

WHEN RECORDED MAIL TO:

City Clerk  
City of Kerman  
850 S. Madera Ave.  
Kerman, CA 93630

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NO FEE - Government Code 6103 & 27383

APNS: 020-160-18S

**BASIN COVENANT AND AGREEMENT  
AFFECTING LAND BENEFITING PROPERTY FOR THE  
FINAL MAP OF TRACT NO. 6430**

This Covenant and Agreement is made by and between the City of Kerman, a general law city (“City”), Lum Family Enterprises, LLC, a California limited liability company, (“Covenantor 1”), and WFK Holdings, LLC, a California limited liability company and the The Boyd Trust dated December 23, 1999 (“Covenantor 2”), and is effective the date first appearing on the Clerk’s Attestation and signature for the City of Kerman.

## RECITALS

A. Covenantor 2 is the owner of that certain real property in the City of Kerman, County of Fresno, State of California, hereinafter referred to as the “Benefiting Property,” and more particularly described as:

Lots 1 through 119, and Outlots A1 through D4, of Tract No. 6430, in the City of Kerman, County of Fresno, State of California, according to the map thereof recorded in Volume \_\_\_\_\_ of Plats at Pages \_\_\_\_\_ through \_\_\_\_\_, Fresno County Records.

B. A condition of approval of Tract No. 6430 is a requirement that the Covenantor 2 provide temporary drainage facilities for the Benefiting Property (a subdivision) until such time that permanent facilities are available. Said condition is set forth in Resolution No. 24-76 as Condition No. F.1 and F.2 (hereafter “Temporary Basin Condition”).

C. Covenantor 2 has represented that the Benefiting Property is unable to accommodate a temporary basin within the Benefiting Property.

D. Covenantor 1 is the owner of that certain real property in the City of County of Fresno, State of California, hereinafter referred to as “the Subject Property,” and more particularly described as:

Lots 19 And 20 In Section 11, Township 14 South, Range 17 East, Mount Diablo Base And Meridian, According To The Map Of A Part Of Fresno Irrigated Farms Company Tract, Recorded In Book 8, Page 1 Of Record Of Surveys, In The Office Of The County Recorder Of Said County.

Except All Oil, Gas And Other Hydrocarbon Substances In And Under Said Premises, Together With The Right And Privilege To Develop And

Remove The Same, As Reserved In The Deed From Win. G. Kerckhoff Company, A Corporation, To Livorio F. Cuadros And Mary Cuadros, Husband And Wife, As Joint Tenants, Dated February 6, 1947, Recorded March 19, 1947 in Book 2494, Page 411 as Document No. 13688.

E. The Subject Property is located contiguous to and immediately north of the Benefiting Property, and has sufficient capacity to accommodate a temporary basin to serve the Benefiting Property immediately north of the future alignment of California Avenue in Kerman, California.

F. Covenantor 2 has requested, and Covenantor 1 desires to grant, an easement upon the Subject Property as more particularly described in **Exhibit “A”** (“Easement”) to serve as a temporary basin facility.

G. The Parties acknowledge that the use of the Easement is a necessary element to satisfy the Temporary Basin Condition.

H. The Covenantor 2, Covenantor 1, and City desire to enter into this covenant (“Covenant”) providing for such facilities. The Parties acknowledge that the Covenantor 2 may establish a homeowners association for the Covenantor 2, which shall then assume all of Covenantor 2’s rights and duties under the Covenant and such homeowners association shall be deemed Covenantor 2 hereunder.

#### **COVENANT AND AGREEMENT**

In consideration of the foregoing recitals which are incorporated by reference and to satisfy the Temporary Basin Condition, the Covenantor 1 hereby covenants, promises, and agrees with the City and Covenantor 2 for the benefit of the City and benefitted properties, including the Benefiting Property, that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, desirability, and safety of the Benefiting Property, the surrounding property and the public at large, and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions, and restrictions contained in this Covenant shall run with the Subject Property and shall be binding upon and inure to the benefit of each successive owner of

the Benefiting Property and owner's heirs, successors, and assigns during ownership thereof as well as to benefit the City.

1. The Covenantor 1 and Covenantor 2 agree that the Easement described in **Exhibit "A"** shall be used as temporary flooding and drainage facilities ("Temporary Basin") until the Engineer of the City determines that such use is no longer necessary. Covenantor 2 shall use commercially reasonable efforts to backfill said basin(s) within ninety (90) days after notice is given by the City that the Temporary Basin is no longer needed.

- a. The Temporary Basin(s) shall be constructed and maintained in such manner that its capacity is equivalent to that which it was designed for or greater than that which is required per the Temporary Basin Condition.
- b. The Temporary Basin (s) shall be kept free of any nuisance in fact or law, and shall be kept fenced and locked, with a separate City lock to allow for City access.
- c. Covenantor 2 shall be solely responsible for operation, maintenance, and repair of the Temporary Basin(s), including without limitation any and all costs associated therewith.
- d. Covenantor 2 shall operate, maintain, and repair the Temporary Basin(s) in a manner that does not interfere with the City's storm drainage system, or public rights of way. If in the discretion of the City, Covenantor 2 is not adequately operating, maintaining, or repairing the Temporary Basin(s), Covenantor 2 shall promptly remedy the same within twenty-one (21) days upon notice provided by the City to Covenantor 2 pursuant to the notice provisions in Section 16 below. If said obligations are not timely and fully completed within twenty-one (21) days of receipt of the notice, Covenantor 1 and Covenantor 2 agree the City has the option, but not the obligation, to enter the Subject Property as authorized herein and per the non-exclusive license granted in Section 2 below, and to undertake the repair, maintenance, or to take any other reasonable action to ensure the Temporary Basin(s) are operating as designed and approved. Notwithstanding, Covenantor 1 and Covenantor 2 agree that the City may immediately, without prior notice, enter the Subject Property and undertake said repairs, maintenance, or operations of the Temporary Basin(s) if warranted to address imminent public health, safety, or

welfare concerns as determined in the sole, reasonable discretion of the City. Covenantor 2 further agrees that any costs or expenses incurred by the City under this Covenant shall be the sole obligation of Covenantor 2 and must be paid by the Covenantor 2 within thirty (30) calendar days of a request for payment, accompanied by invoices or other evidence documenting the reasonable costs incurred by the City being delivered in accordance with the notice provisions contained in Section 16 below to the property owner of the Subject Property at the address shown on the County assessor's property tax assessment records. If not timely paid, Covenantor 2 consents to the recording of a lien on the Benefiting Property for any unpaid amount owing the City.

- e. Covenantor 2 shall place on deposit with the City, an initial amount in the sum of ten thousand dollars (\$10,000.00) which the city will hold as security for the faithful performance of the obligations set forth herein. In the event that Covenantor 2 shall fail to timely perform any of its obligations herein, City may utilize the deposit amount to perform such obligations without notice to Covenantor 2. City will thereafter provide Covenantor 2 with an invoice for amounts expended and Covenantor 2 shall replenish the deposit amount within thirty (30) days of such invoice. The deposit amount shall not earn interest. City may seek an increase in the deposit amount after a period of five years in an amount equal to the increase in CPI for the region during that period. Covenantor 2 may replace the cash deposit with substitute security in the form of a bond or letter of credit approved by the City at any time. The deposit amount shall be refunded to Covenanter 2 upon the first occurrence of (1) the final completion of the formation of an HOA on the Benefitting Property with binding and irrevocable conditions to maintain the Temporary Basin in a form approved by the City, (2) the completion of the sale and transfer of the Subject Property to Covenanter 2 and the execution of a new or amended agreement between Covenanter 2 and the City for maintenance of the Temporary Basin; or (3) the termination of this Covenant and restoration of the Subject Property as required herein.

2. The Covenantor 1 grants to the Covenantor 2 an easement to enter and use the Easement for any of the purposes identified in Section 1, or which may be required to effectuate the Temporary Basin Condition. The Covenantor 1 further grants to the City the right to enter upon the Subject Property for purposes of inspection and emergency maintenance of the drainage facilities and to regulate the use of and access to the portion of the Subject Property subject to the Easement. In that regard, the City shall have a non-exclusive license to enter upon that portion of the Subject Property subject to the Easement, and Covenantor 2 consents to the same.

3. Upon abandonment of the Temporary Basin(s) by connection to the City's drainage system, Covenantor 2 shall also be responsible for abandonment of pipeline and associated storm drain facilities that are no longer used for drainage within the Easement to the satisfaction of the City.

4. The conditions and restrictions of this Covenant are intended to benefit the Benefiting Property, the public, the City, and the City's public properties. Accordingly, it is agreed the City and/or the Covenantor 2 shall have the right to enforce this Covenant by any legal or equitable means, including, but not limited to, obtaining an order of specific performance, against the Covenantor 1 and such person or persons in actual possession of Subject Property who directly or who through any agent violate the terms hereof. Additionally, City shall have the right to enforce this Covenant against Covenantor 2 by any legal or equitable means, including, but not limited to, obtaining an order of specific performance, against Covenantor 2 and such person or persons in actual possession of Subject Property who directly or who through any agent violate the terms hereof.

5. The foregoing conditions shall remain in full force and effect until such time as (i) the City Engineer of City has made a determination that the Temporary Basin and thereby this Covenant are no longer necessary and provides written notice to Covenantor 1 and Covenantor 2; (ii) the Covenantor 2 at their sole cost and expense close the Temporary Basin and restore the Subject Property to substantially the same condition as its pre-Temporary Basin condition; and (iii) the City Engineer of the City has executed a Release of this Covenant. The City acknowledges that it is the intent of the parties of this Covenant to terminate when the Benefiting Property has connected to a permanent retention basin and City drainage facilities sufficient to serve the Benefiting Property.

6. To the furthest extent allowed by law, Covenantor 1 and Covenantor 2 agree to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers—from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, Covenantor 1, Covenantor 2, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's 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 the 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 or performance of this Covenant; (ii) the design, installation, operation, removal or maintenance of the work, including those associated with the Temporary Basin(s), by Covenantor 2 and their employees, officers, agents, contractors or subcontractors; or (iii) the inspection, maintenance, or other work, including those associated with the Temporary Basin(s), by the City including that necessitated by Covenantor 1's or Covenantor 2's failure to timely perform under this Covenant. Covenantor 1's or Covenantor 2's obligations under the preceding sentence shall apply regardless of whether the 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 willful misconduct, of the City or any of its officers, officials, employees, agents or authorized volunteers.

7. The waiver by either party of a breach by the other of any provision of this Covenant shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Covenant. No provisions of this Covenant may be waived unless in writing and signed by all parties to this Covenant. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

8. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Covenant, including enforcement of a lien thereunder, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Covenant, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred

by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

9. Failure by either party to perform any material term or provision of this Covenant shall constitute a default. The party alleging a default shall provide the other party with written notice of any default and fifteen (15) days within which to cure the condition, or, if the nature of such that the default cannot be cured within that time, a party shall not be in default if such party commences to perform its obligations to cure within the fifteen (15) day period and diligently completes performance. Written notice shall specify, in detail the nature of the obligations to be performed by the defaulting party. Notwithstanding the foregoing, the City shall have the right to enter the Subject Property and undertake repairs, maintenance, or operations of the Temporary Basin(s) without notice, when warranted to address imminent public health, safety, or welfare concerns as determined in the sole discretion of the City Manager or designee.

10. Except as provided by Paragraph 8 regarding attorney's fees and legal expenses, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Covenant, it being expressly understood and agreed Covenantor 1's and Covenantor 2's sole legal remedy for breach or violation of this Covenant by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Covenant.

11. The provisions of this Covenant shall be deemed independent and severable and the validity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context of the Covenant so requires, in interpreting this Covenant, any gender includes the other genders, the singular includes the plural, and the plural includes the singular.

12. This Covenant requires Covenantor 1 to obtain subordination agreements by any person, entity, partnership, or corporation that may have a secured interest in the Subject Property that could arise to a fee interest. If there is such a secured interest, the subordination agreements shall be substantially in the form set forth in **Exhibit "B"** and shall be recorded at the same time that this Covenant is recorded.

13. No Third Party Beneficiaries. This Covenant shall not be deemed to confer any rights upon any individual or entity which is not a party hereto. The parties hereto expressly disclaim any such third-party benefit.

14. Amendments. This Covenant may be amended only by a written instrument signed by both the City and the record owner of the Subject Property and Covenantor 2. Such instrument must be recorded in the Official Records of the County of Fresno.

15. Counterparts. This Covenant may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

16. Notices. Any notice authorized, required, or permitted to be given hereunder shall be properly addressed to the party to be notified at the following address:

To City: City of Kerman  
Attn: City Engineer  
850 S. Madera Ave  
Kerman, CA 93630

To Covenantor 1: To the address shown on the County assessor's property tax assessment records

To Covenantor 2: Ken Boyd  
275 S. Madera Ave #100  
Kerman, CA 93630

Any notice shall be deemed to have been given upon actual receipt if sent by United States mail, postage prepaid, certified mail or registered mail, return receipt requested. Any notice delivered by hand delivery or sent by overnight courier shall be deemed received on the date of actual receipt or upon refusal of delivery. Any address for notice may be changed by ten (10) days' prior written notice to the other party of such address change in the manner provided above.

**IN WITNESS WHEREOF, the parties duly executed this Covenant.**

DATED: \_\_\_\_\_, 2025

**CITY:**

City Of Kerman  
a Municipal Corporation

By: \_\_\_\_\_  
Maria Pacheco, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Josie Camacho  
City Clerk

Date: \_\_\_\_\_

**COVENANTOR 1:**

Lum Family Enterprises, LLC, a California  
limited liability company

By: \_\_\_\_\_  
Christopher Lum, Manager

**COVENANTOR 2:**

WFK Holdings, LLC, a California limited  
liability company

By: \_\_\_\_\_  
Ken Boyd, Manager

The Boyd Trust dated December 23, 1999

By: \_\_\_\_\_  
Kenneth Robert Boyd, Trustee for the  
Boyd Trust dated December 23, 1999

By: \_\_\_\_\_  
Susan Kay Boyd, Trustee for the Boyd  
Trust dated December 23, 1999

*(Attach notary acknowledgements)*

Basin Covenant  
Affecting Land Benefiting Property  
Tract No. 6430  
Page 11

**EXHIBIT A**

## EXHIBIT A LEGAL DESCRIPTION

APN: 020-160-18S (portion)

**THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:**

Being a portion of Lot 19 in Section 11, Township 14 South, Range 17 East, Mount Diablo Base and Meridian of Fresno Irrigation Farms Co. Tract, recorded in Book 8, Page 1, of Record of Surveys, Fresno County Records, more particularly described as follows:

**COMMENCING** at the Southwest corner of said Lot 19;

Thence North 00°46'10" East, along the West line of said Lot 19, for 33.28 feet to a point on a line 33.28 feet North of and parallel with the South line of said Lot 19;

Thence North 89°49'20" East, along said parallel line for 48.65 feet to the true **POINT OF BEGINNING**;

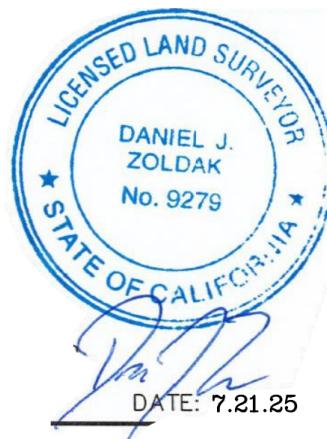
Thence North 00°10'40" West, perpendicular to the South line of said Lot 19 for 216.85 feet to a point on a line 250.13 feet North of and parallel with said South line;

Thence North 89°49'20" East, along said parallel line for 349.06 feet;

Thence South 00°10'40" East, perpendicular to the South line of Lot 19 for 216.85 feet to a point on said parallel line, 33.28 feet North of said South line;

Thence along said parallel line, South 89°49'20" West for 349.06 feet back to the **POINT OF BEGINNING**;

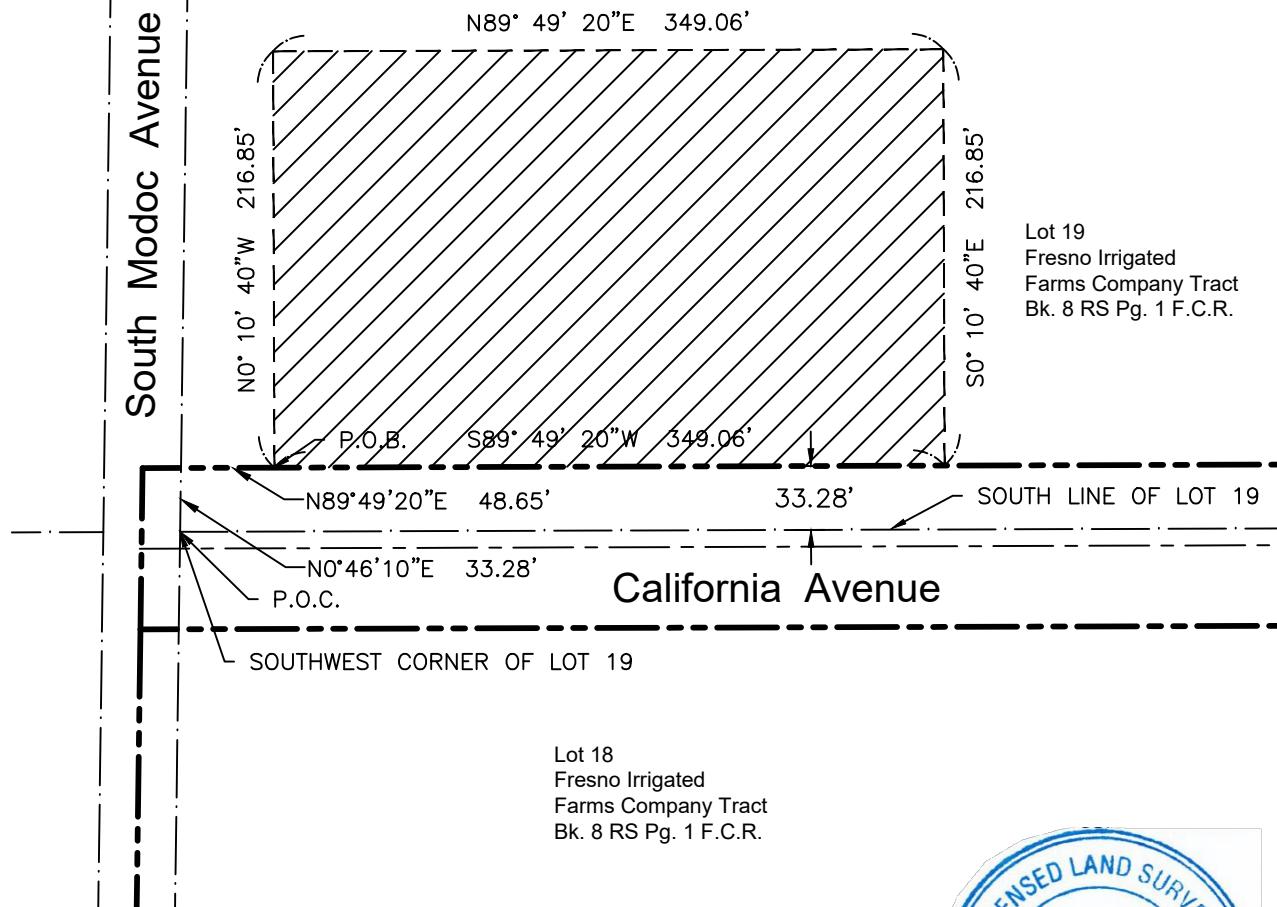
Containing 75,692 Square Feet, or 1.74 acres, more or less



# EXHIBIT A - TEMPORARY BASIN EASEMENT

City of Kerman, County of Fresno, State of California

Lot 20 Fresno Irrigated  
Farms Company Tract  
Bk. 8 RS Pg. 1 F.C.R.



## LEGEND



AREA TO BE GRANTED AS TEMPORARY  
STORM DRAIN BASIN EASEMENT,  
AREA = 75,692 SF

— — — BASIN EASEMENT LINE

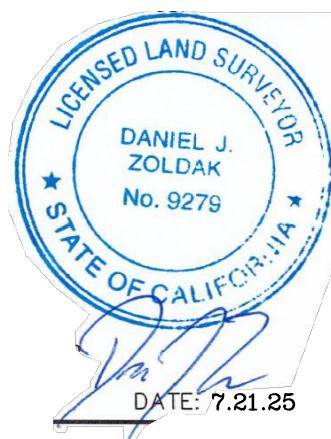
— — — LOT LINES PER FRESNO IRRIGATION FARMS COMPANY TRACT.

— — — BOUNDARY LINE

— — — CENTERLINE

P.O.C. POINT OF COMMENCEMENT

P.O.B. POINT OF BEGINNING



DATE: 07/21/2025



LARS ANDERSEN & ASSOCIATES, INC.  
CIVIL ENGINEERS – LAND SURVEYORS – PLANNERS  
4694 WEST JACQUELYN AVENUE, FRESNO CALIFORNIA 93722  
TEL: 559 276-2790 FAX: 559 276-0850 WWW.LARSANDERSEN.COM



**EXHIBIT B**

**(Subordination - Form)**

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on {\_\_\_\_\_, 20\_\_\_\_}, in the office of the {\_\_\_\_} County Recorder, as Document No. {\_\_\_\_} of which the Deed of Trust in, by and between {Full Name of Trustor}, as Trustor, {Full Name of Trustee}, as Trustee and {Full Name of Beneficiary}, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing Basin Covenant Affecting Land Benefiting Property For The Final Map Of Tract No. 6430

DATED: \_\_\_\_\_, 202\_\_\_\_

**BENEFICIARY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Beneficiary to print/type document information, Name, Title and attach  
Notary Acknowledgment)