

Please return to:

*Executive Assistant
Kennewick Irrigation District
12 West Kennewick Avenue
Kennewick, WA 99336*

KENNEWICK IRRIGATION DISTRICT RESOLUTION 2016-11

Approving Olympia Estates Voluntary Mitigation Agreement with Lien Provisions

A **RESOLUTION** of the Board of Directors of Kennewick Irrigation District (KID), Benton County, Washington, for the purpose of approving a development agreement with Dan Swanson, KDS Development, LLC, an Washington Corporation (hereinafter "Developer"),

WHEREAS, the Board of Directors of KID (the Board) met in regular session on April 5th, 2016, with a quorum present, and

WHEREAS, the Property is proposed for subdivision into a development known as "Olympia Estates" consisting 12.75 acres, of which 12.74 acres is classified as irrigable, which are proposed to be subdivided into 47 lots and legally described as follows;

114891011928002

SHORT PLAT #1928, LOT 2 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

114891011928001

SECTION 14 TOWNSHIP 8 RANGE 29: SHORT PLAT #1928, LOT 1 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD; EXCEPT THE SOUTH 10 FEET THEREOF, AS DELINEATED ON SHORT PLAT NO 1928, RECORDED UNDER AUDITOR'S RECORDING NO 93-18970, RECORDS OF BENTON COUNTY, WASHINGTON. (BLA, QCD AF#2005-004873, 2/16/2005)

hereinafter referred to as the "Property."

WHEREAS, the Property is being developed into a residential subdivision within the City of Kennewick boundaries; and

WHEREAS, the Property is owned by the Developer and has an allotment of irrigation water from KID; and

WHEREAS, RCW 58.17.310 requires that irrigation water rights-of-way be provided for each parcel of land, and also requires that, if the subdivision lies within land within an irrigation district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county; and

WHEREAS, KID Resolution 86-15A requires completed irrigation facilities as a condition for approval of the short plat or final plat; and

WHEREAS, KID Policy 4.19 “Standard Specifications” specifies what comprises completed irrigation facilities; and

WHEREAS, the Developer has made irrigation improvements on the Property, but has not completed the construction of a pond, pump station, and appurtenant facilities to provide pressurized irrigation water to the subdivision as a completed irrigation facility; and

WHEREAS, the Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds towards KID’s planned regional system in lieu of constructing a pump station and appurtenant facilities to service the Property; and

WHEREAS, the Developer desires to contribute funds equal to the mutually agreed cost of completed irrigation facilities, which is \$83,270.14 towards the planned regional system in lieu of construction of a pump station and appurtenant facilities; and

WHEREAS, it is required of the developer to mitigate the increased risk to the KID caused by the removal of drainage features and the proposed construction of downgradient dwellings, and the KID and the Developer have mutually agreed that the Developer Contribute funds in the amount of \$16,040.22 to have KID construct and install canal lining, an amount which has been determined to be adequate and proportional mitigation.

WHEREAS, the parties desire to set forth their agreements on how said Voluntary Mitigation Agreement will be constructed, operated, maintained, replaced, and bettered for their mutual benefit and for the benefit of their heirs, assigns and successors;

NOW, THEREFORE, BE IT RESOLVED that the attached “Olympia Estates Voluntary Mitigation Agreement” is approved.

RESOLUTION 2016-11 IS HEREBY ADOPTED by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting thereof this 5th day of April, 2016.



David McKenzie




Patrick McGuire



Gene Huffman



Kirk Rathbun



Dean Dennis

***OLYMPIA ESTATES
VOLUNTARY MITIGATION DEVELOPMENT
AGREEMENT WITH LIEN PROVISIONS***

THIS AGREEMENT, made and entered into and effective this _____ day of _____, _____ by and between the parties hereto, who are identified as follows:

Dan Swanson, KDS Development LLC, a Washington Corporation (hereinafter “Developer”), and **Gilbert and Gloria Jones**, owners of record of parcel 114891011928002 (hereinafter “Owner”),

and

Kennewick Irrigation District, an irrigation district formed and operated pursuant to RCW Ch. 87.03, referred to herein as “KID,”

Relating to that property in the City of Kennewick (“COK”) boundaries, County of Benton, and State of Washington, this is legally described as follows:

114891011928002

SHORT PLAT #1928, LOT 2 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

114891011928001

SECTION 14 TOWNSHIP 8 RANGE 29: SHORT PLAT #1928, LOT 1 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD; EXCEPT THE SOUTH 10 FEET THEREOF, AS DELINEATED ON SHORT PLAT NO 1928, RECORDED UNDERAUDITOR'S RECORDING NO 93-18970, RECORDS OF BENTON COUNTY, WASHINGTON. (BLA, QCD AF#2005-004873, 2/16/2005)

hereinafter referred to as the “Property.”

WHEREAS, the Property is being developed into a residential subdivision (“Subdivision”) within the COK boundaries; and

WHEREAS, the Property is owned by the Developer, with the exception of parcel 114891011928002, of which the owners of record are Gilbert and Gloria Jones, which parcel the Developer is in the process of purchasing and which is anticipated to close on or about May 1, 2016, and both parcels have an allotment of irrigation water from KID; and

WHEREAS, the Property is proposed for subdivision into a development known as

“Olympia Estates” consisting 12.75 acres, of which approximately 12.74 acres is classified as irrigable, which are proposed to be subdivided into 47 lots; and

WHEREAS, RCW 58.17.310 requires that irrigation water rights-of-way be provided for each parcel of land, and also requires that, if the subdivision lies within land within an irrigation district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county; and

WHEREAS, KID Resolution 86-15A requires completed irrigation facilities as a condition for approval of the short plat or final plat; and

WHEREAS, KID Policy 4.19 “Standard Specifications” specifies what comprises completed irrigation facilities; and

WHEREAS, the Developer has made irrigation improvements on the Property, but has not completed the construction of a pond, pump station, and appurtenant facilities to provide pressurized irrigation water to the Subdivision as a completed irrigation facility; and

WHEREAS, the Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds towards KID’s planned regional system in lieu of constructing a pond, pump station, and appurtenant facilities to service the Subdivision; and

WHEREAS, to mitigate the increased risk to the KID caused by the removal of drainage features and the proposed construction of downgradient dwellings for the Subdivision, the KID and the Developer have mutually agreed that the Developer contribute funds in the amount of \$16,040.22 to have KID construct and install canal lining, an amount which the parties agree to be adequate and proportional mitigation.

WHEREAS, the Developer desires to contribute funds equal to what would be the mutually agreed cost of constructing completed irrigation facilities, which is \$83,270.14 toward the planned regional system in lieu of constructing a pond, pump station, and appurtenant facilities at Developer’s expense to service the Subdivision; and

WHEREAS, the KID cannot approve of any Final Plat phases of the Property unless completed irrigation systems are installed or bonded for, or the KID Board of Directors approves by resolution an acceptable security that creates a lien against the Property; and

WHEREAS, the Developer desires to create a lien against the Property in a form that of acceptable security to the KID, which is the Deed of Trust; and

WHEREAS, the Developer desires to pay the amount over time by paying funds from the proceeds of each lot sale within the Subdivision until such time that the Developer can pay off the remaining amount of \$99,310.36, and therefore agrees to pay 4.6% interest

on that amount running from the date when KID provides irrigation water to the subdivision, and compounding annually on the amounts remaining unpaid at the end of each year until the full amount is paid; and

WHEREAS, the parties desire to set forth their agreements on how said Voluntary Mitigation Development Agreement will be constructed, operated, maintained, replaced, and bettered for their mutual benefit and for the benefit of their heirs, assigns and successors; and the parties understand and agree that the LUPA appeal filed by KID shall be dismissed and that such dismissal shall be contingent upon the incorporation of the terms of this agreement into the revised Pre-Plat; NOW THEREFORE:

1. The Developer's Obligations. Developer:

- a. Shall pay to the KID a total sum of \$99,310.36 ("Total Sum") within 5 years from the date of the agreement, an amount mutually agreed upon by KID and Developer in lieu of the costs to presently install the completed irrigation facilities for the Subdivision and to mitigate associated risks to the KID. Interest on the Total Sum shall accrue at the rate of 4.6% from the date when the KID provides irrigation water to the subdivision, and compounding annually on the amounts remaining unpaid at the end of each year until the full amount is paid
- b. May elect to receive a credit towards the Total Sum stated above in a mutually agreed upon amount if Developer installs at Developer's cost a main service pipeline for the Property that is upsized at KID's request to provide service to lands outside the Property.
- c. Shall pay to the KID \$2,112.99 per lot as a condition of and prior to transfer of title of each lot of the Subdivision within Phase 1 to a third party (see Pre-Plat attached as **Exhibit 1**). The amounts paid to the KID from the proceeds of each lot sale shall reduce the Total Sum by \$2,112.99, provided, however, that each such payment and any other payment shall first be applied to accrued interest and then to principal. The Developer, at any time, may pay off the remaining balance of the Total Sum. If any unpaid balance remains at the time of final plat of Phase 2 or any subsequent phase, a Deed of Trust shall be issued on the remaining phases of the Property as described in e. below.
- d. May elect to make other KID-approved improvements, such as the installation of a pipeline to the Property to provide pressurization, in exchange for a credit or deduction to the Total Sum in an amount mutually agreed upon in writing.
- e. Agrees to grant a Deed of Trust against all of the remaining parcels of the Olympia Estates on the Property. Developer shall ensure that there are no other interests or liens on said lots. The Deed of Trust against the lots of Phase 2 may by agreement be transferred to the lots in additional phases as long as the value of the lots does not fall below the remaining amount due on the mutually agreed amount of \$99,310.36, plus estimated interest, costs and attorney fees.
- f. Agrees to hold harmless and indemnify KID and its officers, agents,

consultants, contractors, representatives, attorneys, insurers and employees from any all claims judgments, damages, penalties, fines, costs, liabilities or losses arising from or related to any design specifications herein or approval given hereunder. This hold harmless and indemnification provision applies to claims of negligence and any other theory of liability related to or arising out of this Agreement or otherwise raised against KID that involve the Subdivision that is the subject of this agreement.

2. KID Obligations. KID shall:
 - a. Provide a proportionate share of available irrigation water to the Subdivision starting in April 2017, per the normal operating rules, regulations, and practices of KID.
3. Water Rights Unaffected; Pump Ownership Remains. This Agreement does not create, grant, transfer, modify or affect any water rights of the Developer or KID.
4. Other Rights and Obligations Not Affected. No rights or obligations of the parties or to which the Property is subject are modified or affected hereby. Without limiting the generality of the foregoing, the Property, and all lots subsequently created from the Property, shall continue to be assessed in accordance with KID assessment rate structure and practices as they now exist and as they may be amended in the future.
5. Entire Agreement; Severability; Modification; Waiver: This agreement contains the entire agreement of the parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, express or implied, between the parties concerning the subject matter of this agreement. Should any term or provision of this Agreement, or any part thereof, be held unenforceable for any reason, such unenforceable term or provision, or part thereof, shall not affect the remainder of this contract, it being agreed the provisions hereof are severable. This Agreement shall not be subject to modification except by written agreement signed by both parties. Failure of either party to enforce any of the provisions of this agreement shall not be construed as a waiver by that party of any such provisions or of the right of such party to thereafter strictly enforce each and every provision of this agreement.
6. Injunctive Relief. The Developer agrees and stipulates that irreparable injury will result to KID if Developer fails to fully perform all of their obligations, and agree that if Developer breaches this agreement or fails to fully perform an obligation herunder, KID shall be entitled to an injunction to restrain further breach and/or to force performance. Said injunctive relief shall be in addition to any other remedies KID may have.

7. Personal Warranty of Representative Authority. Each person signing this Agreement in a representative capacity individually and personally promises, covenants, represents and warrants that he or she has full authority to bind his or her principle to the terms of the Agreement, and hereby promises to hold the other parties hereto harmless from any claim or allegation that said person lacked such authority.
8. Attorney's Fees: In case litigation or arbitration is instituted arising directly or indirectly out of this Agreement, the substantially prevailing party or parties shall be awarded its reasonable attorney's fees, costs (including witness fees, expert witness fees and court reporter fees), at trial and on any appeal plus estimated interest accumulation on attorney fees and costs. In addition, in the event of arbitration, the substantially prevailing party shall be awarded its share of the arbitrator's fee.
9. Disputes, Default, Breach, Mediation and Arbitration. In the event any party alleges any failure to agree, default or breach against the other arising out of this Agreement and they are unable to resolve the same by direct negotiation within seven (7) days of written notification of same, then the following mediation and arbitration provisions shall apply. In the event of any such claims or disputes over this Agreement, and as a condition precedent to the commencing of any legal action on said Agreement, the parties agree that they will first submit said dispute to mediation and arbitration in Kennewick, Washington. Upon demand for mediation by either party, a single mediator shall be selected by agreement of the parties or, if the parties are unable to agree, by the presiding judge of Benton County Superior Court. Within ten (10) days of demand for mediation by a party, a mediator shall be selected by the parties. If the parties cannot agree on a mediator, either party may submit a request to the Benton County Superior Court presiding judge to appoint a mediator in compliance with this Agreement. The mediation shall held within forty-five (45) days of selection of the mediator. If mediation is not successful, the mediator shall thereafter become an arbitrator and shall make a decision on the dispute within ten (10) days of the mediation. The mandatory arbitration rules of the Benton/Franklin County Superior Courts shall be binding as to procedure, except as to the unique right of appeal which is not applicable. The limited right of appeal under the general arbitration laws of the State of Washington shall apply.
10. Jurisdiction and Venue: Any litigation arising under, related to, or in connection with this Agreement shall occur solely in the state court of appropriate subject matter jurisdiction for Benton County, State of Washington, and in no other court.
11. Agreement is binding. The terms of this Agreement are intended to be and shall constitute a binding agreement and a covenant running with the land. The benefits and obligations herein shall benefit and bind the parties and their successors and assigns in interest unless otherwise terminated by the parties hereto.

12. Recording. This Agreement and any amendments thereto shall be filed for recording with the Benton County Auditor.

13. Scrutiny. This Agreement has been submitted to the scrutiny of all parties and their respective legal counsel and shall be given a fair and reasonable interpretation in accordance with the words hereof without consideration or weight being given to its being drafted by or for one of the parties. If in fact one of the parties has not submitted this Agreement to the scrutiny of their legal counsel, such party stipulates that, despite having had the opportunity to do so, they waived the same and elected to proceed without the benefit of such legal review.

IN WITNESS WHEREOF, the parties execute this Agreement as follows.

DEVELOPER:

KDS Development LLC

BY _____
DAN SWANSON, PRESIDENT

Date Signed: _____, 2016

STATE OF WASHINGTON)

: ss

COUNTY OF _____)

On this ____ day of _____, 2016, before me personally appeared **Dan Swanson**, to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2016.

NOTARY PUBLIC,
State of Washington
Residing at _____
My Commission Expires _____

OWNER OF RECORD OF PARCEL 114891011928002

BY _____
GILBERT JONES

Date Signed: _____, 2016

BY _____
GLORIA JONES

Date Signed: _____, 2016

STATE OF WASHINGTON)

: ss

COUNTY OF _____)

On this ____ day of _____, 2016, before me personally appeared **Gilbert Jones and Gloria Jones**, to me known to be the individuals that executed the within and foregoing instrument, and acknowledged said instrument to be their free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2016.

NOTARY PUBLIC,
State of Washington
Residing at _____
My Commission Expires _____

KENNEWICK IRRIGATION DISTRICT:

By: Charles Freeman
Charles Freeman, its Secretary Manager

Date: 5 Apr., 2016

By: David McKenzie
David McKenzie, President of the Board of Directors

Date: 5 Apr., 2016

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on April 5th, 2016

STATE OF WASHINGTON)

: ss

COUNTY OF Benton)

On this 5th day of April, 2016, before me personally appeared Charles Freeman & David McKenzie to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 5th day of April, 2016.



[Signature]

NOTARY PUBLIC,
State of Washington
Residing at Kennewick WA
My Commission Expires 2/16/19