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AND WHEN RECORDED RETURN TO:

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

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

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

CITY OF FRESNO, a municipal corporation

By: _____

Bruce Rudd

Its: City Manager

Dated: _____

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF FRESNO
a municipal corporation

and

UPSIDE ENTERPRISES, LLC
a California Limited Liability Corporation

DISPOSITION AND DEVELOPMENT AGREEMENT

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CITY OF FRESNO
a municipal corporation

and

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

ATTACHMENTS

Exhibit A	Site Map
Exhibit A-1	Legal Description
Exhibit B	Scope of Development and Basic Design
Exhibit C	Performance Schedule
Exhibit D	Certificate of Completion
Exhibit E	Grant Deed
Exhibit F	Promissory Note
Exhibit G	Deed of Trust

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“**DDA**” or “**Agreement**”) is entered into as of the Effective Date (defined below), between CITY OF FRESNO, a municipal corporation (“**City**”) and UPSIDE ENTERPRISES, LLC, a California Limited Liability Company (the “**Developer**”).

RECITALS

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

A. The City currently owns certain real property at Stanislaus and L Streets, Fresno, California, more particularly described in Exhibits “A” (Site Map) and “A-1,” (legal description) attached (the “**Property**”).

B. Developer proposes to purchase the Property from City at fair market value and develop it privately with mixed uses consisting of approximately 60 to 70 multi-family residential units, and approximately 20,000 square feet of commercial space, as more particularly described in the Scope of Development, attached as Exhibit “B” (the “**Project**”).

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

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

AGREEMENT

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

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

1.1 ADA. “ADA” means the Americans with Disabilities Act of 1990.

1.2 Agreement. “Agreement” means this Disposition and Development Agreement between City and Developer.

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

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

1.5 Closing, Close or Close of Escrow. “Closing,” “Close” or “Close of Escrow” means the closing of the escrow in which the City conveys a fee interest in the Property to Developer.

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

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

1.8 Developer. “Developer” means Upside Enterprises, LLC, a California Limited Liability Company.

1.9 Effective Date. “Effective Date” means the date that City signs this Agreement, after Developer signs it.

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

1.11 Escrow. “Escrow” means the escrow opened with Escrow Holder for City to convey a fee interest in the Property to Developer.

1.12 Escrow Holder. “Escrow Holder” means First American Title Company, 7625 N. Palm Avenue, Suite 101, Fresno, California 93711, or another title company mutually satisfactory to both parties.

1.13 Hazardous Materials. “Hazardous Materials” means any substance, material, or waste, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance, which is: (a) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, (c) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, (d) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyl, (h) listed under Article 9 or defined as “hazardous” or “extremely hazardous” under Article 11 of Title 22, California Administrative

Code, (i) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as “hazardous substances” pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing, mixed-use, or commercial developments or associated buildings or grounds, or typically used in household activities in a manner typical of other residential, mixed-use or commercial developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Section 25249, *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet, and saccharine.

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

1.15 Outside Date. “Outside Date” means the date that is 60 days from the date Escrow is opened, the last date on which the parties are willing to Close the Escrow.

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

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

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

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

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

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

2. CONVEYANCE OF THE PROPERTY. City will convey the Property to Developer for the purchase price and on the conditions set forth herein.

Purchase Price. Developer will purchase the Property from City for a purchase price of \$147,000 (“**Purchase Price**”). The Developer shall execute a Promissory Note for the full amount of the Purchase Price in substantially the form attached hereto as Exhibit F, secured as a lien in no worse than second position by a Deed of Trust on the Property naming City as beneficiary, in substantially the form attached hereto as Exhibit G.

2.1 Escrow. Within 15 days after the Effective Date of this Agreement, City and the Developer will open an Escrow with the Escrow Holder, and deposit a signed copy of this Agreement as their initial joint escrow instructions. City and the Developer will sign any supplemental escrow instructions, consistent with this Agreement, that the Escrow Holder or either party hereto deems necessary or appropriate. This Agreement will control any inconsistency that may exist between this Agreement and the supplemental escrow instructions. The parties authorize the Escrow Holder to act under the escrow instructions and, after the Escrow Holder accepts the instructions in writing, it will carry out its duties as Escrow Holder under this Agreement.

2.2 Conditions Precedent to Closing Escrow. The following are conditions precedent to City’s obligations to close the Escrow and convey the Property to the Developer and the Developer’s obligation to purchase and accept conveyance of the Property from City. These conditions must be satisfied by the time stated or, if no time is stated, then by the Outside Date set for the Closing.

2.2.1 City Conditions. The Closing is subject to the fulfillment of each of the conditions precedent described below, which are solely for the benefit of City and which shall be fulfilled consistent with the Exhibit C Performance Schedule, or waived prior to close of escrow:

A. Insurance. Developer has delivered to City, and City has approved the form and content of, certificates of insurance for all insurance that this Agreement requires Developer to obtain and maintain.

B. Notice of Accepting Property Condition. Developer has given written notice to City that it has inspected the Property and, except as provided in Section 2.9.1 accepts, the Property in AS IS condition. If the Developer, after its inspection of the Property and review of any environmental reports, disapproves the Property’s environmental or other condition, and City is either unwilling or unable to cure the condition to which the Developer objects, then the Developer or City may terminate this Agreement by written notice to the other party and without liability for breach or otherwise.

C. No Default. Developer is not in default of this Agreement and all representations and warranties of Developer contained herein are true and correct in all material respects.

2.2.2 Developer Conditions. The Closing is subject to the fulfillment or waiver by the Developer of each of the conditions precedent described below, which are solely for the benefit of the Developer and which shall be fulfilled consistent with the Exhibit C Performance Schedule, or waived prior to close of escrow.

A. Condition of Title. Developer has approved the condition of title to the Property pursuant to this paragraph A. City shall obtain a preliminary title report and transmit a copy to Developer not later than fifteen (15) days following the Effective Date. Developer shall notify City in writing within fifteen (15) days after receipt of a copy of the preliminary title report whether it approves the condition of title. Developer's failure to give such notice within fifteen (15) days will be deemed approval of the condition of title. If Developer notifies City that it disapproves any title exception, City may, but is not obligated to, remove that title exception within fifteen (15) days after receipt of Developer's written notice. If City cannot or does not elect to remove any disapproved title exception or give assurance of removal satisfactory to Developer within that period, Developer will have ten (10) business days after the expiration of such fifteen (15) day period to either give City written notice that Developer elects to purchase the Property subject to the disapproved title exceptions or to terminate this Agreement. Developer hereby objects to all title defects, liens, encumbrances, and mortgages evidencing a monetary obligation, other than non-defaulted real property taxes and assessments. The exceptions to title approved by Developer as provided herein shall be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any further exceptions reported by the title company after the Developer has approved the Condition of Title for the Property (which are not created by the Developer). The City shall not voluntarily create any new exceptions to title following the date of this Agreement and prior to the Closing.

B. Inspection. Because City will convey fee title of the Property to Developer "AS IS," with all faults, except as specifically provided herein (see Section 2.9.1), for a period of 60 days after the Effective Date of this Agreement (the "Review Period"), Developer or its designated representatives may conduct tests, investigations and inspections of the Property in all matters relating to the Property, including, but not limited to, the physical condition or state of the Property and improvements thereon, environmental conditions, including Phase I and Phase II environmental assessments, and all other matters relating to the Property or any improvements thereon or affecting Developer or the feasibility of the Property for the Project ("Due Diligence Investigation"). If, for any reason, Developer is dissatisfied, in Developer's sole and absolute discretion, with the results of the Due Diligence Investigation, Developer shall provide

written notice of disapproval of the Due Diligence Investigation to the City and Escrow Holder. Such written notice of disapproval shall be provided prior to the expiration of the Review Period, and will constitute Developer's notice to terminate pursuant to Section 2.3.3, below. In consideration of Developer's right to conduct the Due Diligence Investigation, including the opportunity to review, inspect and examine the Property in its sole and absolute discretion, Developer shall in all circumstances pay to the City \$100.00, which sum shall be applicable to the Purchase Price.

Developer has the right to enter the Property to conduct the Due Diligence Investigation on the following conditions: (a) the tests, investigations and inspections are conducted without cost or expense to City, (b) the tests, investigations and inspections do not unreasonably interfere with City's possession or use of the Property, and (c) Developer will assume responsibility for any loss or liability and for any damage to the Property to the extent resulting from conducting the tests, investigations or inspections.

Within ten days from the Effective Date, City shall deliver to Developer any and all then-existing plans, engineering reports, surveys, maps, soil or seismic reports, grading plans, environmental reports and assessments, and other studies, reports, correspondence or materials concerning the Property or any improvements thereon (the "Materials"). The Materials may include, without limitation, the following: (i) copies of any environmental reports or environmental site assessments or any other report relating to toxic or hazardous materials or the environmental condition of the Property or improvements; (ii) engineering studies, maps and cost reports (sewer, water, hydrology, storm drain, flood control, FEMA, utilities, traffic and noise); (iii) soils, geology and seismic reports; (iv) covenants, conditions and restrictions, if any, regarding the Property; (v) archaeological studies and reports; (vi) to the extent not described above, grading, erosion control, water, sewer, storm drain, street improvement, landscape and utility improvement plans; (vii) any other documents or materials which City possesses or which are reasonably available to City and which Developer requests in writing or City determines, in its reasonable judgment, are significant to the evaluation or use of the Property.

City makes no representation or warranty concerning, and will have no liability or responsibility for, the Materials or the information contained therein.

C. No Default. City shall not be in default of any provision of this Agreement and all representations and warranties of City contained herein are true and correct in all material aspects.

D. No Litigation. There shall be no litigation pending with respect to this Agreement, any land use, zoning, development or building permits or entitlements for the development contemplated by this Agreement or

encumbering title to the Property, the outcome of which could materially interfere with the development of the Property as set forth herein.

2.2.3 Termination for Failure of Condition. In the event there is a failure of one or more conditions described in Section 2.3.1 or 2.3.2 that are not waived, the party for whose benefit the condition is established may terminate this Agreement by written notice to the other party prior to the Closing, in which event this Agreement shall terminate and no party shall have any further rights or liability to the other under this Agreement.

2.3 Escrow and Title Costs. The Developer and City shall each pay 50% of escrow fees, recording fees, and documentary stamp taxes, if any, to convey the Property to Developer. City shall pay the portion of the premium for an ALTA standard owner's policy of title insurance with coverage not exceeding the Purchase Price, insuring the title to the Property as described herein. The Developer shall pay the portion of the premium for an ALTA extended owner's policy of title insurance or any special endorsements required by Developer. Any other costs associated with the Escrow shall be paid by City or the Developer according to the custom and practice in Fresno County, as declared by the Escrow Holder.

2.4 Prorations. The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of the Closing, between City and the Developer. If the then-current taxes and assessments are not ascertainable, the Escrow Agent will apportion the taxes and assessments based on the most recent statement of taxes and assessments. Escrow Holder will adjust the proration, if necessary, within 30 days after the actual taxes and assessments are available. Developer will be solely responsible for ad valorem taxes or assessments on the Property, or any taxes on this Agreement or any rights hereunder, which may be levied, assessed or imposed for any period after the Closing.

2.5 Form of Deed. City will convey the Property to the Developer by a Grant Deed, substantially in the form attached hereto as Exhibit E. The conveyance and Developer's title will be subject to all conditions, covenants, restrictions and requirements set forth in this Agreement, and the Grant Deed.

2.6 Nonmerger. Prior to the issuance of a Certificate of Completion, the provisions of this Agreement will not merge with the Grant Deed. The Grant Deed will not affect, impair or limit the provisions, covenants, conditions or agreements of this Agreement.

2.7 Possession. City will deliver exclusive possession of the Property to Developer at or immediately following the Closing.

2.8 Sale "AS IS" – No Warranties. Subject to the provisions of Section 2.9.1, City will convey the Property "AS IS" with all faults, including, without limitation, the conditions disclosed in any toxics reports delivered to Developer, any conditions disclosed in the files of the regulators such as, but not limited to, the Fresno County Health Department, and the Regional Water Quality Control Board, and any environmental or other physical conditions on or under the Property, buried debris or structures, and soil compaction, presence of Hazardous Materials or the condition of the soil, its geology, the presence of known

or unknown seismic faults, and the suitability of the Property for the development purposes intended hereunder.

2.9 Close of Escrow. The Escrow will close within 30 days after the parties satisfy all the conditions precedent to Closing as set forth in this Agreement, but not later than the “Outside Date,” unless the parties mutually agree to extend the time for Closing.

2.10 Authority of Escrow Holder. The parties authorize the Escrow Holder to, and the Escrow Holder will do the following:

A. Title Policy Premium. Pay and charge City and Developer, respectively, for the title insurance premiums described in Section 2.4 of this Agreement.

B. Pay Fees. Pay and charge the Developer and City equal 50% share of the escrow fees and closing costs, excluding any costs to correct title exceptions or cure property conditions. City and Developer must agree in separate writing or instructions to the Escrow Holder to the allocation of costs to cure title exceptions or property conditions.

C. Record Grant Deed and Disburse Funds. Disburse funds from the Purchase Price, and record and deliver the Grant Deed to the appropriate party when the conditions precedent to Closing are satisfied or waived.

D. Actions to Fulfill Obligations. Take any other action necessary to fulfill its obligations under this Agreement.

E. FIRPTA, and More. Direct the parties to deliver any instrument, or to perform any act, necessary to comply with FIRPTA or any similar state act and regulation promulgated thereunder. City will sign a Certificate of Non-foreign Status, or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as the Escrow Holder may require.

F. Closing and Other Statements. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including, without limitation, an IRS 1099-S form, and be responsible for withholding taxes, if the law so requires.

G. Closing Statements. Escrow Holder will forward to both Developer and City a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

H. Termination Without Close. If the Escrow is not in condition to close by the Outside Date, then any party that is not in default of this Agreement, may demand the return of money or property and terminate this Agreement and the Escrow. If either party makes a written demand for return of documents or properties, this Agreement will not terminate until five days after Escrow Holder has delivered copies of the demand to the other party at the respective addresses shown in this Agreement. If the

other party objects within the five-day period, the parties authorize the Escrow Holder to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement will be without prejudice to whatever legal rights either party may have against the other arising from this Agreement. If no party demands that the Escrow terminate, the Escrow Holder will proceed to Closing as soon as possible.

2.11 City's Authority to Sign Instructions and Documents. The City Manager or his designee is authorized to execute any supplemental escrow instructions for City that are not a material change hereto. The City Manager or his designee may make minor modifications, not constituting a material change, to this Agreement, Exhibits and the documents referenced herein, to effect the opening and Close of the Escrow.

2.12 Access Prior to Conveyance. Prior to the conveyance of title from City, representatives of Developer shall have the right of access to the Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold City harmless for any injury or damages arising out of any activity pursuant to this Section. The Developer shall have access to all data and information on the Property available to City, but without warranty or representation by City as to the completeness, correctness or validity of such data and information. Any preliminary work, other than work in connection with Developer's Due Diligence Investigation, undertaken on the Property by the Developer prior to conveyance of title thereto shall be done only after written consent of City, satisfaction of City imposed conditions including without limitation evidence of reasonably required insurance coverage(s), all at the sole expense of the Developer. The Developer shall save and protect City against any claims or liens resulting from such preliminary work, access or use of the Property. Copies of the data, surveys and tests obtained or made by the Developer on the Property shall be filed with City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

3. PROJECT DEVELOPMENT

3.1 Private Development Project; Revision of Project. Developer will complete the Project as described in the Scope of Development using contractors licensed to do business in California. Except as may be expressly provided herein, Developer shall not begin construction or perform any other work on the Property until after Closing.

3.1.1 Design Approval. Developer shall obtain the City's approval of the design development drawings. Within 15 business days after receiving the design development drawings, the City, through its City Manager, will review the drawings, and acting in a commercially reasonable manner, will approve or disapprove. If the City disapproves the drawings, it will specify the reason for disapproval and ask Developer to provide any additional information the City may need to approve the drawings. If the City fails to either approve or disapprove the design and development drawings within the 15-day period, the City shall be deemed to have approved the design and development drawings. The parties intend this process shall be in addition to, but shall occur concurrently with, the approval process by the Development and Resource Management Department of the City.

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

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

3.4 Certificate of Completion. After Developer has satisfactorily completed a Phase of the Project according to this Agreement and after the completion of the final Phase of the Project, Developer may ask City to record a Certificate of Completion indicating that a Phase or that all Phases are complete, substantially in the form attached as Exhibit D. For purposes of this section, Developer's submission of a "Safe to Occupy" Certificate or Certificate of Occupancy for the Improvements within the subject Phase of the Project shall be conclusive evidence that Developer has satisfactorily completed those Improvements. Subject to the satisfaction of the conditions to its issuance (see next subsection) and within ten days of such request, City shall provide an instrument certifying Developer's completion of the Project, or any Phase thereof, by preparing and recording the Certificate of Completion. This release, when recorded, will evidence City's conclusive determination that Developer has satisfied the construction covenants in this Agreement as to the subject Phase of the Project. The release will not be evidence that Developer has complied with or satisfied any obligation to any person holding a deed of trust or Security Financing Interest. The release shall not terminate Developer's indemnification or other obligations, which by their nature are intended to survive Project completion. After the release is recorded in the Official Records of Fresno County, any party then owning or after that purchasing, leasing or otherwise acquiring any interest in the applicable portion of the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding the construction requirements or Project development of the completed Project.

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

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

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

A. Pay or discharge the same; or

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

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

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

3.8 Taxes and Assessments. The Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Developer's right to contest any taxes or assessments in good faith. The Developer will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Except as to property in public use and subject to the following sentence, Developer and those tenants/others holding or using the Property under Developer by lease or otherwise, shall not apply for or take advantage of or otherwise enable any exemption from property/possessory taxes. The Developer shall not allow a use, transfer or sale of the Property/portion thereof, whether prior to or following completion of the improvements hereunder, to an entity that is exempt from property/possessory tax and/or which would allow a removal from the tax roll, absent prior notice to and written consent of City.

3.9 Compliance with Laws. In performing its obligations hereunder, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction, including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not City, is responsible for determining applicability of and compliance with all local, state and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. City makes no representations regarding the applicability of any such laws to this Agreement, the

Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether City knew or should have known of the need for Developer to comply, or whether City failed to notify Developer of the need to comply.

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

4. INDEMNITY; INSURANCE.

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

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

This indemnity shall also cover, without limitation the following: (i) any act, error or omission of Developer as to the City or any of their officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Project or the Property; (ii) any use of the Property, the Project by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance

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

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

4.1.1 Action Arising Out of Approval of This Agreement. The Developer shall indemnify, defend and hold the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the City by any third party arising out of the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The City will promptly notify the Developer of the action. Within fifteen (15) days after receipt of the notice, the Developer shall take all steps necessary and appropriate to assume defense of the action. The City will cooperate with the Developer in the defense of the action (at no cost to the City). Neither the Developer nor the City will compromise the defense of such action or permit a default judgment to be taken against the City without the prior written approval of the other party(ies).

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

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

4.2.1 Commercial General Liability Insurance. Commercial general liability Insurance, which shall be at least as broad as the most current version of Insurance

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

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

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

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

4.2.5 Fire and Extended Coverage Insurance. Fire and extended coverage insurance for at least the full replacement cost of the Developer Improvements on the Property, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

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

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

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty-(30) calendar day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy that shall provide a ten (10)-calendar day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing policy renewal not less than fifteen (15) calendar days before the expiration date of the policy. When an insurer, broker, or agent issues a notice of cancellation, change or reduction in coverage, Developer shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the City.

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

The fact that insurance is obtained by Developer or its subcontractors shall not be deemed to release or diminish the liability of Developer or its subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City, and their officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer or its subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, its principals, officers, agents, employees, persons under the supervision of Developer, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

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

If Developer subcontracts all or any portion of the work under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of Developer and the City, and their officers, officials, employees, agents and volunteers according to the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer, and City before the subcontractor begins any work.

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

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

4.2.8 Performance and Payment Bonds. Developer will obtain and deliver labor and material bonds, payment, and performance bonds, issued by an insurance company meeting the criteria for Developer's other insurance under this Agreement. The bonds will

each contain a penal sum at least equal to forty (40) percent of Developer's estimated construction costs of any particular Phase of the Project then under construction and shall remain in full force until the issuance of a "Safe to Occupy" Certificate or Certificate of Occupancy, or the recording of a Certificate of Completion for that Phase, whichever is earlier. The bonds will name City as co-obligee. Instead of requiring performance and payment bonds, City may consider and accept other evidence of Developer's ability to complete the Project.

5. SECURITY FINANCING INTERESTS AND RIGHTS OF HOLDERS.

5.1 Prohibition Against Transfer of Property, the Buildings or Structures Thereon and Assignment of Agreement. After conveyance of title and prior to the issuance by City of a Certificate of Completion for the Project, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign, or lease the whole or any part of the Property or the buildings or improvements thereon without the prior written approval of City. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

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

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

5.2 Approval or Consent of City. When a request for transfer or assignment is submitted to City for consideration, approval will be conditioned on the following:

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

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

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

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

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

5.3 Security Financing; Rights of Holders

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

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

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

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

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

- A. The unpaid mortgage, deed of trust, or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- B. All expenses with respect to foreclosure;
- C. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property;
- D. The costs of any authorized improvements made by such holder; and
- E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage

or deed of trust debt and such debt had continued in existence to the date of payment by City.

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

6. REPRESENTATIONS AND WARRANTIES.

6.1 Developer Representations and Warranties.

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

1. Developer is a California limited liability company duly formed and existing under the laws of the State of California, in good standing, and authorized to do business in the State of California, County of Fresno, and City of Fresno.
2. Developer has all requisite power and authority to carry out its business as now and hereafter conducted and to enter and perform its obligations under this Agreement.
3. The person or persons signing this Agreement for Developer have been duly authorized to execute and deliver this Agreement and to legally bind Developer to its terms and conditions.
4. Developer's execution and performance of this Agreement does not violate any provision of any other agreement to which Developer is a party.
5. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary to Developer's execution of this Agreement.
6. Developer has or will have sufficient funds available to fund the Project and to pay all costs assumed by Developer hereunder.
7. This Agreement is valid, binding, and enforceable against Developer in accordance with its terms, except as such enforceability may be limited by principals of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules of law governing specific performance, injunctive relief or other equitable remedies.

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

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

7. DEFAULT, REMEDIES AND TERMINATION.

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

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

7.3 Rights and Remedies are Cumulative. Except as may be expressly stated otherwise in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other rights or remedies for the same default or any other default. In addition to the specific rights and remedies herein, the parties may resort to any other rights or remedies available at law or in equity, including, without limitation, specific performance.

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

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

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

7.6 Effect on Security Holders. City's right to reenter, repossess, terminate and revest shall be secured by the provisions of the Grant Deed and Deed of Trust attached hereto as Exhibits E and F. Such right to reenter, repossess, terminate and revest shall be subject to, limited by, and shall not defeat, render invalid, or limit: (i) any Security Financing Interest permitted by this Agreement; or (ii) any provision of this Agreement protecting the holder's Security Financing Interest.

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

- A. First, to reimburse City for (a) all costs and expenses incurred (including, without limitation, salaries of personnel) in connection with the recapture, management, and resale of the Property, or part of it, less any income City derived from the property in connection with the management; (b) all taxes, assessments, and water and sewer charges respecting the Property (or, if any of the Property is exempt from taxation or assessment or such charges during City's ownership, then such taxes, assessments or charges as would have been payable if the Property were not so exempt); (c) any payments necessary to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees from attaching or being made; (d) any expenditures made or obligations incurred to complete the Project or other improvements on the Property; and any amounts otherwise owing to City from Developer or by its successor or transferee; and
- B. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the purchase price paid to City for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Developer from the Property, the Project or other improvements on it. Notwithstanding the foregoing, the amount calculated pursuant to this Section shall not exceed the price that Developer paid City for the Property, and the fair market value of the improvements on it when the default or failure occurred, which led to City's exercise of the right of reverter.
- C. Any balance remaining after such reimbursements shall be retained by City.

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

8. GENERAL PROVISIONS.

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

CITY:

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

WITH COPIES TO:

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

DEVELOPER:

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

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

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

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

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

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

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

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

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

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

8.9 Entire Understanding of the Parties. The exhibits referenced as attached are by such references incorporated into this Agreement. This Agreement, including

exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings, and written agreements are superseded by this Agreement. This Agreement shall not be modified except by written instrument duly approved as required by law and executed by authorized representatives of the parties. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.

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

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

8.12 Ambiguity. This Agreement is the result of the combined efforts of the parties. Should any provision of this Agreement be found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.

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

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

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

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

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

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

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

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, City and Developer have executed this Agreement on the dates set forth below.

DEVELOPER:
UPSIDE ENTERPRISES, LLC,
A California Limited Liability Company

CITY:
CITY OF FRESNO ,
A Municipal Corporation

By _____
Mark Astone, Managing Partner

By _____
Bruce Rudd, City Manager

Dated: _____

Dated: _____

The above persons to execute this agreement before a Notary Public and attach the notary acknowledgments.

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____
(Deputy)

By _____
(Deputy/Assistant)

Attachments:	Exhibit A	Site Map
	Exhibit A-1	Legal Description
	Exhibit B	Scope of Development and Basic Design
	Exhibit C	Performance Schedule
	Exhibit D	Certificate of Completion
	Exhibit E	Grant Deed
	Exhibit F	Promissory Note
	Exhibit G	Deed of Trust

EXHIBIT A
SITE MAP



CALAVERAS ST

L STREET

STANISLAUS ST

VAN NESS AVE

ALY

466-142-01
Lisle Funeral Home

466-142-02
Lisle Funeral Home

466-142-03
Upside Enterprises, LLC

466-142-04
Upside Enterprises, LLC

446-142-14T
City of Fresno

466-142-15T
City of Fresno

466-142-12
Valley Public Television

466-142-09
Valley Public Television

466-142-08
Upside Enterprises, LLC

466-142-07
Upside Enterprises, LLC

466-143-13
Upside Enterprises, LLC



EXHIBIT A-1
LEGAL DESCRIPTION

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

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

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

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

EXHIBIT B

SCOPE OF DEVELOPMENT

The Project shall consist of approximately 60 to 70 multi-family residential units, and approximately 20,000 square feet of commercial space.

EXHIBIT C
PERFORMANCE SCHEDULE

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
Developer prepares and submits to City Concept Drawings and Site Plan, including architectural theme and treatment. Thereafter, final drawings and specifications shall be prepared in accordance with Concept Drawings and Site Plan.		On or before November 16, 2015
Developer executes and delivers Agreement to City		On or before November 19, 2015
City approves Disposition and Development Agreement (DDA) with Developer for Project		November 19, 2015
<u>Submission and Approval – Certificates of Insurance.</u> The Developer furnishes to City appropriate certificates of bodily injury and property damage insurance policies.	Within 15 days after approval of this Agreement by City.	December 4, 2015
City executes Agreement.	After receipt and approval of insurance certificates and receipt of executed documents from Developer.	December 7, 2015
Escrow opens	Within 15 days of fully executed agreement.	December 22, 2015
<u>Escrow closes</u>	Within 60 days of escrow opening.	February 22, 2016
<u>Commencement of Construction of Developer's Improvements.</u> Within 30 days after receipt of building permits by the Developer, construction shall commence on improvements to be constructed on the Project Site.		June 22, 2016
<u>Completion of Construction of Developer's Improvements.</u> The Developer shall complete construction of	Within the specified months after commencement thereof by the Developer, not to	June 22, 2018

the improvements to be constructed on the Project Site.	exceed 24 months after commencement of construction	
<u>Issuance – Certificate of Completion.</u> City shall furnish the Developer with a Certificate of Completion on the Project.	Promptly after completion of all construction and upon written request thereof by the Developer.	July 22, 2018

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

Construction to commence by: June 22, 2016

Construction to be completed by: June 22, 2018 (“**Construction Completion Date**”)

EXHIBIT D
CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

No Fee-Govt. Code Sections 6103-27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

APNs: []

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

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

NOW THEREFORE:

1. As provided in Section 3.4 of the DDA, the City does hereby certify that construction of all of the improvements required by the DDA on the portion of the Property described in Attachment A, attached hereto and incorporated herein by this reference, has been satisfactorily completed.
2. The DDA is therefore of no further force and effect as to such Phase of Development of the Property, and all rights, duties, obligations and liabilities of the City and the Developer thereunder with respect to such Phase of Development shall cease to exist. Any continuing and existing rights, duties, obligations and liabilities of the City and the Developer (and its successors) pertaining such Phase of development are provided in the Grant Deed conveying the Property from the City to the Developer.
3. This Release of Construction Covenants and Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the improvements on the Property. This Release of Construction Covenants and Certificate of Completion, is not a notice of completion as referred to in Section 3093 of the California Civil Code.

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

CITY OF FRESNO,
A municipal corporation

By: _____
Its: _____

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

Dated: _____, 201__

Upside Enterprises, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

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

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Deputy

Dated: _____

Dated: _____

EXHIBIT D

EXHIBIT E

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Attn: Bruce Rudd

(Space Above This Line For Recorder's Office Use Only)

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

CITY OF FRESNO, a municipal corporation ("Grantor"), hereby grants to UPSIDE ENTERPRISES, LLC, a California limited liability company ("Grantee"), the real property ("Property") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

Consistent with the Disposition and Development Agreement including covenants, conditions and restrictions, ("DDA") dated [__, 20__] entered by Grantor and Grantee, all incorporated herein by this reference, the Grantee herein covenants by and for itself and its successors, transferees, vendees, administrators, and assigns, and all persons claiming under or through it that:

1. There shall be no discrimination against or segregation of, any person or group of persons on account of any bases listed in subdivision (a) or (d) of Section 12995 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

2. The Grantor may reenter pursuant to a reserved power of termination and take possession of the Property, or part of it, and all improvements on it, terminate the estate conveyed to Grantee by this Grant Deed, and revest the estate in the Grantor if, before recording a Certificate of Completion, as defined in the DDA, any of the following occurs:

a. Grantee does not begin and complete construction on the Property, or part of it, within the times specified and as provide in the DDA; or

b. Grantee abandons or substantially suspends construction on the Property, or part of it, for 30 days after the Grantor gives written notice of the abandonment or suspension; or

c. Grantee assigns or transfers, or suffers an involuntary transfer or any rights or obligations under the DDA, or in the Property, or part of it, in violation of the DDA including assignment provisions therein.

Such right to reenter, repossess, terminate and revest shall be subject to, limited by, and shall not defeat, render invalid or limit: (i) any mortgage, deed of trust or other Security Financing Interest

permitted by the DDA; or (ii) any provision of the DDA protecting the holder's Security Financing Interest.

When title to the Property reverts in Grantor, Grantor may, but is not required to, use its best efforts to resell the Property to a qualified and responsible party (as determined by the Grantor). The transferee will assume the obligation of completing the development of the Property, satisfactory to the Grantor. Upon any resale of the Property, or part of it, the proceeds shall be applied as follows:

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

ii. Second, to reimburse Grantee, its successors or transferee, up to the amount equal to the sum of (a) the purchase price paid to Grantor for the Property; and (b) the out-of-pocket costs incurred to develop and improve the Property, less (c) any gains or income to Grantee from the Property or the improvements on it. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph shall not exceed the price that the Grantee paid the Grantor for the Property plus the fair market value of the improvements on it when the default or failure to cure, which led to the Grantors exercise of the right of reverter.

iii. Any balance remaining after such reimbursement shall be retained by Grantor.

The rights established in this section 2 shall be interpreted considering Grantor's intent to convey the Property to Grantee for development of the Property, and not for speculation in undeveloped land or any other purpose.

3. a. Grantee will take all commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials (as defined in the DDA) in, on or under the Property. Grantee will comply with all governmental requirements with respect to Hazardous Materials.

b. Until a Certificate of Completion is recorded as to the Property/portion thereof, Grantee will notify Grantor and give Grantor a copy or copies of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any governmental requirement relating to Hazardous Materials and underground tanks. Immediately after each incident, Grantee will report any unusual or potentially important incidents respecting the environmental condition of the Property to Grantor.

c. If a release of any Hazardous Materials into the environment occurs, Grantee will, as soon as possible after the release, furnish Grantor with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Grantee will furnish Grantor with a copy of any other environmental entitlements or inquiries relating to or affecting the Property, including, without limitation, all permit applications, permits and reports, including reports and other matters, which may be characterized as confidential.

4. Grantor is the beneficiary of the covenants running with the land for itself and for protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Grantor has been, remains, or is in ownership of any land on the Property/portion thereof. Grantor may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries. The provisions of the DDA which by their terms or nature are intended to survive completion of the Project are fully enforceable under and shall not merge with this Deed.

5. If a conflict exists or arises between the provisions of this Deed and the DDA, the DDA shall control.

The obligations of the Grantee hereunder are covenants or conditions running with the land enforceable by Grantor through a reserved right to re-entry and reverter.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its behalf by its respective officers thereunto duly authorized, this _____ day of _____, 201_.

“GRANTOR”

CITY OF FRESNO
a municipal corporation

By:

Its:

Date: _____

ATTACHMENT NO. 1 to GRANT DEED
UPSIDE ENTERPRISES, LLC

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

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

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

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

EXHIBIT E

EXHIBIT F
PROMISSORY NOTE

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for Cancellation.

\$147,000.00

Fresno, California
_____, 2015

For value received, the undersigned, Upside Enterprises, LLC, a California limited liability company ("Borrower"), promises to pay to the order of the the City of Fresno ("Lender" or "Beneficiary"), the sum of One Hundred Forty Seven Thousand Dollars (\$147,000.00) together with interest on unpaid principal at the rate of 3.5% per annum, with such interest accruing as of the date this Promissory Note ("Note") is executed, all due and payable as described herein and pursuant to the Disposition and Development Agreement.

This Note is made and entered into in accordance with the terms of the Disposition and Development Agreement dated [_____] 2015, entered into between Borrower and Lender ("Agreement").

This Note is payable in full on the date with is thirty (30) years after its execution (the "Maturity Date"). Lender is under no obligation to refinance the Note at that time. On the Maturity Date, the entire remaining unpaid balance of principal together with interest and unpaid penalties or late charges where applicable thereon shall be all due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws.

Any failure to make a payment required hereunder shall constitute a default under this Note.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement. In addition, as used in this Note, the following terms will have the following meanings:

"Business Day" means any day other than Saturday, Sunday, or public holiday or the equivalent for banks generally under the laws of California. Whenever any payment to be made under this Note is stated to be due on a day other than a Business Day, that payment may be made on the next succeeding Business Day. However, if the extension would cause the payment to be made in a new calendar month, that payment will be made on the preceding Business Day.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust with Assignment of Rents on real estate in Fresno County, California, that provides for acceleration upon stated events, dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"), insured by First American Title Company as no worse than an ALTA or CLTA second position lien.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement, any other Loan Documents (as defined in the Agreement), or if Borrower fails to pay when due any sum payable under this Note or under any other obligation secured by a deed of trust or other lien senior to the deed of trust which secures this Note. Borrower shall promptly inform Lender of any new or additional financing or funding, and Borrower shall provide Lender copies of all agreements with any and all Funding Sources for this Project. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other Loan Documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Loan Documents gives rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due and payable without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note, the Agreement, or other Loan Documents, and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar

proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as an acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

DUE ON SALE—CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any cumulative change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member or the distribution of a trust that is member of Trustor to its beneficiaries. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever

relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

The Note shall be nonrecourse to the Borrower and all constituent members of the Borrower.

The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Note.

IN WITNESS WHEREOF, Borrower has executed this Note on the date first written above.

Borrower

Upside Enterprises LLC, a California limited liability company

By: _____

By: _____

***** Attach Notary Acknowledgement *****

EXHIBIT "G"

DEED OF TRUST

**Recording requested by,
and when recorded mail to:**

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

INSTRUCTIONS TO COUNTY RECORDER:

Index this instrument as
(i) a Deed of Trust, and
(ii) a Fixture Filing

Space above for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between Upside Enterprises, LLC, a California limited liability company whose principal executive office is at _____, Fresno, CA 93711 (the "Trustor"), in favor of FIRST AMERICAN TITLE COMPANY, whose address is 7625 N. Palm Avenue, Suite 101, Fresno, California 93711 (the "Trustee"), for the benefit of the CITY OF FRESNO (the "Beneficiary"), with offices at 2600 Fresno Street, Fresno, California 93721.

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Fresno, Fresno County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;

(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor

with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon; and

(vii) All articles of personal property owned by the Trustor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, and all other goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner; subject, however, to (and only to) any purchase money security interests in such personal property.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:

(a) Payment to the Beneficiary of an indebtedness in the principal amount of One Hundred Forty Seven Thousand Dollars (\$147,000.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation of Trustor in this Deed of Trust, the Note, the Disposition and Development Agreement between Beneficiary and Trustor related to the Property (the "Disposition and Development Agreement") contemplating the improvement of the "Project" (as that term is defined in the Disposition and Development Agreement);

and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Disposition and Development Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Disposition and Development Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (i) until the completion of construction as contemplated by that certain Disposition and Development between Lender and Borrower, a Builders Risk (Course of Construction) insurance in an amount

equal to the completed value of the improvements to be constructed with no coinsurance penalty provisions; and (ii) following the completion of construction, Commercial Property insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the improvements with no coinsurance penalty provisions. Such insurance shall include coverage for business income, including “rental value,” in an amount equal to the two (2) years of annual rent generated by the improvements. Coverage for business income, including “rental value,” shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30. Trustor shall also maintain such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. The foregoing minimum insurance coverage limits shall be subject to reasonable adjustment from time to time by the Beneficiary. Each such policy shall be endorsed with a standard mortgage clause with loss payable to the Beneficiary and the Trustor, and shall provide that the policy shall not be canceled or materially changed without at least thirty (30) days’ prior notice to the Beneficiary. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral, including assessments on appurtenant water stock; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair and not remove or demolish any buildings on the Property; (ii) to the extent insurance or condemnation proceeds are available complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys’ fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any obligation

hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s), as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

The term "Construction/Permanent Financing Loan" means, collectively, the construction financing and take-out financing, and any refinancing or replacement of that financing from time to time, to be provided by a commercial or other lender(s); provided, however, that (i) before entering into any Construction/Permanent Financing Loan, the Trustor shall give the Beneficiary notice of the Construction/Permanent Financing Loan and copies of the loan agreement and all other loan documents evidencing the Construction/Permanent Financing Loan; (ii) the funds disbursed from each Construction/Permanent Financing Loan shall be used only for costs and charges associated with the loan and for the operation, maintenance and/or improvement of the Project or the Property as provided in the Disposition and Development Agreement or to refinance existing indebtedness; (iii) the interest on each Construction/Permanent Financing Loan shall be at a reasonable rate based on all the facts and circumstances; and (iv) the combined amounts of all Construction/Permanent Financing Loans or any refinancing thereof and the Note secured by this Deed of Trust shall not exceed one hundred percent (100%) of the fair market value of the Property as improved by the Project under the Disposition and Development Agreement (such value to be determined by a qualified appraiser reasonably acceptable to Trustor and Beneficiary. Notwithstanding any limitations set forth above, in the event of any subsequent refinancing of a Construction/Permanent Financing Loan, Trustor may use funds from any refinancing that are in excess of the original principal of the initial Construction/Permanent Financing Loan to compensate Trustor for any negative cash flow of the Project or to fund other projects by Trustor or a related entity in the Urban Core of the City of Fresno. (By way of illustration only, and without limiting the foregoing, if the initial Construction/Permanent Financing Loan for the Project is \$4,000,000 and, while satisfying the rate and loan-to-value limits set forth in subparagraphs (iii) and (iv), Trustor subsequently obtains refinancing in the amount of \$5,000,000, Trustor may use the additional \$1,000,000 in excess of the original Construction/Permanent Financing Loan to compensate Trustor for negative cash flow or for another project in the Urban Core without making any prepayment on the Note secured by this Deed of Trust.)

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Disposition and Development Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Disposition and Development Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

DUE ON SALE-CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock,

partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member or the distribution of a trust that is a member of Trustor to its beneficiaries. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any covenant or agreement in this Deed of Trust or the Disposition and Development Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The

Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by the Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Fresno County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall

include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at 1396 W. Herndon Avenue, Suite 101, Fresno, CA 93711.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

29. PROVIDED THAT NO NOTICE OF DEFAULT HEREUNDER THEN APPEARS OF RECORD AND SUBJECT TO THE CONDITIONS IN SECTION 10 ABOVE AND/OR IN THE DISPOSITION AND DEVELOPMENT AGREEMENT, THIS DEED OF TRUST SHALL BE SUBORDINATE AND SUBJECT TO ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN. BENEFICIARY SHALL, UPON REQUEST OF TRUSTOR, EXECUTE SUCH SUBORDINATION AGREEMENT OR OTHER DOCUMENTATION REASONABLY NECESSARY TO SUBORDINATE THE LIEN AND CHARGE OF THIS DEED OF TRUST TO LIEN OF ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN, AS PROVIDED IN THE DISPOSITION AND DEVELOPMENT AGREEMENT.

30. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

31. Capitalized terms not otherwise defined herein shall have the meanings given them in the Disposition and Development Agreement or the Note.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TRUSTOR:
Upside Enterprises, LLC,
a California limited liability company

By: _____
Mark Astone, Managing Partner

By: _____

Name: _____

Its: _____

*** ***Attach Notary Acknowledgement*** ***

Attachment:

Exhibit A: Legal Description of Property

Exhibit A to Deed of Trust

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

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

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

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