard Avenue Extension; (b) Developer shall waive any rights to receive any credits pursuant

to Section 6.6.1 of the Development Agreement related to the planning, development and construction of the Bullard Avenue Extension; and (c) the City shall cause the Bullard Avenue Extension to be constructed and completed at the earliest possible date. If the City's construction schedule extends beyond the date by which the Developer is ready to obtain occupancy of any buildings in Phase 1F of the Marketplace Project, the City shall not withhold occupancy of said buildings due to the City's later completion date of the Bullard Avenue Extension

13. Reimbursement to City. Developer shall pay to the City the sum of One Thousand Eight Hundred Four Dollars (\$1,804.00) to reimburse the City for the costs incurred by the City to review, negotiate and process this Fifth Amendment.

14. Previously approved Conditions and Mitigation Measures. As and when required under the provisions of the following applicable documents, Developer shall comply with: (a) all applicable mitigation measures set forth in SCH No. 2008011003;. (b) all conditions of approval and construct all remaining required public improvements as required by CUP C-08-172/V-08-016, inclusive of any and all subsequent amendments thereto; and (c) all remaining conditions of approval for Parcel Map 2008-13 including, but not limited to all attached memorandum including specific conditions related to streets and rights of way, sanitary sewer service, water service, flood control, public health, fire, and PG &E, including requirement 24 "Comply with all of the requirements of the Department of Public Utilities, Water Division memorandum dated October 21, 2010."

15. Future Environmental Review. Developer acknowledges that any Future Discretionary Approvals sought by Developer in connection with the Marketplace Project subsequent to the approvals granted pursuant to this Fifth Amendment and the approvals referenced in Recital L hereto may require additional environmental review and that nothing in this Fifth Amendment constitutes a representation by the City of Fresno as to the degree of environmental review required under CEQA for such Future Discretionary Approvals and shall not be construed as such..

16. Binding and Effective. This Fifth Amendment shall become: (a) binding upon the effective date of Bill No._____, an Ordinance of the City of Fresno approving the Fifth Amendment to the Development Agreement for the El Paseo Marketplace Project; and (b) upon becoming binding pursuant to clause (a), shall be deemed effective as of the Fifth Amendment Date.

[SIGNATURES ARE ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment at Fresno, California, on the day and year first above written.

“City”

CITY OF FRESNO,
A California municipal corporation

REVIEWED BY:

By: _____
Wilma Quan-Schechter
City Manager

Scott Mozier, PE
Public Works Director

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Talia Kolluri
Supervising Deputy City Attorney

Address for City:

City of Fresno
Attention: Scott Mozier, PE
Public Works Director
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8811

[SIGNATURES FOR DEVELOPER ARE ON THE FOLLOWING PAGE]

“JACLLC”

JOHN ALLEN COMPANY, LLC
a California limited liability company

By: _____
John E. Allen
Its: Manager

“D388”

DCTN3 388 FRESNO CA, LLC,
a Delaware limited liability company

By: _____
Joseph W. Rich
Its: Manager

“D389”

DCTN3 389 FRESNO CA, LLC,
a Delaware limited liability company

By: _____
Joseph W. Rich
Its: Manager

Address for Developer:

c/o Rich Development Company
Attention: Joseph W. Rich, Manager
1000 N. Western Avenue, Suite 200
San Pedro, CA 90732
Phone: (310) 547-3326
Fax: (310) 547-1177

EXHIBIT "A"
Legal Description of Marketplace Project Area

THE FOLLOWING LAND LOCATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA:

PARCEL ONE:

PARCELS A, B, C, D, G, H, I, J, K AND O OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED MAY 31, 2013 IN BOOK 71 OF PARCEL MAPS, AT PAGES 81 THRU 89, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

PARCEL TWO:

PARCEL A OF LOT LINE ADJUSTMENT NO. 2016-07, AS DOCUMENT NO. 20170120318, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL E OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 OF PARCEL MAPS, PAGES 81 THRU 89, FRESNO COUNTY RECORDS.

TOGETHER WITH THAT PORTION OF PARCEL F OF SAID PARCEL MAP NO. 2008-13 DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID PARCEL F, SAID CORNER BEING ON THE WESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE; THENCE SOUTH 76° 10' 11" WEST, ALONG THE NORTHERLY LINE OF SAID PARCEL F, A DISTANCE OF 70.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 49° 29' 40" WEST, A DISTANCE OF 69.55 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL F; THENCE NORTH 40° 30' 20" WEST, ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 12.62 FEET; THENCE NORTH 49° 29' 40" EAST, ALONG THE NORTHWESTERLY LINE OF SAID PARCEL F, A DISTANCE OF 44.43 FEET; THENCE NORTH 76° 10' 11" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL F, A DISTANCE OF 28.11 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAY.

PARCEL THREE:

PARCEL B OF LOT LINE ADJUSTMENT NO. 2016-07, AS DOCUMENT NO. 20170120318, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL F OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 OF PARCEL MAPS, PAGES 81 THRU 89, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM THE FOLLOWING PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID PARCEL F, SAID CORNER BEING ON THE WESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE; THENCE SOUTH $76^{\circ} 10' 11''$ WEST, ALONG THE NORTHERLY LINE OF SAID PARCEL F, A DISTANCE OF 70.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $49^{\circ} 29' 40''$ WEST, A DISTANCE OF 69.55 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL F; THENCE NORTH $40^{\circ} 30' 20''$ WEST, ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 12.62 FEET; THENCE NORTH $49^{\circ} 29' 40''$ EAST, ALONG THE NORTHWESTERLY LINE OF SAID PARCEL F, A DISTANCE OF 44.43 FEET; THENCE NORTH $76^{\circ} 10' 11''$ EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL F, A DISTANCE OF 28.11 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAY.

PARCEL FOUR:

PARCEL A OF LOT LINE ADJUSTMENT NO. 2015-11, AS DOCUMENT NO. 20150065987, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PARCELS L AND M OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 OF PARCEL MAPS, PAGES 81 THRU 89, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL L, SAID CORNER BEING ON A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 104.50 FEET, A RADIAL TO SAID CORNER BEARS NORTH $36^{\circ} 39' 35''$ EAST; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY BOUNDARY

LINE OF SAID PARCEL L AND ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12° 50' 05", AN ARC DISTANCE OF 23.41 FEET; THENCE SOUTH 40° 30' 20" EAST, ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID PARCELS L AND M, A DISTANCE OF 120.26 FEET; THENCE SOUTH 49° 29' 40" WEST, A DISTANCE OF 607.12 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL L; THENCE SOUTH 50° 56' 17" EAST, ALONG LAST SAID BOUNDARY LINE, A DISTANCE OF 29.95 FEET; THENCE SOUTH 50° 55' 14" EAST, A DISTANCE OF 65.87 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID PARCEL M; THENCE SOUTH 48° 49' 04" EAST, ALONG LAST SAID BOUNDARY LINE, A DISTANCE OF 65.00 FEET; THENCE SOUTH 41° 40' 11" WEST, CONTINUING ALONG LAST SAID BOUNDARY LINE, A DISTANCE OF 366.08 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL M; THENCE NORTH 49° 49' 49" WEST, ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCELS M AND L, A DISTANCE OF 262.24 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL L; THENCE ALONG THE NORTHWESTERLY BOUNDARY OF SAID PARCEL L THE FOLLOWING COURSES: NORTH 41° 45' 00" EAST, A DISTANCE OF 363.46 FEET; THENCE NORTH 49° 04' 34" WEST, A DISTANCE OF 39.34 FEET; THENCE NORTH 49° 29' 40" EAST, A DISTANCE OF 368.94 FEET; THENCE NORTH 40° 30' 20" WEST, A DISTANCE OF 0.83 FEET; THENCE NORTH 46° 18' 49" EAST, A DISTANCE OF 15.69 FEET; THENCE NORTH 49° 20' 01" EAST, A DISTANCE OF 105.41 FEET; THENCE NORTH 49° 29' 40" EAST, A DISTANCE OF 65.40 FEET; THENCE NORTH 43° 45' 25" EAST, A DISTANCE OF 30.01 FEET; THENCE NORTH 49° 12' 43" EAST, A DISTANCE OF 43.39 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAY.

PARCEL FIVE:

PARCEL B OF LOT LINE ADJUSTMENT NO. 2015-11, AS DOCUMENT NO. 20150065987, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PARCELS M AND N OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 OF PARCEL MAPS, PAGES 81 THRU 89, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID PARCEL M; THENCE SOUTH 40° 30' 20" EAST, ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID PARCEL M, A DISTANCE OF 71.26 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 40° 30' 20" EAST, CONTINUING ALONG SAID NORTHEASTERLY BOUNDARY LINE, A DISTANCE OF 61.74 FEET; THENCE SOUTH 49° 29' 40" WEST, A DISTANCE OF 277.04 FEET; THENCE SOUTH 40° 30' 20" EAST, A DISTANCE OF 64.02 FEET; THENCE SOUTH 49° 29' 40" WEST, A

DISTANCE OF 121.28 FEET; THENCE SOUTH 40° 30' 20" EAST, A DISTANCE OF 323.63 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL N; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY THE FOLLOWING COURSES: SOUTH 37° 41' 04" WEST, A DISTANCE OF 66.99 FEET; THENCE SOUTH 41° 46' 25" WEST, A DISTANCE OF 54.41 FEET; THENCE NORTH 46° 54' 10" WEST, A DISTANCE OF 23.33 FEET; THENCE SOUTH 40° 11' 34" WEST, A DISTANCE OF 378.37 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL N; THENCE NORTH 49° 49' 49" WEST, ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCEL N, A DISTANCE OF 304.00 FEET TO THE MOST WESTERLY CORNER THEREOF; THENCE NORTH 41° 40' 11" EAST, A DISTANCE OF 366.08 FEET; THENCE NORTH 48° 49' 04" WEST, A DISTANCE OF 65.00 FEET; THENCE NORTH 50° 55' 11" WEST, A DISTANCE OF 65.87 FEET; THENCE NORTH 50° 56' 17" WEST, A DISTANCE OF 29.95 FEET; THENCE NORTH 49° 29' 40" EAST, A DISTANCE OF 607.12 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAY.

PARCEL SIX:

PARCEL C OF LOT LINE ADJUSTMENT NO. 2015-11, AS DOCUMENT NO. 20150065987, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PARCELS M AND N OF PARCEL MAP NO. 2008-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 OF PARCEL MAPS, PAGES 81 THRU 89, FRESNO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL N; THENCE SOUTH 40° 30' 20" EAST, ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID PARCEL N, A DISTANCE OF 9.17 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 217.25 FEET; THENCE SOUTHEASTERLY ALONG SAID BOUNDARY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 5° 38' 00", AN ARC DISTANCE OF 21.36 FEET TO THE MOST NORTHERLY CORNER OF PARCEL O OF SAID PARCEL MAP NO. 2008-13; THENCE SOUTH 49° 29' 40" WEST, ALONG THE NORTHWESTERLY BOUNDARY OF SAID PARCEL O, A DISTANCE OF 261.27 FEET; THENCE SOUTH 40° 30' 20" EAST, ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID PARCEL O, A DISTANCE OF 211.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 500.00 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY BOUNDARY AND ALONG LAST SAID CURVE, THROUGH A CENTRAL ANGLE OF 12° 18' 06", AN ARC DISTANCE OF 107.35 FEET; THENCE SOUTH 52° 48' 26" EAST, A DISTANCE OF 10.80 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL O; THENCE

SOUTH 44° 02' 45" WEST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL N, A DISTANCE OF 40.82 FEET; THENCE SOUTH 37° 41' 04" WEST, CONTINUING ALONG SAID SOUTHEASTERLY BOUNDARY LINE, A DISTANCE OF 111.51 FEET; THENCE NORTH 40° 30' 20" WEST, A DISTANCE OF 323.63 FEET; THENCE NORTH 49° 29' 40" EAST, A DISTANCE OF 121.28 FEET; THENCE NORTH 40° 30' 20" WEST, A DISTANCE OF 64.02 FEET TO A POINT ON THE NORTHWESTERLY BOUNDARY LINE OF SAID PARCEL N; THENCE NORTH 49° 29' 40" EAST, ALONG SAID NORTHWESTERLY BOUNDARY LINE AND ITS NORTHEASTERLY PROLONGATION, A DISTANCE OF 277.04 FEET TO A POINT ON THE NORTHEASTERLY BOUNDARY LINE OF SAID PARCEL M; THENCE SOUTH 40° 30' 20" EAST, ALONG SAID NORTHEASTERLY BOUNDARY LINE, A DISTANCE OF 2.00 FEET TO THE POINT OF BEGINNING. TOGETHER WITH UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY IN AND TO THE ADJOINING PUBLIC RIGHT OF WAY.

PARCEL SEVEN:

PARCEL C OF LOT LINE ADJUSTMENT NO. 2012-11, RECORDED JULY 24, 2012 AS DOCUMENT NO. 2012-102257, OF OFFICIAL RECORDS OF FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THOSE PORTIONS OF LOTS 285, 286 AND 336 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 OF PLATS AT PAGE 79, FRESNO COUNTY RECORDS, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 286; THENCE NORTH 89° 47' 10" EAST, ALONG THE SOUTHERLY LINE OF SAID LOT 286, 322.23 FEET TO THE EASTERLY LINE OF SAID LOT, BEING ALSO THE WESTERLY RIGHT OF WAY LINE OF NORTH BRYAN AVENUE ALIGNMENT (ARTHUR AVENUE) AS SHOWN ON SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3; THENCE NORTH 00° 26' 02" EAST ALONG SAID EASTERLY LINE AND WESTERLY RIGHT-OF-WAY LINE 488.92 FEET; THENCE LEAVING SAID EASTERLY LINE SOUTH 49° 30' 00" WEST, 109.70 FEET; THENCE SOUTH 44° 02' 45" WEST, 201.50 FEET; THENCE SOUTH 37° 41' 04" WEST, 178.50 FEET; THENCE SOUTH 41° 46' 25" WEST, 54.41 FEET; THENCE NORTH 46° 54' 10" WEST, 23.33 FEET; THENCE SOUTH 40° 11' 34" WEST, 318.35 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 336, BEING ALSO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF NORTH WEBER AVENUE (NICHOLS AVENUE) AS SHOWN ON SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3; THENCE SOUTH 49° 49' 49" EAST ALONG SAID SOUTHWESTERLY LINE AND NORTHEASTERLY RIGHT-OF-WAY LINE 343.97 FEET TO THE EASTERLY LINE OF SAID LOT 336; THENCE NORTH 00° 25' 02" EAST ALONG SAID EASTERLY LINE 356.94 FEET TO THE NORTHEASTERLY

CORNER OF SAID LOT, BEING ALSO THE SOUTHWESTERLY CORNER OF SAID LOT 286 AND THE POINT OF BEGINNING.

TOGETHER WITH, THE UNDERLYING FEE INTEREST, IF ANY, ADJACENT TO THE ABOVE DESCRIBED PROPERTY, IN AND TO THE ADJOINING PUBLIC RIGHT-OF-WAY.

PARCEL EIGHT:

PARCEL A OF LOT LINE ADJUSTMENT NO. 2014-09, RECORDED AS DOCUMENT NO. 2015-24896, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOTS 287, 334 AND 335 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 OF PLATS, PAGE 79, FRESNO COUNTY RECORDS, AND THAT PORTION OF NORTH WEBER AVENUE AND NORTH BRYAN AVENUE THAT WOULD ACCRUE BY OPERATION OF LAW, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERLY CORNER OF THE REMAINDER OF TRACT NO. 5078, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGES 35 THRU 38, FRESNO COUNTY RECORDS; THENCE SOUTH 89° 38' 08" WEST, ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTH LINE OF LOTS 331 AND 332 OF SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, A DISTANCE OF 186.00 FEET; THENCE NORTH 00° 28' 17" EAST, ALONG THE EASTERLY LINE OF SAID LOT 332 AND ITS SOUTHERLY PROLONGATION, A DISTANCE OF 90.19 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1855.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 28° 50' 15" WEST; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 12° 04' 24", AN ARC DISTANCE OF 390.88 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 332; THENCE SOUTH 00° 27' 32" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 29.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A PACIFIC GAS AND ELECTRIC EASEMENT RECORDED IN BOOK 3744, PAGE 551, OFFICIAL RECORDS FRESNO COUNTY; THENCE NORTH 40° 45' 03" WEST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 507.98 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 40° 10' 11" WEST, A DISTANCE OF 800.28 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 49° 49' 49" WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 284.77 FEET; THENCE NORTH 40° 10' 11" EAST, A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 335; THENCE NORTH 00° 27' 52" EAST, ALONG THE WESTERLY LINE OF SAID LOT 335, A DISTANCE OF 356.32 FEET TO THE NORTHWEST CORNER OF SAID

LOT 335; THENCE NORTH 89° 47' 44" EAST, ALONG THE NORTHERLY LINE OF SAID LOT 335, A DISTANCE OF 322.72 FEET TO THE NORTHEAST CORNER OF SAID LOT 335; THENCE SOUTH 89° 33' 58" EAST, A DISTANCE OF 30.00 FEET; THENCE NORTH 00° 26' 02" EAST, ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET WEST OF THE WESTERLY LINE OF SAID LOT 287, A DISTANCE OF 415.13 FEET; THENCE SOUTH 40° 45' 03" EAST, ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE, A DISTANCE OF 515.30 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NINE:

PARCEL D OF LOT LINE ADJUSTMENT NO. 2014-09, AS DOCUMENT NO. 2015-24896, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE LOT 332 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, ACCORDING TO THE MAP THEREOF RECORDED IN VOL. 8 OF PLATS, PAGE 79, FRESNO COUNTY RECORDS AND PARCEL A OF LOT LINE ADJUSTMENT NO. 2010-09, AS DOCUMENT NO. 2011-0129069, OF OFFICIAL RECORDS FRESNO COUNTY, TOGETHER WITH THAT PORTION OF WEST SIERRA AVENUE THAT WOULD ACCRUE BY OPERATION OF LAW, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERLY CORNER OF THE REMAINDER OF TRACT NO. 5078, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGES 35 THRU 38, FRESNO COUNTY RECORDS; THENCE SOUTH 89° 38' 08" WEST, ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTH LINE OF LOTS 331 AND 332 OF SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, A DISTANCE OF 54.30 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00° 21' 52" EAST, A DISTANCE OF 30.00 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL A; THENCE SOUTH 24° 44' 41" WEST, ALONG THE EASTERLY BOUNDARY OF SAID PARCEL A, A DISTANCE OF 47.81 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 210.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID EASTERLY BOUNDARY, THROUGH A CENTRAL ANGLE OF 25° 30' 11", AN ARC DISTANCE OF 93.47 FEET; THENCE SOUTH 50° 14' 52" WEST, CONTINUING ALONG SAID EASTERLY BOUNDARY, A DISTANCE OF 10.68 FEET; THENCE NORTH 59° 16' 45" WEST, A DISTANCE OF 218.79 FEET; THENCE NORTH 30° 32' 32" EAST, A DISTANCE OF 184.28 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1855.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 30° 32' 32" WEST; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE AND ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 1° 42' 17", AN ARC DISTANCE OF

55.19 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 332; THENCE SOUTH 00° 28' 17" WEST, ALONG SAID EASTERLY LINE, A DISTANCE OF 90.19 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTH LINE OF SAID LOT 331; THENCE NORTH 89° 38' 08" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 131.70 FEET; THENCE TO THE TRUE POINT OF BEGINNING.

PARCEL TEN:

PARCEL A OF LOT LINE ADJUSTMENT NO. 2017-13, AS DOCUMENT NO. 2017-0100149, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. 2014-09, RECORDED AS DOCUMENT NO. 2015-0024896, OFFICIAL RECORDS FRESNO COUNTY, BEING A PORTION OF LOTS 287, 333, 334, 335 AND 337 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 OF PLATS, PAGE 79, FRESNO COUNTY RECORDS, AND THAT PORTION OF NORTH WEBER AVENUE, WEST SIERRA AVENUE AND NORTH BRYAN AVENUE THAT WOULD ACCRUE BY OPERATION OF LAW, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERLY CORNER OF THE REMAINDER OF TRACT NO. 5078, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGES 35 THRU 38, FRESNO COUNTY RECORDS; THENCE SOUTH 89° 38' 08" WEST, ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTH LINE OF LOT 331 OF SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, A DISTANCE OF 186.00 FEET; THENCE NORTH 00° 28' 17" EAST, ALONG THE EASTERLY LINE OF SAID LOT 332 AND ITS SOUTHERLY PROLONGATION, A DISTANCE OF 90.19 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1855.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 28° 50' 15" WEST; THENCE NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE AND ALONG SAID NON-TANGENT CURVE, THROUGH A CENTRAL ANGLE OF 12° 04' 24", AN ARC DISTANCE OF 390.88 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 332; THENCE SOUTH 00° 27' 32" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 29.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF A PACIFIC GAS AND ELECTRIC EASEMENT RECORDED IN BOOK 3744, PAGE 551, OFFICIAL RECORDS FRESNO COUNTY; THENCE NORTH 40° 45' 03" WEST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 141.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 40° 10' 11" WEST, A DISTANCE OF 742.45 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 49° 49' 49" WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 361.87 FEET; THENCE NORTH 40° 10' 11"

EAST, ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID PARCEL B, A DISTANCE OF 800.28 FEET TO A POINT ON SAID NORTHEASTERLY LINE OF A PACIFIC GAS AND ELECTRIC EASEMENT, SAID POINT ALSO BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE; THENCE SOUTH 40° 45' 03" EAST, ALONG SAID NORTHEASTERLY LINE OF A PACIFIC GAS AND ELECTRIC EASEMENT, A DISTANCE OF 366.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL ELEVEN:

PARCEL B OF LOT LINE ADJUSTMENT NO. 2017-13, AS DOCUMENT NO. 2017-0100149, OF OFFICIAL RECORDS FRESNO COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL C AND A PORTION OF PARCEL B, BOTH OF LOT LINE ADJUSTMENT NO. 2014-09, RECORDED AS DOCUMENT NO. 2015-0024896, OFFICIAL RECORDS FRESNO COUNTY, BEING A PORTION OF LOTS 332, 333, 334, 337, 338 AND 339 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 OF PLATS, PAGE 79, FRESNO COUNTY RECORDS, AND THAT PORTION OF NORTH WEBER AVENUE AND WEST SIERRA AVENUE THAT WOULD ACCRUE BY OPERATION OF LAW, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERLY CORNER OF THE REMAINDER OF TRACT NO. 5078, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 71 OF PLATS, PAGES 35 THRU 38, FRESNO COUNTY RECORDS; THENCE SOUTH 89° 38' 08" WEST, ALONG A LINE THAT IS PARALLEL WITH AND 30.00 FEET SOUTH OF THE SOUTH LINE OF LOTS 331 OF SAID J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, A DISTANCE OF 54.30 FEET; THENCE SOUTH 00° 21' 52" EAST, A DISTANCE OF 30.00 FEET TO THE NORTHEASTERLY CORNER OF PARCEL A OF LOT LINE ADJUSTMENT NO. 2010-09, RECORDED AS DOCUMENT NO. 2011-0129069, OFFICIAL RECORDS FRESNO COUNTY; THENCE SOUTH 24° 44' 41" WEST, ALONG THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL A, A DISTANCE OF 47.81 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 210.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID SOUTHEASTERLY BOUNDARY, THROUGH A CENTRAL ANGLE OF 25° 30' 11", AN ARC DISTANCE OF 93.47 FEET; THENCE SOUTH 50° 14' 52" WEST, CONTINUING ALONG SAID SOUTHEASTERLY BOUNDARY, A DISTANCE OF 10.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHEASTERLY BOUNDARY SOUTH 50° 14' 52" WEST, A DISTANCE OF 31.33 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 190.00 FEET; THENCE CONTINUING SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY LINE AND ALONG LAST SAID CURVE, THROUGH A CENTRAL ANGLE OF 9° 42' 05", AN ARC DISTANCE OF 32.17 FEET; THENCE

CONTINUING ALONG SAID SOUTHEASTERLY BOUNDARY LINE SOUTH 40° 32' 47" WEST, A DISTANCE OF 500.38 FEET TO THE SOUTHERLY CORNER OF SAID PARCEL A; THENCE SOUTH 40° 10' 11" WEST, A DISTANCE OF 60.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THE UNION PACIFIC RAILROAD RIGHT OF WAY; THENCE NORTH 49° 49' 49" WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 689.90 FEET; THENCE NORTH 40° 10' 11" EAST, A DISTANCE OF 742.45 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THE PACIFIC GAS AND ELECTRIC COMPANY EASEMENT RECORDED MARCH 23, 1956 AS INSTRUMENT NO. 22233, IN BOOK 3744, PAGE 551, OFFICIAL RECORDS FRESNO COUNTY; THENCE SOUTH 40° 45' 03" EAST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 141.52 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 333; THENCE NORTH 00° 27' 32" EAST, ALONG SAID EASTERLY LINE, A DISTANCE OF 29.76 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH RIVERSIDE DRIVE, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1855.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 40° 54' 39" WEST; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 10° 22' 07", AN ARC DISTANCE OF 335.69 FEET; THENCE SOUTH 30° 32' 32" WEST, A DISTANCE OF 184.28 FEET; THENCE SOUTH 59° 16' 45" EAST, A DISTANCE OF 218.79 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL TWELVE:

THE REMAINDER PARCEL OF LAND, AS SHOWN ON TRACT NO. 5078, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 71 PAGE 35 OF PLATS, FRESNO COUNTY RECORDS, ALSO BEING A PORTION OF LOTS 333 AND 334 OF J. C. FORKNER FIG GARDENS SUBDIVISION NO. 3, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 8 OF PLATS, PAGE 79, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN THE LAND DESCRIBED IN THE APPLICATION FOR LOT LINE ADJUSTMENT, RECORDED MARCH 2, 2015, INSTRUMENT NO. 2015-24896, OFFICIAL RECORDS.

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 _____)

On _____, 2018, before me, _____,
(insert name and title of the officer)

personally appeared JOHN E. ALLEN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature _____

(Seal)

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 Los Angeles)

On _____, 2018, before me, _____,
(insert name and title of the officer)

personally appeared JOSEPH W. RICH, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature _____

(Seal)

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 Los Angeles)

On _____, 2018, before me, _____,
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Signature _____

(Seal)

Exhibit B
Water Requirements for Conditional Use Permit Application C-17-057

EXHIBIT B



DEPARTMENT OF PUBLIC UTILITIES MEMORANDUM

DATE: June 5, 2018

TO: MARGO LERWILL, Planner III
Department of Development and Resource Management

FROM: ROBERT A. DIAZ, Senior Engineering Technician 
Department of Public Utilities – Utilities Planning & Engineering

SUBJECT: WATER REQUIREMENTS FOR CONDITIONAL USE PERMIT
APPLICATION C-17-057

General

The Applicant previously proposed a project, referred to as the Market Place at El Paseo (Project), that would occupy 906,788 square feet of retail, food service and commercial space (occupied space) at build out conditions.

The Applicant now proposes to reduce the size of the project at build out conditions from 906,788 square feet to 850,000 square feet of occupied space.

To date, the Applicant has completed construction of approximately 400,000 square feet of occupied space, and currently has an approved conditional use permit (CUP) to construct up to 666,218 square feet of occupied space.

The property is zoned CR/UGM (Commercial-Regional/Urban Growth Management).

Water Requirements

The nearest water main to serve the proposed project is a 14-inch water main located in North Riverside Drive and a 12-inch water main located in the 22-foot water easement adjacent to the northwest property line. Water facilities are available to provide service to the site subject to the following requirements:

1. Construct a 12-inch water main (including installation of City fire hydrants) along the western boundary of Phase II from the existing City water main in southwest boundary of Phase I and West Palo Alto Alignment, then east connecting to the existing 14-inch water main in North Riverside Drive. Provide a minimum 20-foot wide water main easement to include water services and meter boxes for the operation and maintenance of the proposed 12-inch water main for the portions of the water main that traverse private property. Backflow prevention devices required at property line.



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2. On-site water facilities shall be private except for the 12-inch water main required above.
3. Engineered improvement plans prepared by a Registered Civil Engineer shall be submitted for Department of Public Utilities review and approvals for proposed additions to the City Municipal Water System.
4. Installation(s) of public fire hydrant(s) is/are required in accordance with City Standards.
5. All water main easements shall be clear and unobstructed by buildings or other structures. No fencing or wall shall either enclose or be located above the water main. The planting plan, for any proposed landscape within the easement, shall be approved by the Department of Public Utilities. No Trees shall be located within 8-feet of the water main. All water mains within an easement shall be clearly marked with signage above indicating the exact location and type of facility below.
6. Separate water services with meters shall be provided to each lot created. Multiple water meters serving single lots shall be allowed. Location and configuration of meters is subject to approval by the Director of Public Utilities.
7. Two independent sources of water, meeting Federal and State Drinking Water Act Standards, are required to serve the tract including any subsequent phases thereof. The two-source requirement may be accomplished through any combination of water main extensions, construction of supply wells, or other acceptable sources of water supply approved by the Assistant Public Utilities Director.
8. Seal and abandon any existing on-site well in compliance with the State of California Well Standards, Bulletin 74-90 or current revisions issued by California Department of Water Resources and City of Fresno standards.
9. **Municipal Well Site.**
 - a. As a condition of approval for Amendment No. 5 to the original Development Agreement and prior to occupancy of any building over 680,250 square feet in the Market Place per Development Agreement (7 of approved EIR), the Applicant shall be required to plan, permit, design, construct, and place into operation a 2,000 gallon per minute (gpm) municipal well.
 - b. Upon completing the land acquisition, site development, construction and operational testing for the municipal well, the Applicant shall transfer operational control and ownership of the municipal well to the City.

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WATER REQUIREMENTS FOR CONDITIONAL USE PERMIT APPLICATION C-17-057

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- c. The Applicant shall dedicate a separate legal parcel to the City for the development, construction, and operation of a municipal well. The dedication of the required municipal well site parcel shall be completed within 180 calendar days, after the 680,250 square foot threshold noted in 9a above is met, of the Fresno City Council approving Amendment No. 5 to the original Development Agreement.
- d. If the municipal well site is not dedicated to the City as a separate legal parcel within 180-calendar days, after the 680,250 square foot threshold noted in 9a above is met, of the Fresno City Council approving Amendment No. 5, then the City shall withhold issuing the certificate(s) of occupancy for any newly constructed occupied spaces above the previously approved 680,250 square feet.
- e. The Municipal Well Site and Municipal Well shall be developed, constructed, and placed into operation in general conformance with City Standards. "City Standards" means the municipal well requirements as set forth in Attachment A attached hereto and incorporated herein by reference.

10. **Approval Process for Municipal Well Site.**

- a. The review and approval process for the Municipal Well Site's location, dimensions, layout, and configuration shall be subject to the following procedure:
 - i. **Applicant's Initial Submission of Municipal Well Site Plan.** Applicant shall prepare and submit for review to the Director, a proposed conceptual site layout for the proposed Municipal Well Site (the "**Municipal Well Site Plan**"). The Municipal Well Site Plan shall include all of the following: (1) setback requirements; (2) Municipal Well Site access from the Public Street; (3) location of chemical feed facilities (chlorine and corrosion inhibitor); (4) location of future carbon treatment facilities; (5) location of perimeter walls, access gates, landscaping, lighting, sidewalks, and similar; (6) location of electrical power supply; and (7) location of standby power generation equipment.
 - ii. **City's Response to Municipal Well Site Plan.** The Director shall review Applicant's proposed Municipal Well Site Plan and, within thirty (30) calendar days of receipt, provide written comments to Applicant regarding changes and corrections to be incorporated into the Municipal Well Site Plan such that the Municipal Well Site Plan is consistent with the requirements in Attachment A, and

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consistent with the City's access, inspection, operations, and maintenance requirements for the facility.

- iii. **Applicant's Submission of Revised Municipal Well Site Plan.** After incorporating changes and corrections required by the Director, Applicant shall submit the revised Municipal Well Site Plan to the Director for review to confirm that the changes and corrections have been incorporated.

11. **Municipal Test Well.**

- a. Upon satisfactory submission, as determined by the Director, of a feasible Municipal Well Site Plan, the Applicant shall drill a test well, and the e-log results of said test well, shall be provided to the Director.
 - i. **Review of Test Well Drilling Plan.** Prior to mobilizing vehicles, equipment, materials, licensed personnel to the Municipal Well Site to drill the test wells, the Applicant shall submit a test well drilling plan to the Director for review and comment to ensure that the well drilling procedure and data collection is consistent with the City's standard methods and approach for constructing test wells. The Director shall review Applicant's test well drilling plan, within five (5) calendar days of receipt, provide written comments to Applicant regarding changes and corrections required. Upon resubmitting the revised test well drilling plan, with the required changes and corrections, the Director shall authorize Applicant to drill the test well.
 - ii. **Acceptance of Municipal Well Site Plan.** If the e-log results from the test well are deemed satisfactory to the Director, the Applicant shall construct a cluster monitoring well to perform water quality testing at the municipal well site.
 - iii. **Rejection of Municipal Well Site Plan.** If the test well results are not satisfactory to the Director, the Applicant shall have an opportunity to cure such deficiency. If such cure(s) fail to render the Municipal Well Site Plan satisfactory to the Director, then Applicant shall propose an alternate Municipal Well Site in accordance with the procedures defined in these water system conditions of approval for the Market Place at El Paseo Project.

12. **Water Quality Testing & Transfer of Municipal Well Site.**

- a. The City's acceptance of the Municipal Well site is contingent upon the Applicant demonstrating, through water quality testing, that the Municipal Well water complies with all federal and state primary and secondary

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drinking water standards. Following Municipal Well Site Plan acceptance, and acceptance of e log results, the Applicant shall perform water quality testing and submit all results to the Director.

- i. **Water Quality Testing Results Comply with Drinking Water Standards.** Upon submitting water quality testing results to the Director confirming that the Municipal Well water does comply with all federal and state primary and secondary drinking water standards: (i) the City shall accept the Municipal Well Site, (ii) the Applicant, at its sole cost, shall take all necessary steps for the Municipal Well Site to become a separate legal parcel dedicated to the City, and (iii) the City shall promptly support Applicant in creating such legal parcel on an expedited basis.
- ii. **Water Quality Testing Results Do Not Comply with Drinking Water Standards.** Upon submitting water quality testing results to the Director confirming that the Municipal Well water does not comply with all federal and state primary and secondary drinking water standards, the City shall determine if there is a commercially-available and cost-effective treatment technology available to treat the Municipal Well water to comply with all federal and state primary and secondary drinking water standards.
 1. If the Director determines that a cost-effective, commercially-available treatment technology is available to treat the Municipal Well water to comply with all federal and state primary and secondary drinking water standards, then the City shall condition acceptance of the Municipal Well on the installation of the cost-effective and commercially-available treatment system.
 2. The Applicant shall be required to install the cost-effective and commercially-available treatment technology prior to the date when operational control of the Municipal Well Site and Municipal Well are transferred from the Applicant to the City in accordance with the procedures defined in in these water system conditions of approval for the Market Place at El Paseo Project. The City shall withhold the issuance of certificates of occupancy for any newly constructed occupied spaces above the previously approved 680,091 square feet, until such time that the treatment technology is installed, tested, and accepted by the City.

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3. If the Director determines that a cost-effective, commercially-available treatment technology is not available to treat the Municipal Well water to comply with all federal and state primary and secondary drinking water standards, then the City shall reject the Municipal Well Site, and the Applicant may propose an alternate Municipal Well Site in accordance with the procedures defined in these water system conditions of approval for the Market Place at El Paseo.

b. **Creation of Separate Legal Parcel.** Following the creation of such separate legal parcel, the Applicant shall deed the Municipal Well Site to the City and record the grant deed accordingly with Fresno County.

13. **Municipal Well Construction.**

a. Upon creation of a separate legal parcel for the Municipal Well Site by the Applicant, the City shall issue a notice to proceed, authorizing Applicant to begin development of the Municipal Well Site and construction of the Municipal Well. Applicant shall not begin site development or well construction activities prior to City's issuance of a notice to proceed, which the City shall use commercially reasonable efforts to expedite. The following criteria shall apply to Municipal Well construction:

i. **City Standards.** The Municipal Well shall be constructed in accordance with City Standards, which are more specifically described in Attachment A. No substitutions or variances from the City Standards shall be authorized, without prior written approval of the Director.

ii. **Construction Inspections.** All construction activities associated with the Municipal Well shall be subject to inspection by City, at City's expense, during construction in the ordinary course of work. If construction activities proceed without the required City inspection(s) the work shall be rejected and Applicant shall be required to perform the work again under inspection by the City.

14. **Final Acceptance Inspections.**

a. The City shall not accept the Municipal Well as mechanically, operationally, and hydraulically ready for service until the City performs final inspections, at City's expense, and operational testing and commissioning, at Applicant's expense, to confirm and validate that the Municipal Well is consistent with City Standards.

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- b. The City's final inspection shall include a camera inspection of the Municipal Well to confirm that the quality, workmanship, and placement of Municipal Well casings and screens are consistent with City Standards.

15. **Municipal Well Costs.**

- a. All costs associated with developing the Municipal Well Site, constructing the Municipal Well, and placing the Municipal Well into operation, including all costs associated with purchasing and installing wellhead treatment systems (if required) prior to transferring operational control of the Municipal Well to the City, shall be reimbursed from UGM 201s Water Supply in accordance with established UGM Policies.

16. **Warranty**

- a. Upon transferring operational control of the Municipal Well to the City, the Applicant shall provide the City directly with a two-year warranty for the pump and pump motor components associated with the Municipal Well. The two-year warranty shall commence from the date of City's acceptance of the Municipal Well for operational use.

Water Fees

1. The Applicant shall pay the following water-related fees and charges for all occupied spaces constructed between 400,000 square feet and 680,250 square feet.
 - a. The project is located within the boundaries of UGM Water Supply Well Service Area 201S.
 - b. Frontage Charge
 - c. Transmission Grid Main Charge
 - d. Transmission Grid Main Bond Debt Service Charge
 - e. UGM Water Supply Area 201s
 - f. Wet-tie(s), water service(s) and/or meter(s) installation(s)
2. The Applicant shall pay the following water-related fees and charges for all occupied spaces constructed above 680,250 square feet.

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- a. The Water Capacity Fee based on the number and size of water meters installed, as defined in the Master Fee Schedule.
 - b. Frontage Charge
 - c. Wet-tie(s), water service(s) and/or meter(s) installation(s)
3. The Water Capacity Fee, and all other applicable water-related fees, shall be due and payable to the City prior to the City issuing a certificate of occupancy for any occupied space constructed by Applicant above 680,250 square feet.

Attachment A
Municipal Well Standards and
Requirements Market Place at El Paseo

1. The Municipal Well Site shall be a separate legal parcel, deeded to the City of Fresno, with a minimum area of 14,000 square feet to accommodate: (1) setback requirements; (2) perimeter site development requirements (i.e. perimeter walls, access gates, landscaping, lighting, sidewalks, and similar); (3) treatment facility and chemical dosing station requirements; (4) standby power generation equipment; (5) vehicle access and maneuvering for carbon and other chemical deliveries; and (6) heavy equipment and vehicle access for well inspection, maintenance, and repair activities.
2. The Municipal Well Site must abut, and be directly accessible from, a paved public roadway, and the public roadway must be suitable to accommodate large, specialized commercial and industrial equipment and vehicles for carbon deliveries, chemical deliveries, and specialized well inspection, maintenance, and repair purposes.
3. The Municipal Well site cannot be located within one-half mile of another City public water supply well.
4. The Applicant shall fully develop the Municipal Well Site in accordance with the development policies, procedures, and standards defined in the Fresno Municipal Code, and other conditions that may be required by Amendment No. 5 to the original Development Agreement.
5. Upon transfer of the Municipal Well to the City, the Applicant, at the Applicant's shall:
 - a. Connect the Municipal Well to a 12-inch diameter or larger water main in the abutting paved public roadway. The 12-inch or larger water main will receive water from the Municipal Well at the time the well is placed into service by the City.
 - b. Connect the Municipal Well to a 12-inch diameter or larger sanitary sewer main. The 12-inch diameter or larger sewer main will receive wastewater flows from the Municipal Well at the time the well is placed into service by the City.
 - c. Connect the Municipal Well to the Fresno Metropolitan Flood Control District's (FMFCD) stormwater system. The storm water system shall receive stormwater runoff from the Municipal Well site for discharge to a designated FMFCD stormwater basin at the time the well is placed into service by the City.
6. Prior to ordering all the necessary mechanical, electrical, and instrumentation equipment required to construct the Municipal Well, the Applicant shall submit a bill of materials to the Director for review and comment.
 - a. The Director's review and comments on the bill of materials will be to ensure that the quality, workmanship, and materials of construction of all components of the Municipal Well are consistent with the City's other public water supply well assets, and will provide reliable, long-term service to the City at the lowest life-cycle cost.

Attachment A
Municipal Well Standards and
Requirements Market Place at El Paseo

- b. The Director shall complete the review of the Applicant's Municipal Well bill of materials, within ten (10) calendar days of receipt, and submit written comments to the Applicant regarding changes and corrections required.
 - c. Upon the Applicant's resubmittal of the corrected Municipal Well bill of materials, with the required changes and corrections incorporated, the Director shall authorize Applicant to order all the necessary mechanical, electrical, and instrumentation equipment required to construct the Municipal Well.
7. The minimum acceptable capacity for the Municipal Well shall be 2,000 GPM.
 8. The well casing shall be a minimum of 20-inches in diameter; stainless steel construction meeting the State's standards; and depth dependent on e-log results.
 9. The drawdown on the Municipal Well shall not exceed 40 feet after the Municipal Well has been in operation 24-continuous hours.
 10. The Municipal Well site shall be provided with three-phase electrical power.
 11. The Municipal Well shall be provided with a variable-frequency drive.
 12. The Municipal Well shall be equipped with a flow meter that can record and monitor groundwater extraction rates on a continuous basis, and report the data in real-time to the City's supervisor control and data acquisition ("SCADA") system.