

WHEN RECORDED MAIL TO:

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

NO FEE - Government Code 6103 & 27383

APNs: 020-160-36S, 020-41-45S, 020-41-47S
TRACT NO. 6430

**COVENANT REGARDING LAND DEVELOPMENT FOR THE
FINAL MAP OF TRACT NO 6430
“Kerman Landscape and Lighting District No. 1”**

This covenant and agreement is by and between the City of Kerman, a general law city (“City”), and **WFK Holdings, LLC, a California limited liability company and The Boyd Trust dated December 23, 1999** (“Covenantor”) located at 275 S. Madera Avenue, #100, Kerman, CA 93630 and is effective the date first appearing on the Clerk’s Attestation and signature for the City of Kerman.

RECITALS

A. Covenantor is the owner and developer of that certain real property in the City of Kerman, County of Fresno, State of California, hereinafter referred to as “the Subject Property,” which is generally depicted on Exhibit ‘A’ and more particularly described as:

Lots 1 through 119, inclusive, of the Final Map of Tract No. 6430, according to the map thereof recorded on _____, 20____ in Volume _____ of Plats at Page(s) _____, Fresno County Records

B. A condition of approval of Tentative Tract No. 6430 is a requirement that, prior to Final Map recordation, the Covenantor will annex the property to the Kerman Landscaping and Lighting District #1 (“LLD No. 1”) to levy and collect assessments to cover the cost of maintaining all streetlights, landscaping, and irrigation systems within the LLD No. 1 public right-of-way, and to cover the cost of maintaining special amenities located within the LLD No. 1 public right-of-way or easements, including, but not limited to, maintaining masonry walls, storm water holding ponds, and roundabouts. The Covenantor is also required to disclose to all potential lot buyers that the Tract has been annexed into LLD No. 1. Said condition is set forth in Resolution No. 24-76 as Condition No. G.3 (hereafter “LLD Condition”).

C. The Covenantor and the City desire to enter into this covenant (“Covenant”) providing for such annexation and notice to satisfy the LLD Condition for the Subject Property portion of Tentative Tract No. 6430.

COVENANT AND AGREEMENT

In consideration of the foregoing recitals which are incorporated by reference and to satisfy the LLD Condition, the Covenantor hereby covenants, promises, and agrees with the City for the benefit of the City and benefitted properties 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 Subject 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 Subject Property and Covenantor's heirs, successors, and assigns during Covenantor's ownership thereof.

1. The Covenantor agrees that prior to the recordation of Tentative Map No. 6430, Covenantor will annex the property to LLD No. 1 to be levied and assessments collected to cover the cost of maintaining streetlights, landscaping, and irrigation systems within the LLD No. 1 public right-of-way, and to cover the cost of maintaining special amenities located within the LLD No. 1 public right-of-way or easements, including, but not limited to, maintaining masonry walls, storm water holding ponds, and roundabouts.

2. The Covenantor agrees to disclose to all potential lot buyers, prior to transfer of ownership, that the parcel within the Subject Property is part of LLD No. 1.

3. The conditions of this Covenant are intended to benefit the Subject Property, the public, the City and its public properties. Accordingly, it is agreed the City 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 and such person or persons in actual possession of Subject property who directly or who through any agent violate the terms hereof.

4. 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.

5. 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 or under LLD No. 1, 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.

6. 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.

7. 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.

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

9. 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.

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IN WITNESS WHEREOF, the parties duly executed this Covenant.

City:
CITY OF KERMAN
a Municipal Corporation

Covenantor:
WFK Holdings, LLC, a California limited
liability company

By: _____
John Jansons,
City Manager

By: _____
Ken Boyd, Manager

ATTEST:

The Boyd Trust dated December 23, 1999

By: _____
Josie Camacho,
City Clerk

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

Date: _____

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

APPROVED AS TO FORM:

(Attach Notary Acknowledgments)

By: _____
Hilda Cantu Montoy,
City Attorney

Exhibit 'A'

General Depiction of the Subject Property

The property comprised of APNs: 020-160-36S, 020-41-45S, 020-41-47S, generally located at the southeast corner of the California and Modoc Avenues alignments intersection.

