

**CITY CLERKS DEPARTMENT**  
Marci Reyes, City Clerk

**Mayor** – Stephen B. Hill

**Council Members**

Rhonda Armstrong  
Nathan Fox  
Bill Nijjer  
Gary Yep



850 S. Madera Avenue  
Kerman, CA 93630

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mreyes@cityofkerman.org

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## **NOTICE AND CALL OF SPECIAL MEETING OF THE KERMAN CITY COUNCIL**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Council of the City of Kerman is hereby called to be held on Wednesday, March 23, 2016 commencing at 10:00 a.m. in the Council Chambers at 850 S. Madera Avenue, Kerman, CA.

The sole business to be conducted is as follows:

1. Call to order
2. Agreement with Joseph Crown Construction and Development, Inc. a California Corporation for the Deferment of Certain Fees Concerning Construction of 11 Additional Homes in Kerman Estates Tract 5478

This notice is given pursuant to CA Government Code Section 54956 and this notice shall also be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

Date: March 21, 2016

A handwritten signature in blue ink that reads "Marci Reyes".

Marci Reyes  
City Clerk



# City of Kerman

*A Place Where "Community Comes First"*

**MAYOR**

Stephen B. Hill

**MAYOR PRO-TEM**

Gary Yep

**COUNCIL MEMBER**

Rhonda Armstrong

**COUNCIL MEMBER**

Nathan Fox

**COUNCIL MEMBER**

Bill Nijjer

DEPARTMENT: PLANNING & DEVELOPMENT

STAFF REPORT

CITY COUNCIL MEETING

MEETING DATE: MARCH 23, 2016

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**To:** Mayor and City Council  
**From:** Olivia Pimentel, Planning and Development Department  
**Subject:** Agreement with Joseph Crown Construction and Development (Crown Development) for the Deferment of Certain Fees Related to Construction of Eleven (11) Homes in Kerman Estates, Tract 5478

## RECOMMENDATION

Staff recommends that the City Council, by motion, adopt the attached resolution approving a new agreement with Crown Development to defer certain fees related to construction of eleven (11) lots within Kerman Estates, Tract 5478, and authorize the Mayor to execute the agreement.

## EXECUTIVE SUMMARY

On August 5, 2015 the City Council approved a deferment agreement with Crown Development, for twenty (20) lots which Crown Development had purchased from United Security Bank. Crown Development has since completed construction of new homes on a majority of the twenty (20) lots and is now requesting a similar deferment agreement to include an additional eleven (11) lots (90, 103, 107, 108-111, 129-132). The eleven (11) lots are depicted in Attachment 'A'. The proposed agreement would allow Crown Development to defer payment of Development Impact Fees and certain Improvement Fees, for the eleven (11) lots, prior to completion and/or repair of certain defined improvements within Tract 5478 and completion of improvement to Whitesbridge Road. The fees proposed for deferment are Development Impact Fees of \$12,920.00 per lot, and Improvement Fees (Internal Improvement Repairs Fee & Whitesbridge Improvement Fee) of \$9,041.00 per lot. The Improvement Fees are to complete and/or repair improvements in Tract 5478 and to complete improvements to Whitesbridge Road. Both of these requirements are conditions of the City's original approval of Tract 5478. The proposed deferment agreement allows Crown Development to defer the payment of the Development Impact Fees and Improvement Fees for the eleven (11) lots until such time as Crown Development requests a Certificate of Occupancy for each home constructed on the eleven (11) lots.

## OUTSTANDING ISSUES

Completion and/or repair of improvements within Tract 5478 and completion of improvement to Whitesbridge Road. Should the proposed agreement be approved, and construction of new homes on the eleven (11) lots be completed, sixty-four (64) lots will remain in Tract 5478. Crown Development has indicated that they intend to purchase the remaining lots. An agreement will be prepared to address not only construction on the remaining lots, but also ultimate completion and/or repair of improvements within Tract 5478 and completion

of improvement to Whitesbridge Road. The parties have discussed the parameters of such an agreement. That agreement will be brought before the City Council for review and approval at a later date.

**DISCUSSION**

In January, 2015, as part of negotiations with another developer owning lots within Tract 5478 staff obtained new estimates for the cost for the completion and/or repair of certain in-tract and the completion of the widening of Whitesbridge Road, (State Route 180) to ensure subsequent developers of lots within Tract 5478 pay their fair share cost of completing and/or repairing the in-tract improvements and the widening of Whitesbridge Road both of which were conditions to the City’s original approval of Tract 5478.

The original estimate of \$285,722.00 for the in-tract repairs and \$737,131.00 for the off-site improvements totaling \$1,022,853.00 was obtained in September of 2011. As reflected in the table below, the revised estimate shows a slight decrease in the costs for the in-tract repairs and a slight increase in the cost for the off-site repairs. Overall, the total cost increased by \$13,939.

Table 1

Improvements	Original Estimate	Revised Estimate	Difference
In-Tract Repairs	\$285,722	\$275,062	(\$10,660)
Off-Site Improvements	\$737,131	\$761,730	\$24,599
Total	\$1,022,853	<b>\$1,036,792</b>	\$13,939

Based on the revised estimates, the fair share contribution per lot for the remaining 95 lots is \$9,041.00. As shown in Table 2, the new per lot fee has been adjusted in the new agreement to reflect the per lot fee collected on the initial 20 lots totaling \$177,880.00. This amount is deducted from the new estimate of \$1,036,792 with the revised costs divided by the remaining 95 lots for a per lot cost of \$9,041.00 (“Improvement Fee”).

Table 2

Original Agreements	Interior Repairs	Whitesbridge	Total
Original Estimates	\$285,722.50	\$737,131.40	\$1,022,853.90
Per Lot Fee (Total=115 Lots)	2,485.00	6,409.00	8,894.00
RJ Hill Per Lot Fee (10 Lots)	24,850.00	64,090.00	88,940.00
GJ Gardner Per Lot Fee (10 Lots)	24,850.00	64,090.00	88,940.00
Total Per Lot Fees (20 Lots)	49,700.00	128,180.00	177,880.00
Amended Agreements	Interior Repairs	Whitesbridge	Total
New Estimates	\$275,062.01	\$761,730.67	\$1,036,792.68
Less Per Lot Fee (Initial 20 Lots)	(49,700.00)	(128,180.00)	(177,880.00)
Revised Costs	225,362.01	633,550.67	858,912.68
New Per Lot Fee (95 Lots)	2,372.00	6,669.00	<b>9,041.00</b>

On March 16, 2016, Crown Development requested to enter into a similar agreement that was approved by Council on August 5, 2015 for 20 lots. Crown Development has completed and built out the majority of the original 20 lots and paid all of the associated development impact fees and street improvements for those completed lots as agreed. Crown Development is now requesting to add an additional eleven 11 homes (90,

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103, 107, 108-111, 129-132) with the same deferment agreement to defer payment of Development Impact Fees and Improvement Fees for the additional lots until such time as Crown Development requests a certificate of occupancy on a home constructed on any of the eleven (11) additional Crown Development is requesting. Council is being asked to consider an agreement, in the form attached hereto, with Crown Development allow for the construction of eleven (11) additional homes prior to payment of Development Impact Fees, estimated to be \$12,920.00 per lot; and; prior to payment of the Improvement Fee of \$9,041.00, per lot, until such time as each home is complete, a final inspection has occurred and Crown Development requests a certificate of occupancy on each home. To date, of the original twenty (20) lots Crown Development has constructed and received final inspection on seven (7) lots, eleven (11) lots are under construction for homes that have been sold and two (2) lots remain. Crown Development has buyers for more homes but must first obtain the ability to start construction on the additional eleven (11) new lots addressed in the proposed revised deferment agreement.

The proposed revised agreement allows Crown Development to immediately obtain building permits for the additional eleven (11) and deferral of Development Impact Fees until there is a request for a Certificate of Occupancy.

### **REASON FOR RECOMMENDATION**

The proposed revision to the existing agreement was requested by Crown Development. New home construction on the twenty (20) lots from the current deferment agreement has moved quickly. Crown Development has several customers waiting for new homes and the revised deferment agreement for the eleven (11) lots will allow construction for additional new homes to begin immediately. A new agreement for the remainder of Tract 5478 including public improvements will be brought before the City Council for review and approval.

### **PUBLIC HEARING**

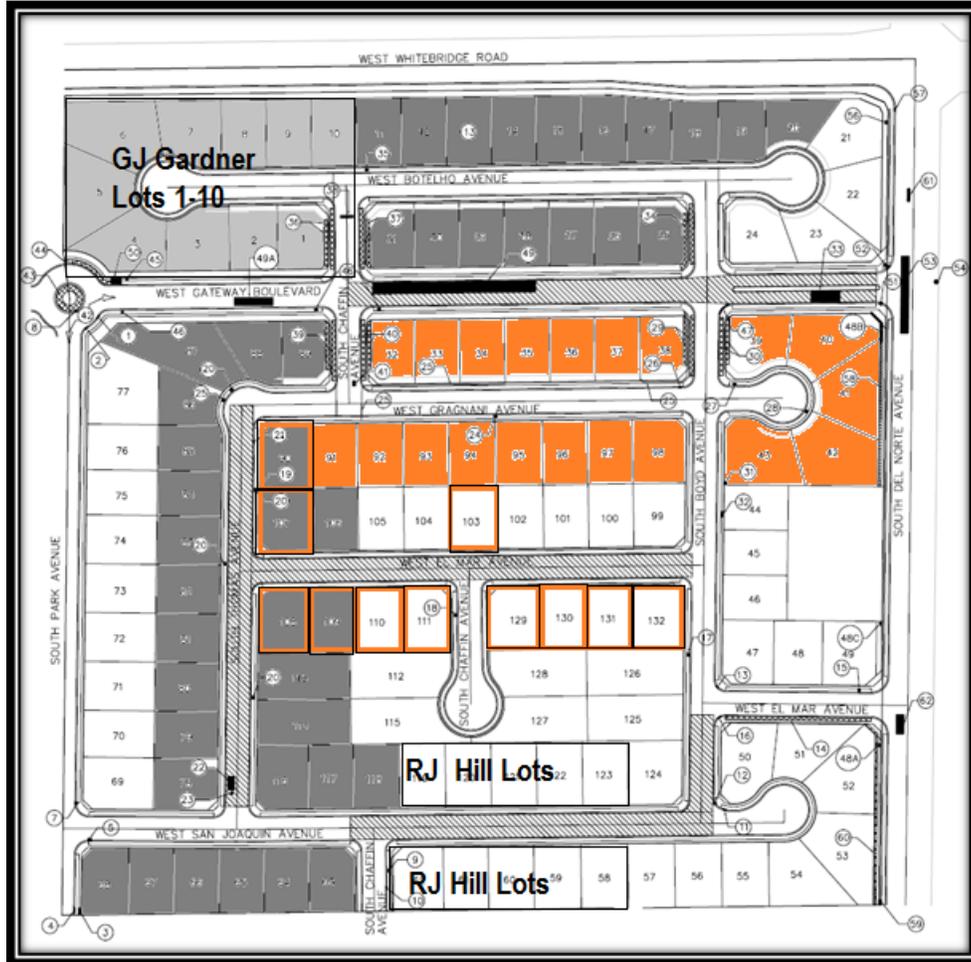
None required.

Attachments:

- A. Map of Crown Additional 11 Lots (90, 103, 107, 108-111, 129-132), Tract 5478
- B. List of Development Impact Fees
- C. Resolution w/Exhibits

Attachment 'A'

Crown 11 Additional Lots – Tract 5478



 Crown – 11 Additional Lots

Attachment 'B'

**CITY OF KERMAN  
 DEVELOPMENT IMPACT FEES 2014  
 TRACT 5478 - PACIFIC MOUNTAIN**

AREA = 40.38 Ac.  
 LOTS = 133 UN  
 SEWER & WATER UNITS = 133 UN

VTM Approved 7/20/2005  
 Final Map Recorded 11/9/2006

CODE	FEE	UNIT		RATE	AMOUNT	FEE CREDIT	ADJUSTED AMOUNT	PER LOT
110	ADMINISTRATIVE FEE	133	LOTS	\$500	\$66,500		\$66,500	\$500.00
140	PUBLIC BUILDING FACILITIES	133	LOTS	1,324	176,092		176,092	\$1,324.00
170	GENERAL PLAN UPDATE	133	LOTS	296	39,368		39,368	\$296.00
180	FIRE STATION & EQUIPMENT	133	LOTS	730	97,090		97,090	\$730.00
520	WATER FRONT FOOTAGE	535	LF	15.00	8,025		8,025	\$60.34
530	WATER OVERSIZE	133	LOTS	304	40,432	51,742	0	\$0.00
540	WATER MAJOR FACILITIES	133	LOTS	2,126	282,758		282,758	\$2,126.00
550	SEWER FRONT FOOTAGE	1,531	LF	16.00	24,496		24,496	\$184.18
560	SEWER OVERSIZE	133	LOTS	554	73,682	10,948	62,734	\$471.68
570	SEWER MAJOR FACILITIES	133	LOTS	2,349	312,417		312,417	\$2,349.00
580	PARKS - DEVELOPMENT	133	LOTS	2,706	359,898		359,898	\$2,706.00
590	PARKS - QUIMBY	133	LOTS	759	100,947		100,947	\$759.00
910	MAJOR STREETS	133	LOTS	1,545	205,485	144,773	60,712	\$456.48
920	STREET SIGNALS	133	LOTS	159	21,147		21,147	\$159.00
930	RAILROAD CROSSINGS	133	LOTS	263	34,979		34,979	\$263.00
	DEL NORTE SEWER FEE	133	LOTS	226	30,058		30,058	\$226.00
	OUTSIDE TRAVEL LANE	133	LOTS	310	41,230		41,230	\$310.00
				14,182	1,914,604		1,718,451	\$12,920.68
05-130/5478 Fees 14								7/10/2014

Attachment 'C'

**RESOLUTION NO. 16-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN APPROVING  
AGREEMENT WITH CROWN HOMES FOR THE DEFERMENT OF CERTAIN FEES CONCERNING  
CONSTRUCTION OF 11 HOMES IN KERMAN ESTATES TRACT 5478**

WHEREAS, Crown Homes (CROWN), has purchased 11 lots that are part of Tract 5478 from United Security Bank; and

WHEREAS, CROWN has requested a deferral of payment of certain fees until such time as CROWN requests a certificate of occupancy for any home constructed on a CROWN Lot; and

WHEREAS, the proposed Agreement allows CROWN to defer the payment of the Development Impact Fees and Improvement Fees on 11 homes until such time as CROWN requests a certificate of occupancy for each home constructed on the CROWN Lots; and

WHEREAS, the proposed Agreement is consistent with prior Agreements deferring fees on Tract 5478 lots.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Kerman as follows;

1. The foregoing recitals are incorporated by reference.
2. The Council hereby approves the agreement attached as Exhibit 'A' with CROWN to construct homes on the 11 lots that CROWN owns in Tract 5478 and authorizes the Mayor to execute the agreement on behalf of the City.

The foregoing resolution was introduced at a special meeting of the City Council of the City of Kerman held on the 23<sup>th</sup> day of March, 2016 and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

ATTEST:

\_\_\_\_\_  
Stephen B. Hill  
Mayor

\_\_\_\_\_  
Marci Reyes  
City Clerk

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Exhibit 'A'

RECORDED AT THE REQUEST OF, AND  
WHEN RECORDED, RETURN TO:

CITY CLERK  
CITY OF KERMAN  
850 S. MADERA AVENUE  
KERMAN, CA 93630

NO RECORDING FEE GOV. CODE 27383

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*SPACE ABOVE THIS LINE FOR RECORDER'S USE*

**AGREEMENT TO DEFER CERTAIN FEES  
CONCERNING THE CONSTRUCTION OF 11 HOMES  
IN KERMAN ESTATES TRACT 5478**

This Agreement to Defer Certain Fees Concerning the Construction of 11 Homes in Kerman Estates Tract 5478 ("Deferral Agreement"), is made as of March \_\_, 2016, by and between the City of Kerman, a California general law city, (City), and JOSEPH CROWN CONSTRUCTION AND DEVELOPMENT, INC, a California corporation ("Crown"). City and Crown are sometimes referred to individually as "Party" and collectively as "Parties."

**RECITALS**

- A. On or about August 24, 2006, City and Pacific Mountain Partners, L.L.C., a California Limited Liability Company, the original developer of Tract 5478 ("Pacific"), entered into a Subdivision Agreement for Tract No. 5478, as a condition of City's approval of a subdivision map for Tract No. 5478 ("Subdivision Agreement"); recorded on November 9, 2006 as Document No. 2006-0238844 in the Official Records of the County of Fresno, State of California.
- B. The Subdivision Agreement sets forth the terms and conditions under which Pacific would construct certain public improvements, including the widening of Whitesbridge Road, which were conditions of the City's approval of Tract No. 5478.
- C. Pacific became insolvent before satisfactorily completing the said improvements described in the Subdivision Agreement.
- D. The incomplete improvements are detailed in the plans on file with the City Clerk prepared by Yamabe & Horn Engineering, Inc. titled "City of Kerman, Kerman Estates Tract 5478, Reconstruct Interior Improvements," dated September 8, 2011 consisting of 2 sheets and listing 62 items of construction or repair, hereinafter referred to as "Interior Improvement Repairs", and in the Proposal to the City of Kerman, Whitesbridge Road Widening, Tract 5478, Kerman Estates, hereinafter referred to as Whitesbridge Road Widening, attached hereto as Exhibit 'B'. The Interior Improvement Repairs and the Whitesbridge Road Widening are sometimes collectively referred to as "Improvements."
- E. City has filed an action against Pacific's bonding company, Western Insurance Company, but that action has been stayed because Western Insurance has become insolvent, and is currently in liquidation proceedings conducted by the Insurance Commissioner for the State of Utah.

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- F. In or about February, 2015, City obtained estimates for the completion and/or repair of the Interior Improvements and the Whitesbridge Road Widening. The estimate for construction of the Whitesbridge Road Widening was \$761,730.67. The estimate for the Tract 5478 Interior Improvement Repairs was \$275,062.01. The combined total for the Improvements amounted to \$1,036,792.68.
- G. City has been notified that the Insurance Commissioner has approved City's claim for \$1,022,853.90 to complete the Improvements. However, the Insurance Commissioner reports that as of May 31, 2013, Western Insurance had total assets of \$15,092,751.68, and total liabilities of \$135,138,869.18. If total liabilities all become approved claims, City may receive only about \$114,235.67 as its Claim Payment. At this point it is unknown when or what amount Kerman may receive as its Claim Payment.
- H. United Security Bank ("Bank") foreclosed on several deeds of trust from Pacific, and by Trustee's Deeds recorded on January 12, 2009, in the Official Records of the County of Fresno as Documents 2009-0003586, -0003588 and -0003589, became the owner of 129 residential lots in Tract No. 5478. Homes have not yet been built on 115 of those lots.
- I. The City has determined that subsequent developers of Tract 5478 shall pay \$9,041 per lot developed to cover the cost of completing and/or repairing the Improvements ("Improvement Fee"). The Improvement Fee is a "fair share contribution" and is based upon bids that City obtained in or about February, 2015, for the construction of the Whitesbridge Road Widening required by the Subdivision Agreement in the amount of \$761,730.67, and the bid for the Tract 5478 Interior Improvement Repairs in the amount of \$275,062.01 for a total of \$1,036,792.68. There are 75 undeveloped lots in Tract 5478 which lots are not presently subject to an agreement regarding their fair share contribution, and the fair share that each of the remaining lots must contribute for the construction of the Whitesbridge Road Widening and the Tract 5478 Interior Improvement Repairs is \$9,041 ( $\$1,036,792 - \$177,880$  (Obligated) =  $\$858,912 \div 95$  lots =  $\$9,041.00$ )
- J. The City has also established two funds, the "Tract 5478 Interior Improvement Fund" and the "Whitesbridge Road Widening Improvement Fund" (collectively referred to as "Improvement Fees") wherein said Improvement Fees are proportionally deposited upon payment and held for the future completion and/or repair of the Improvements.
- K. Developers of lots within Tract 5478 are also required to pay certain development impact fees more specifically in Exhibit 'A' currently estimated at \$12,920.00 per lot ("Development Impact Fees").
- L. The City has previously entered agreements with other developers of lots within Tract 5478 for the deferral of the payment of the Development Impact Fees and the Improvement Fee to the certificate of occupancy.
- M. On August 18, 2015 the City and Crown entered into an identical Deferral Agreement for the Deferral of Impact Fees and Improvement Fees for 20 lots, commonly identified as Lots 32 through 43 and 91 through 98 of Tract 5478.
- N. Crown has now reached an agreement with the Bank wherein Crown will purchase the remaining 75 Lots of Tract 5478 on a quarterly basis; and, currently prepared to construct homes on 11 Lots and legally described in Exhibit 'C' (Crown Lots).

- O. City and Crown have discussed the necessity of completing the Whitesbridge Road Widening and the Tract 5478 Interior Improvement Repairs; and, Crown and City will enter an Amended and Restated Subdivision Agreement wherein Crown will agree to complete the above described Improvements, establish a schedule for completion, and performance security for the completion of those Improvements.
- P. In the interim, Crown and City wish to enter into this Deferral Agreement, identical to the deferral agreement previously entered between City and Crown for the development of Lots 32 through 43 and 91 through 98, to defer the payment of Impact Fees and Improvement Fees on each of the 11 additional Lot until such time as Crown seeks and the City is prepared to issue, a certificate of occupancy. This interim Deferral Agreement will allow Crown to commence home construction on the 11 Lots while the City and Crown prepare and approve an Amended and Restated Subdivision Agreement, which, when approved, will consume this Deferral Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants of the Parties to this Deferral Agreement and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Truth of Recitals. The recitals set forth above are true and correct.
2. Whitesbridge Road Widening: The Parties acknowledge that completion of the Whitesbridge Road Widening Improvement is required pursuant to the Subdivision Agreement for Tract 5478. The Parties further acknowledge that Whitesbridge Road is a State Highway, and any work on it will require payment of prevailing wages. Any work performed by the City or its contractors will also require the payment of prevailing wages.
3. Estimates. The Parties acknowledge and understand that estimates for the Interior Improvement Repairs and the Whitesbridge Road Widening are only estimates and the actual cost to complete the Whitesbridge Road Widening Improvements and the Interior Improvement Repairs is unknown and may differ. The Parties also acknowledge and understand that Development Impact Fees, as identified in Exhibit 'A', are currently estimated to be \$12,920.00 per lot, those fees are subject to change and currently just estimates based upon the City's current fee schedule.
4. Existing Improvements Not Accepted by City. The Parties acknowledge that City has not accepted the streets and sidewalks offered for dedication in Tract 5478, and, except for the Crown Lots, improvements may not be constructed until such time as United Security Bank has given permission to construct the improvements
5. Conditions for Issuance of Building Permits.
  - A. Upon execution of this Deferral Agreement and upon submission of a properly completed applications for building permits, payment of the permit fees, including, but not limited to normal and usual plan check fees as may be necessary to comply with current uniform building codes, and receipt of written instructions from Kerman Unified School District regarding the payment of school fees, City will issue building permits to Crown for the Crown Lots.

- B. City agrees to defer the collection of the Development Impact Fees and the Improvement Fees in connection with each of the Crown Lots until such time as a certificate of occupancy is requested for each Lot.

6. Conditions Precedent for Issuance of Certificates of Occupancy.

- A. Upon completion of the construction of any home on the Crown Lots, including the construction of any improvements legally required for the safe and convenient occupancy of each home, and upon receiving satisfactory final inspections, Crown may apply for a certificate of occupancy. As a conditions precedent (collectively “Conditions Precedent”) to City’s obligation to issue a certificate of occupancy for any Crown Lot, Crown shall provide, to the satisfaction of City the following:
  - 1) Written evidence in a form reasonably acceptable to City that Kerman Unified School District development impact fees have been paid for that lot;
  - 2) Payment of City of Kerman Development Impact Fees specified in Exhibit ‘A’ attached hereto at the rate in effect at the time of payment; and
  - 3) Payment of County of Fresno Facilities Impact Fees and the Regional Transportation Mitigation Fees in effect at the time of payment; and
  - 4) Payment of the Improvement Fees.
- B. Subject to the provisions contained herein, as to each house on a Crown Lot for which Crown has satisfied the Conditions Precedent described in Paragraph 6.A. above; and provided Crown is not in default or breach of this Deferral Agreement, or other conditions affecting the health, safety and welfare of the public prohibiting the City from issuing a certificate of occupancy do not exist, City shall issue a certificate of occupancy.
- C. Until Tract 5478 Interior Improvement Repairs have been completed and accepted by City, Crown shall disclose to purchasers of the Crown Lots that City has **NOT ACCEPTED** the streets, sidewalks, or other public infrastructure improvements within Tract 5478 as complete, and that further construction work will be required in the future before the improvements are complete.

7. Funding and Construction of Improvements.

- A. Deposits. City will deposit the Improvement Fee received for each Crown Lot, in two funds to be established and held by City as follows:
  - 1) \$6,669.00 of each Improvement Fee paid shall be deposited into the “Whitesbridge Road Widening Improvements Fund” to be used toward the completion of the Whitesbridge Road Widening as described in the Proposal to the City of Kerman, Whitesbridge Road Widening, Tract 5478, Kerman Estates attached hereto as Exhibit ‘B’.
  - 2) \$2,372.00 of each Improvement Fee paid shall be deposited into the “Tract 5478 Interior Improvement Repairs Fund” to be used to satisfactorily reconstruct or repair those

improvements described in the plans on file with the City Clerk prepared by Yamabe & Horn Engineering, Inc. titled "City of Kerman, Kerman Estates Tract 5478, Reconstruct Interior Improvements," dated September 8, 2011 consisting of 2 sheets and listing 62 items of construction or repair. (Collectively "Deposits").

- B. Use of Funds. The City shall utilize the Improvement Funds collected for the completion of the Whitesbridge Road Widening Improvements Fund, and/or in the Tract 5478 Interior Improvement Repairs Fund; whether using said Improvement Funds to pay for the direct costs of such Improvements or reimburse a developer the cost of completing such Improvements.
  - C. Claim Proceeds. City shall deposit to the Whitesbridge Road Widening Improvement Fund any amounts it receives from its Claim Payment from the Utah Insurance Commissioner in connection with City's claim against Western Insurance, after City has first reimbursed itself for its costs, attorney's fees and other expenses incurred in connection with its efforts to enforce the Subdivision Agreement the security bonds, and the discussions and negotiations leading up to, and culminating in this Deferral Agreement, together with any subsequent expense incurred to enforce or administer this Deferral Agreement or other agreements for the completion of Tract 5478 ("Claims Proceeds").
  - D. Excess Funds in Whitesbridge Road Widening Improvement Fund. If the Deposits and Claims Proceeds detailed above exceed the total cost for completing the Whitesbridge Road Widening Improvement, City shall refund the excess funds to the persons who contributed them in proportion to their contribution. If construction of the Whitesbridge Road Widening Improvement is completed for a cost that is less than the estimate, then for lots where the Improvement Fee has not yet been paid, the Improvement Fee will be adjusted; and for lots which have paid the Improvement Fee, refunds will be provided, so that all lots will have contributed a proportionally fair share to the cost of constructing the Whitesbridge Road Widening Improvement. City shall only provide refunds when all entitled to the refunds have agreed in writing as to the correct proportional distribution. If the persons entitled to refunds have not agreed within 6 months of City's determination that refunds are appropriate, the City will deposit the funds with the Fresno County Superior Court and file an interpleader action to allow the Court to determine the appropriate distribution.
  - E. Other City Funds. The City reserves the right, in its sole and absolute discretion, to allocate other City funds to the completion of the Whitesbridge Road Widening Improvement or the Tract 5478 Interior Improvement Repairs; or, apply for grants for that purpose (collectively "Other City Funds"). In the event that the City expends Other City Funds for the completion of the Whitesbridge Road Widening Improvement and/or the Tract 5478 Interior Improvement Repairs in an amount that exceeds the sum of the Deposits and Claims Proceeds any remaining portion of the relevant Fund shall be retained by City for use as it may determine.
8. Authority to Execute Agreement. The Parties represent that they have the sole right and exclusive authority to execute this Deferral Agreement. Each of the Parties further warrant, represent and agree that such Party has not heretofore assigned or transferred or purported to assign or transfer, to any person, firm, partnership, corporation or entity whatsoever, any action or actions, cause of causes of action, at law or in equity, or rights, claims, demands, costs, expenses (including, without limitation, attorney's fees) damages or losses in connection with their rights in connection with the Subdivision Agreement or the lots described in Exhibit 'C'.

9. Notices. Any delivery of this Deferral Agreement, notice, modification of this Deferral Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, transmitted by facsimile or by nationally recognized overnight delivery service (i.e., Federal Express), or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Crown:            Joseph Crown  
                              Joseph Crown Construction and Development, Inc.  
                              4337 N Golden State Blvd.  
                              Fresno, CA 93722

To City:                City of Kerman  
                              850 S. Madera Avenue  
                              Kerman, CA 93630

Any such communication shall be deemed effective upon personal delivery, confirmed receipt of notice transmitted by facsimile during regular business hours, two (2) days after transmitting the notice by a nationally recognized overnight delivery service, or three (3) days after mailing in accordance with this section. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section, and that any person to be given notice actually receives such notice.

10. No Inducement. Each Party agrees that if the facts with respect to which this Deferral Agreement is executed are found hereafter to be different from the facts now believed by any Party, each Party expressly accepts and assumes the risk of such possible difference in facts, and agrees that this Deferral Agreement shall remain effective, notwithstanding such differences. Each Party declares and represents that no promise or inducement of other agreement not expressly contained herein has been made to induce this Deferral Agreement.
11. Binding Successors. This Deferral Agreement shall inure to the benefit of each Party hereto, its predecessors, successors, subsidiaries, affiliates, representatives, assigns, agents, officers, directors, employees and personal representatives, past, present, and future. Without limiting the generality of the foregoing sentence, it is agreed that the benefits and burdens of this Deferral Agreement shall be binding upon, and benefit the present and future owners of each and every lot or parcel described in Exhibit 'C' attached hereto.
12. Legal Representation. The Parties represent and acknowledge that each of them has been represented by legal counsel, and/or had the opportunity to be represented, with respect to this Deferral Agreement and all matters covered by or related to this Deferral Agreement, and each Party shall bear its own attorney fees for such.
13. Modification. This Deferral Agreement contains the entire agreement between the Parties on the subject matter hereof and may not be altered, amended or modified in any respect, except in a writing duly executed by the Party to be charged. The Parties expressly acknowledge that the Subdivision Agreement for Tract No. 5478 remains in full force and effect, but that all other prior negotiations, agreements, understandings, oral agreements and writings on the subject matter hereof between the Parties to this Deferral Agreement are expressly superseded hereby and are of no further force and effect.

14. Drafting of Agreement. Each Party represents and warrants that it has cooperated and participated in the drafting and preparation of this Deferral Agreement. Each Party to this Deferral Agreement acknowledges that this Deferral Agreement and its reduction to final written form is the result of arms-length, good faith negotiations. Accordingly, the Parties hereby acknowledge and agree that this Deferral Agreement shall not be construed or interpreted in favor or against any of the Parties by virtue of the identity of the actual preparer.
15. Effectuation. The Parties agree to execute any and all documents, including but not limited to disclaimers, building permits, certificates of occupancy, and to do all other things as may be reasonably necessary to comply with and carry out the terms of this Deferral Agreement.
16. Governing Law. This Deferral Agreement shall be interpreted and governed by the laws of the State of California.
17. Construction. Headings are used herein for convenience only and shall have no force and effect in the interpretation or construction of this Deferral Agreement. As used in this Deferral Agreement, the singular shall include the plural, the masculine, the feminine and neuter genders.
18. Waiver. Should any term, clause or provision of this Deferral Agreement be found to be waived, unenforceable or invalid, the validity of the remaining terms, clauses and provisions shall not be affected.
19. Attorney's Fees. In the event suit is brought to enforce or interpret any Party of this Deferral Agreement, the prevailing Party shall be entitled to recover as an element of his costs of suit reasonable attorney's fees. The "prevailing party" shall be the Party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment.
20. Execution; Enforcement of Unpaid Amounts as Lien. The Parties hereto agree that this Deferral Agreement may be executed in counterparts with the same force and effect as though all signatures were set forth on a single instrument. This Deferral Agreement shall be executed in recordable form, and may be recorded by the City. At its discretion, City may record a Memorandum of this Deferral Agreement in substantially the form set forth as Exhibit 'D' attached hereto. As owner of all of the parcels or lots described in Exhibit 'C', Crown agrees that from and after December 1, 2020, the unpaid amounts of any deposits or contributions required in connection with each parcel or lot may be enforced as a lien to be collected and enforced as a special assessment for the amount unpaid as to each parcel in the same manner that unpaid taxes on the property are collected and enforced when the assessment has been levied and confirmed by a resolution of the City Council. Notwithstanding the foregoing or any other provision of this Deferral Agreement, the City shall not have any lien rights in connection with this Deferral Agreement for any of the Tract 5478 Lots for which a certificate of occupancy has been issued.

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This Deferral Agreement shall be effective on the date last written below.

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

JOSEPH CROWN CONSTRUCTION AND DEVELOPMENT, INC.

By: \_\_\_\_\_  
Joseph Crown, Secretary

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

City of Kerman

By: \_\_\_\_\_  
Stephen B. Hill, Mayor

Approved as to Form Only:

City Attorney for City of Kerman

\_\_\_\_\_  
Hilda Cantú Montoy

Exhibits:

- A. Schedule of Current Development Impact Fees for Tract 5478
- B. Revised Estimate, Tract 5478, Kerman Estates
- C. Legal Descriptions, Crown Lots
- D. Memorandum of Deferral Agreement

Exhibit 'A'

Schedule of Current Development Impact Fees for Tract 5478

**CITY OF KERMAN  
 DEVELOPMENT IMPACT FEES 2014  
 TRACT 5478 - PACIFIC MOUNTAIN**

AREA = 40.38 Ac.  
 LOTS = 133 UN  
 SEWER & WATER UNITS = 133 UN

VTM Approved 7/20/2005  
 Final Map Recorded 11/9/2006

CODE	FEE	UNIT	RATE	AMOUNT	FEE CREDIT	ADJUSTED AMOUNT	PER LOT
110	ADMINISTRATIVE FEE	133 LOTS	\$500	\$66,500		\$66,500	\$500.00
140	PUBLIC BUILDING FACILITIES	133 LOTS	1,324	176,092		176,092	\$1,324.00
170	GENERAL PLAN UPDATE	133 LOTS	296	39,368		39,368	\$296.00
180	FIRE STATION & EQUIPMENT	133 LOTS	730	97,090		97,090	\$730.00
520	WATER FRONT FOOTAGE	535 LF	15.00	8,025		8,025	\$60.34
530	WATER OVERSIZE	133 LOTS	304	40,432	51,742	0	\$0.00
540	WATER MAJOR FACILITIES	133 LOTS	2,126	282,758		282,758	\$2,126.00
550	SEWER FRONT FOOTAGE	1,531 LF	16.00	24,496		24,496	\$184.18
560	SEWER OVERSIDE	133 LOTS	554	73,682	10,948	62,734	\$471.68
570	SEWER MAJOR FACILITIES	133 LOTS	2,349	312,417		312,417	\$2,349.00
580	PARKS - DEVELOPMENT	133 LOTS	2,706	359,898		359,898	\$2,706.00
590	PARKS - QUIMBY	133 LOTS	759	100,947		100,947	\$759.00
910	MAJOR STREETS	133 LOTS	1,545	205,485	144,773	60,712	\$456.48
920	STREET SIGNALS	133 LOTS	159	21,147		21,147	\$159.00
930	RAILROAD CROSSINGS	133 LOTS	263	34,979		34,979	\$263.00
	DEL NORTE SEWER FEE	133 LOTS	226	30,058		30,058	\$226.00
	OUTSIDE TRAVEL LANE	133 LOTS	310	41,230		41,230	\$310.00
			14,182	1,914,604		1,718,451	\$12,920.68
05-130/5478 Fees 14							7/10/2014

Exhibit 'B'

Revised Estimate – Tract 5478, Kerman Estates

City of Kerman  
 Tract 5478, Kerman Estates

February 10, 2015

WHITESBRIDGE WIDENING								
Item	Description	Amount	Engineers Estimate - 2011		Dave Christian - 2011		Valley Excavation - 2015	
			Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization	1 L.S.	\$29,500.00	\$29,500.00	\$29,000.00	\$29,000.00	\$29,500.00	\$29,500.00
2	Traffic Control	1 L.S.	\$11,800.00	\$11,800.00	\$15,000.00	\$15,000.00	\$17,200.00	\$17,200.00
3	Dust Control	1 L.S.	\$11,800.00	\$11,800.00	\$2,000.00	\$2,000.00	\$4,800.00	\$4,800.00
4	Storm Water Pollution Prevention Plan	1 L.S.	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00	\$3,300.00	\$3,300.00
5	Implementing Storm Water Pollution Plan	1 L.S.	\$6,000.00	\$6,000.00	\$5,000.00	\$5,000.00	\$5,800.00	\$5,800.00
6	Clearing and Grubbing	1 L.S.	\$17,000.00	\$17,000.00	\$18,000.00	\$18,000.00	\$19,120.00	\$19,120.00
7	Excavation	2,548 CY	\$25.00	\$63,700.00	\$27.00	\$68,796.00	\$25.35	\$64,591.80
8	7" Hot Mix Asphalt	1,832 TON	\$90.00	\$164,880.00	\$89.00	\$163,048.00	\$97.00	\$177,704.00
9	9" Aggregate Base, Class II	2,253 TON	\$35.00	\$78,855.00	\$23.60	\$53,170.80	\$32.13	\$72,388.89
10	Concrete Curb and Gutter	1,308 L.F.	\$15.00	\$19,620.00	\$21.10	\$27,598.80	\$18.04	\$23,596.32
11	Concrete Handicap Ramp	2 EA.	\$2,500.00	\$5,000.00	\$2,800.00	\$5,600.00	\$2,950.00	\$5,900.00
12	18" Storm Drain Pipe	840 L.F.	\$80.00	\$50,400.00	\$67.00	\$56,280.00	\$68.10	\$57,204.00
13	Type G3 Drain Inlet	3 EA.	\$3,500.00	\$10,500.00	\$6,300.00	\$18,900.00	\$6,133.00	\$18,399.00
14	Type G0 Drain Inlet	1 EA.	\$4,000.00	\$4,000.00	\$6,700.00	\$6,700.00	\$8,810.00	\$8,810.00
15	Streetlight	9 EA.	\$3,500.00	\$31,500.00	\$8,300.00	\$74,700.00	\$8,852.00	\$81,668.00
16	Signing and Striping	1 L.S.	\$12,000.00	\$12,000.00	\$14,500.00	\$14,500.00	\$15,900.00	\$15,900.00
17	Asphalt Grinding	8,378 SF.	\$1.20	\$10,053.60	\$1.10	\$9,215.80	\$1.17	\$9,802.26
18	Landscape Planting	1 L.S.	\$11,000.00	\$11,000.00	\$53,000.00	\$53,000.00	\$57,100.00	\$57,100.00
19	Landscape Irrigation	1 L.S.	\$31,000.00	\$31,000.00	\$52,000.00	\$52,000.00	\$50,200.00	\$50,200.00
20	Gas Main Relocation	1 L.S.	\$5,000.00	\$5,000.00	\$37,000.00	\$37,000.00	\$34,700.00	\$34,700.00
21	Sawcut	1,386 LF	\$1.50	\$2,079.00	\$2.00	\$2,772.00	\$2.40	\$3,326.40
22	Construction Staking	1 L.S.	\$12,000.00	\$12,000.00	\$9,200.00	\$9,200.00	\$10,320.00	\$10,320.00
23	Miscellaneous Facilities	1 L.S.	\$8,812.40	\$8,812.40	\$12,650.00	\$12,650.00	\$12,400.00	\$12,400.00
<b>Total Whitesbridge Widening Cost:</b>			<b>\$597,000.00</b>	<b>\$597,000.00</b>	<b>\$737,131.40</b>	<b>\$737,131.40</b>	<b>\$761,730.67</b>	<b>\$761,730.67</b>

INTERIOR REPAIRS								
Item	Description	Amount	Engineers Estimate - 2011		Dave Christian - 2011		Valley Excavation - 2015	
			Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization	1 LS	\$11,900.00	\$11,900.00	\$11,900.00	\$11,900.00	\$11,900.00	\$11,900.00
2	Traffic Control	1 LS	\$4,750.00	\$4,750.00	\$5,000.00	\$5,000.00	\$4,700.00	\$4,700.00
3	Dust Control	1 LS	\$4,750.00	\$4,750.00	\$2,000.00	\$2,000.00	\$2,500.00	\$2,500.00
4	Grind	30,300 SF	\$0.30	\$9,090.00	\$0.50	\$15,150.00	\$0.48	\$14,544.00
5	Clearing and Grubbing	1 LS	\$12,000.00	\$12,000.00	\$18,000.00	\$18,000.00	\$17,400.00	\$17,400.00
6	Excavation	211 CY	\$25.00	\$5,275.00	\$40.00	\$8,440.00	\$39.15	\$8,260.65
7	Hot Mix Asphalt	942 TON	\$90.00	\$84,780.00	\$100.00	\$94,200.00	\$105.72	\$99,588.24
8	Aggregate Base, Class II	309 TON	\$35.00	\$10,815.00	\$32.50	\$10,042.50	\$44.66	\$13,799.94
9	R&R Concrete Curb & Gutter	104 LF	\$20.00	\$2,080.00	\$45.00	\$4,680.00	\$44.42	\$4,619.68
10	R&R Concrete Sidewalk	154 SF	\$9.00	\$1,386.00	\$15.00	\$2,310.00	\$21.75	\$3,349.50
11	Install Mailbox	4 EA	\$1,500.00	\$6,000.00	\$2,000.00	\$8,000.00	\$2,240.00	\$8,960.00
12	Install Cage Over BF Service	4 EA	\$600.00	\$2,400.00	\$1,500.00	\$6,000.00	\$1,400.00	\$5,600.00
13	Install Water Service Box Lid	2 EA	\$150.00	\$300.00	\$500.00	\$1,000.00	\$285.00	\$570.00
14	R&R or Install Water Service Box	4 EA	\$1,500.00	\$6,000.00	\$800.00	\$3,200.00	\$792.50	\$3,170.00
15	Landscape Planting & Irrigation	1 LS	\$60,000.00	\$60,000.00	\$32,500.00	\$32,500.00	\$39,800.00	\$39,800.00
16	Install Meter Box	1 EA	\$800.00	\$800.00	\$800.00	\$800.00	\$850.00	\$850.00
17	Install SS Manhole	1 EA	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$5,600.00	\$5,600.00
18	Adjust MH	1 EA	\$1,000.00	\$1,000.00	\$1,200.00	\$1,200.00	\$1,150.00	\$1,150.00
19	Miscellaneous Facilities	1 LS	\$10,000.00	\$10,000.00	\$56,800.00	\$56,800.00	\$28,700.00	\$28,700.00
<b>Total Interior Repairs Cost: \$</b>			<b>237,630.00</b>	<b>237,630.00</b>	<b>\$285,722.50</b>	<b>\$285,722.50</b>	<b>\$275,062.01</b>	<b>\$275,062.01</b>
<b>Total =</b>			<b>\$834,630.00</b>	<b>\$834,630.00</b>	<b>\$1,022,853.90</b>	<b>\$1,022,853.90</b>	<b>\$1,036,792.68</b>	<b>\$1,036,792.68</b>

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Exhibit 'C'

**LEGAL DESCRIPTION**

**CROWN Lots:**

LOTS 90, 103, 107 THROUGH 111, INCLUSIVE, AND 129 THROUGH 132, INCLUSIVE OF TRACT NO. 5478, KERMEN ESTATES ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 78, PAGE(S) 9, 10, AND 11 OF PLATS, FRESNO COUNTY RECORDS.

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 WM. G. KERCKHOFF COMPANY, A CORPORATION RECORDED DECEMBER 15, 1945 IN BOOK 2323, PAGE 260, OFFICIAL RECORDS, AS DOCUMENT NO. 59070.

A.P.N.'s: 023-710-52s , 023-721-05s, 023-721-09s, 023-725-01s, 023-725-02s, 023-725-03s, 023-725-04s, 023-725-09s, 023-725-10s, 023-725-11s, 023-725-12s

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Exhibit 'D'

RECORDED AT THE REQUEST OF, AND  
WHEN RECORDED, RETURN TO:

CITY CLERK  
CITY OF KERMAN  
850 S. MADERA AVENUE  
KERMAN, CA 93630

NO RECORDING FEE GOV. CODE 27383

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

Affects Assessor's Parcel Numbers:

**MEMORANDUM OF DEFERRAL AGREEMENT CONCERNING CERTAIN REAL PROPERTY  
IN KERMAN ESTATES TRACT 5478, CITY OF KERMAN**

The parcels of real property identified in this Memorandum of Deferral Agreement are subject to an Agreement Concerning the Construction of homes in Kerman Estates Tract 5478 ("Deferral Agreement"), made as of March \_\_, 2016, between the City of Kerman, a California general law city, hereinafter designated and called "City", and Joseph Crown Construction and Development, Inc.

The Deferral Agreement also concerns a Subdivision Agreement for Tract No. 5478 entered into on or about August 24, 2006, in connection with the City's approval of a subdivision map for Tract No. 5478 in the City of Kerman. A Memorandum of Subdivision Agreement was recorded on November 9, 2006 as Document No. 2006-0238844 in the Official Records of the County of Fresno, State of California.

The Lots affected by the Deferral Agreement are the real property described in Exhibit 'A', attached hereto.

The Deferral Agreement and the Subdivision Agreement specify terms, conditions and requirements for the subdivision of lands, and the construction of homes on the lands within Tract 5478. **The complete Deferral Agreement and Subdivision Agreement should be reviewed by any person contemplating any transaction in connection with any lands in Tract 5478.** The Deferral Agreement and Subdivision Agreement are available for review in the Office of the City Clerk, 850 South Madera Avenue, Kerman, California.

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

JOSEPH CROWN CONSTRUCTION AND DEVELOPMENT, INC

By: \_\_\_\_\_  
Joseph Crown, Secretary

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

City of Kerman

By: \_\_\_\_\_  
Stephen B. Hill, Mayor

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Exhibit 'A' TO MEMORANDUM OF DEFERRAL AGREEMENT

**LEGAL DESCRIPTION**

LOTS 90, 103, 107 THROUGH 111, INCLUSIVE, AND 129 THROUGH 132, INCLUSIVE OF TRACT NO. 5478, KERMANS ESTATES ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 78, PAGE(S) 9, 10, AND 11 OF PLATS, FRESNO COUNTY RECORDS.

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 WM. G. KERCKHOFF COMPANY, A CORPORATION RECORDED DECEMBER 15, 1945 IN BOOK 2323, PAGE 260, OFFICIAL RECORDS, AS DOCUMENT NO. 59070.

A.P.N.'s: 023-710-52s , 023-721-05s, 023-721-09s, 023-725-01s, 023-725-02s, 023-725-03s, 023-725-04s, 023-725-09s, 023-725-10s, 023-725-11s, 023-725-12s