

Please return to:

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

KENNEWICK IRRIGATION DISTRICT RESOLUTION 2016-17

Approving Canyon Ranch Voluntary Mitigation Agreement

A **RESOLUTION** of the Board of Directors of Kennewick Irrigation District (KID), Benton County, Washington, for the purpose of approving a development agreement with Tri Cities Development Co. LLC, an Oregon Corporation (hereinafter “Developer”),

WHEREAS, the Board of Directors of KID (the Board) met in regular session on June 7, 2016, with a quorum present, and

WHEREAS, the Property is proposed for subdivision into a development known as “Canyon Ranch” consisting approximately 55.94 acres, of which approximately 53.17 acres is classified as irrigable, which are proposed to be subdivided into 179 lots legally described in attached “Canyon Ranch Voluntary Mitigation Agreement”, 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 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 Property; and

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

WHEREAS, the KID cannot approve of any Final Plat phases of the Property unless completed irrigation system 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 contribute funds for each lot sale until such time that the Developer can pay off the remaining amount; and

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 “Canyon Ranch Voluntary Mitigation Agreement” is approved.

RESOLUTION 2016-17 IS HEREBY ADOPTED by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting thereof this 7th day of June, 2016.

ABSENT

David McKenzie




Patrick McGuire



Gene Huffman

ABSENT

Kirk Rathbun



Dean Dennis

CANYON RANCH VOLUNTARY MITIGATION AGREEMENT

THIS AGREEMENT, made and entered into and effective this 20th day of October, 2016, by and between the parties hereto, who are identified as follows:

Matt Smith, Tri Cities Development Corporation. LLC, a Washington Corporation (hereinafter "Developer"),

and

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

Relating to that properties in the City of Kennewick ("COK") boundaries, County of Benton, and State of Washington, this are legally described as follows:

- LOTS 1 THROUGH 5 OF SHORT PLAT #3386, RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3386, RECORDS OF BENTON COUNTY, WASHINGTON, AF#2012-040111
- LOTS 1 THROUGH 12 OF PLAT SUBDIVISION "CANYON RANCH PHASE 1", RECORDED IN VOLUME 15 OF PLATS, PAGE 461, RECORDS OF BENTON COUNTY, WASHINGTON, AF#2013-018523
- LOTS 1 THROUGH 16 OF PLAT SUBDIVISION "CANYON RANCH PHASE 2", RECORDED IN VOLUME 15 OF PLATS, PAGE 475, RECORDS OF BENTON COUNTY, WASHINGTON AF#2013-040456
- LOTS 1 THROUGH 19 OF PLAT SUBDIVISION "CANYON RANCH PHASE 3", RECORDED IN VOLUME 15 OF PLATS, PAGE 497, RECORDS OF BENTON COUNTY, WASHINGTON, AF#2014-028526
- LOTS 1 THROUGH 11 OF PLAT SUBDIVISION "CANYON RANCH PHASE 4", RECORDED IN VOLUME 15 OF PLATS, PAGE 497, RECORDS OF BENTON COUNTY, WASHINGTON, AF#2014-028526
- LOTS 1 THROUGH 40 OF PLAT SUBDIVISION "CANYON RANCH PHASE 5 AND 6", RECORDED IN VOLUME 15 OF PLATS, PAGE 526, RECORDS OF BENTON COUNTY, WASHINGTON AF#2015-035306
- **Parcel 112882013386019 (Future Canyon Ranch Phase 7 and 8)**
A PORTION OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M. BEING THOSE PORTIONS OF LOTS 7 AND 8 SHORT PLAT 3386, ACCORDING TO THE SURVEY THEREOF AS RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3386 RECORDS OF BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12, BEING A BRASS CAP; THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER

NORTH 88° 40' 21" EAST FOR 668.79 FEET, THENCE NORTH 00° 21' 57" WEST FOR 1258.24 FEET TO THE NORTHWEST CORNER OF LOT 8, SHORT PLAT 3386, THENCE ALONG THE NORTH LINE OF SAID LOT 8 SHORT PLAT 3386 NORTH 87° 43' 28" EAST FOR 738.07 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE BOUNDARY OF SAID LOT 8 THE FOLLOWING COURSES AND DISTANCES NORTH 87° 43' 28" EAST FOR 583.42 FEET; THENCE SOUTH 00° 09' 09" EAST FOR 386.93 FEET; THENCE NORTH 90° 00' 00" WEST FOR 170.00 FEET; THENCE SOUTH 00° 09' 09" EAST FOR 100.01 FEET; THENCE NORTH 90° 00' 00" EAST FOR 170.00 FEET; THENCE SOUTH 00° 09' 09" EAST FOR 269.61 FEET TO THE BOUNDARY LINE OF CANYON RANCH PHASE 2, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 475 RECORDS OF BENTON COUNTY, WASHINGTON; THENCE ALONG SAID BOUNDARY THE FOLLOWING COURSES AND DISTANCES SOUTH 89° 50' 51" WEST FOR 105.00 FEET; THENCE NORTH 00° 09' 09" WEST FOR 77.81 FEET; THENCE SOUTH 89° 50' 51" WEST FOR 40.00 FEET; THENCE NORTH 00° 09' 09" WEST FOR 83.69 FEET; THENCE SOUTH 89° 03' 27" WEST FOR 73.10 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7, SHORT PLAT 3386; THENCE ALONG THE SOUTH LINE OF SAID LOT 7 AND THE BOUNDARY OF SAID CANYON RANCH PHASE 2, SOUTH 89° 03' 27" WEST FOR 68.24 FEET TO THE NORTHWEST CORNER OF SAID CANYON RANCH PHASE 2 AND THE BEING THE NORTHEAST CORNER OF CANYON RANCH PHASE 3 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 497 RECORDS OF BENTON COUNTY, WASHINGTON; THENCE ALONG THE NORTH LINE OF SAID CANYON RANCH PHASE 3, SOUTH 89° 03' 27" WEST FOR 237.05 FEET; THENCE NORTH 01° 10' 47" WEST FOR 119.92 FEET; THENCE NORTH 05° 11' 43" EAST FOR 40.25 FEET; THENCE NORTH 01° 40' 45" WEST FOR 254.83 FEET; THENCE NORTH 19° 27' 38" WEST FOR 41.87 FEET; THENCE NORTH 02° 16' 32" WEST FOR 125.00 FEET TO THE TRUE POINT OF BEGINNING. (BOUNDARY LINE ADJUSTMENT PER AF#2015-026989, 9/09/2015).

• **Parcel 112882013386015 (Future Canyon Ranch Phase 9)**

SECTION 12, TOWNSHIP 8 NORTH, RANGE 28 EAST, QUARTER NW: SHORT PLAT #3386, LOT 9, RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 3386, RECORDS OF BENTON COUNTY, WASHINGTON. AF#2012-040111, 12/19/2012; LESS THAT PORTION THAT LIES WITHIN CANYON RANCH, PHASE 2, (AF#2013-041826, 12/30/2013). LESS THAT PORTION LYING EAST OF CLODFELTER ROAD RIGHT OF WAY ALL BEING IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M. (BOUNDARY LINE ADJUSTMENT PER AF#2014-018074, 7/24/2014).

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 has an allotment of irrigation water from KID; and

WHEREAS, the Property is proposed for subdivision into a development known as “Canyon Ranch” consisting approximately 55.94 acres, of which approximately 53.17 acres is classified as irrigable, which are proposed to be subdivided into 179 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, the Developer desires to contribute funds equal to what would be the mutually agreed cost of constructing completed irrigation facilities, which is \$219,839.11 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 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 \$219,839.11; 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;
NOW THEREFORE:

1. The Developer’s Obligations. Developer:

- a. Shall pay to the KID a total sum of \$161,437.97 (“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, The mutually agreed upon amount accounts for the following:

- i. \$26,373.49 credit for upsizing pipelines within Phase 2 of the subdivision.
 - ii. \$11,880 credit for the Operation and Maintenance of the temporary pumping facility.
 - iii. \$5,310.94 credit for the electric power of the temporary pumping facility.
 - iv. \$12,500 credit for the pond improvements.
 - v. \$2,336.71 credit for upsizing pipelines within Phases 7 and 8.
- b. Shall pay to the KID \$901.89 per lot as a condition of and prior to transfer of title of each lot of the Subdivision within Phases 1 through 8. Each lot sale shall reduce the mutually agreed upon amount of \$161,437.97 by \$901.89. The Developer, at any time, may pay off the remaining balance.
- c. 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 of 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 hereunder, 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:

KENNEWICK IRRIGATION DISTRICT:

By: Charles Freeman
Charles Freeman, Secretary/District Manager

Date: 6-23, 2016

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

Date: 6-23-16, 2016

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on June 7, 2016

STATE OF WASHINGTON)

COUNTY OF Benton : ss

On this 23rd day of June, 2016, before me personally appeared Charles Freeman and David McKenzie, 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 of said irrigation district, 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 23rd day of June, 2016.



[Signature]
NOTARY PUBLIC,
State of Washington

Residing at Kennewick WA
My Commission Expires 2/16/19