



Return Name and Address:

Kennewick Irrigation District
Attn: Lori Gibson
2015 South Ely Street
Kennewick, WA 99337

PLEASE PRINT OR TYPE INFORMATION:

Document Title: Resolution 2024-28

Grantor(s)(Last name first, first name, middle initials):

1. Kennewick Irrigation District
- 2.
- 3.
- 4.

Additional names on page _____ of document.

Grantee(s)(Last name first, first name, middle initials):

1. Public
- 2.
- 3.
- 4.

Additional names on page _____ of document.

Legal description (abbreviated: i.e., lot, block, plat or section, township, range, qtr./qtr.)

Section 07, Township 8, Range 29

Additional legal is on page 3 of document.

Reference Number(s) of documents assigned or released:

Additional numbers on page _____ of document.

Assessor's Property Tax Parcel/Account Number: (MUST HAVE 15 DIGITS)

107891013763001

Property Tax Parcel ID is not yet assigned.

Additional parcel numbers on page _____ of document.

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.

Please return to:

*Executive Assistant
Kennewick Irrigation District
2015 South Ely Street
Kennewick, WA 99337*

KENNEWICK IRRIGATION DISTRICT RESOLUTION 2024-28

Approving Voluntary Mitigation Development Agreement for Shade Tree

A RESOLUTION of the Board of Directors of Kennewick Irrigation District (KID), Benton County, Washington, for the purpose of approving a development agreement with TDKJ Residential Property, LLC (hereinafter “Developer”),

Section 1. RECITALS AND FINDINGS.

1.1 The Board of Directors of KID (the Board) met in regular session on July 2nd, 2024, with a quorum present.

1.2 Relating to that property owned by Developer in the City of Kennewick (“COK”), County of Benton, and State of Washington, tax parcel number: 107891013763001. The Property consists of 4.43 acres, of which approximately 4.43 acres are classified as irrigable and is proposed for subdivision into a development known as “Shade Tree” (“Subdivision”).

1.3 The Property is being developed into a residential subdivision within the COK boundaries.

1.4 The Property is owned by the Developer and has an allotment of irrigation water from KID.

1.5 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.

1.6 KID Resolution 86-15A requires completed irrigation facilities as a condition for approval of the short plat or final plat.

1.7 KID Policy 4.19 “Standard Specifications” specifies what comprises completed irrigation facilities.

1.8 KID submitted a comment letter on March 8, 2023 requesting that the COK incorporate

certain conditions into its final decision approving the Subdivision.

1.9 The Developer agrees to make irrigation improvements on the Property, which include the installation of distribution piping and service connections to each property of the Subdivision.

1.10 The Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds of \$27,411.90 towards KID's planned regional system in lieu of constructing a pump station and appurtenant facilities to serve the Shade Tree subdivision.

1.11 The KID cannot issue and sign an irrigation district certificate for any Final Plat phases of the Subdivision unless completed on-site 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.

1.12 The parties desire to set forth their agreements on how Developer's contributions to irrigation facilities serving the Subdivision will be constructed, operated, maintained, and replaced.

1.13 The Developer and KID mutually agree that it is in each of their best interest for the Developer and KID to enter into the attached Voluntary Mitigation Development Agreement entitled, "SHADE TREE VOLUNTARY MITIGATION DEVELOPMENT AGREEMENT."


1.14 The attached Voluntary Mitigation Development Agreement describes the terms and conditions.

Section 2. IMPLEMENTATION. The KID Board of Directors hereby adopts and approves the attached Voluntary Mitigation Development Agreement, and the KID District Manager is hereby authorized and directed to take such action as appropriate and necessary to administer and enforce this Resolution.

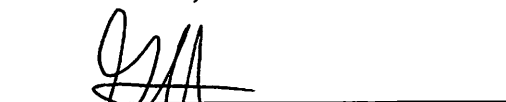
RESOLUTION 2024-28 IS HEREBY ADOPTED by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting with a quorum present thereof this 2nd day of July 2024.


Gene Huffman, President


David McKenzie, Director


Kirk Rathbun, Vice President


Arland Ward, Director


Griffin Hanberg, Director

**SHADE TREE
VOLUNTARY MITIGATION DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made and entered into and effective this 8th day of July, 2024 by and between the parties hereto, who are identified as follows:

TDKJ Residential Property, LLC, a Washington limited liability company (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 property owned by Developer in the City of Kennewick (“COK”), County of Benton, and State of Washington, tax parcel numbered 1-0789-101-3763-001, legally described below as:

1-0789-101-3763-001

That parcel of land being Lot 1 of that certain short plat recorded under Volume 1 of Short Plats at Page 3763, records of Benton County, Washington, located in a portion of the Northwest and Northeast Quarter of the Northeast Quarter of Section 7, Township 8 North, Range 29 East, Willamette Meridian, Benton County, Washington.

and the preliminary plat shown on **Exhibit A**, hereinafter referred to as the “Property.”

WHEREAS, the Property is proposed for subdivision into a development known as “SHADE TREE” (“Subdivision”) consisting 4.43 acres, of which approximately 4.43 acres is classified as irrigable, which are proposed to be subdivided into 14 lots; and

WHEREAS, the Subdivision is within the COK 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 agrees to make irrigation improvements on the Property; and

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

WHEREAS, the Developer and KID mutually agree that it is in each of their best interest for the Developer to contribute funds of \$2,741.19 per lot towards KID's planned regional system in lieu of construction of a pump station and appurtenant facilities to serve the subdivision; and

WHEREAS, the KID cannot issue and sign an irrigation district certificate for any Final Plat phases of the Subdivision unless completed on-site 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 parties desire to set forth their agreements on how Developer's contributions to irrigation facilities serving the Subdivision will be constructed, operated, maintained, and replaced;

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

1. The Developer's Obligations. Developer:

- a) Shall pay to KID a total sum of \$27,411.90, or \$2,741.19 per irrigation service (10 lots) for the 10 lots created by Shade Tree Ph 1 and \$2,741.19 per lot for future phases of the Shade Tree subdivision, an amount mutually agreed upon by KID and the Developer. Payments shall be required upon completion of any one of the following:
 - i. Transfer of parcel ownership
 - ii. Building permit application
 - iii. Utilization of irrigation water

2. KID Obligations. KID shall:

- a. Provide pressurized water to Shade Tree.
- b. Provide a proportionate share of available irrigation water to the Subdivision.

3. Mutual Agreements.

- a. The parties agree that the Developer's obligations set forth in Paragraph 1 above shall be the only conditions of Subdivision approval relating to KID's irrigation facilities. Upon mutual execution of this Agreement, this Agreement shall only apply to the Property described on Exhibits A and shall not preclude the KID from commenting on or requesting conditions of approval for other property owned by the Developer located within the KID boundaries.
- b. The parties understand and agree that this Agreement shall supplement KID's requested conditions set forth in KID's comment letter date March 8, 2023 and incorporated in the Hearing Examiner's decision on May 10, 2023.

4. Hold Harmless/Indemnification: The parties each agree for itself, its successors, and assigns to hold harmless and indemnify each other and its board of directors, 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 their respective acts or omissions relating to work performed under this Agreement ("Claims"). 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 or Developer that involve the Subdivision that is the subject of this Agreement. Notwithstanding the foregoing paragraphs, KID shall have no obligation to indemnify or hold harmless Developer for Claims arising from the sole negligence or willful misconduct of the Developer, its agents, officers, and employees; and Developer shall have no obligation to indemnify or hold harmless KID for Claims arising from the sole negligence or willful misconduct of KID, its agents, officials, and employees. Where such Claims result from concurrent acts or omissions of the parties, or their respective agents, employees or contractors, the hold harmless and indemnity provisions herein shall be valid and enforceable only to the extent such Claims are caused by each party's acts or omissions or those of their

respective agents, employee and contractors.

5. **Water Rights Unaffected:** This Agreement does not create, grant, transfer, modify or affect any water rights of the Developer or KID.
6. **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.
7. **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.
8. **Injunctive Relief:** The Developer and KID agree and stipulate that irreparable injury will result if either party fails to fully perform all of their obligations, and agree that if either party breaches this Agreement or fails to fully perform an obligation hereunder, the non-defaulting party 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 either party may have at law or in equity.
9. **Personal Warranty of Representative Authority:** Each person signing this Agreement in a representative capacity covenants, represents and warrants that he or she has full authority to bind his or her principal 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.
10. **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. In addition, in the event of arbitration, the substantially prevailing party shall be awarded its share of the arbitrator's fee.

11. **Disputes, Default, Breach, Mediation and Arbitration:** In the event any party alleges any 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.
12. **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.
13. **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.
14. **Recording:** A Memorandum of this Agreement and any amendments thereto shall be filed for recording with the Benton County Auditor.
15. **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:
TDKJ Residential Property, LLC



Signature

Date Signed: 7/8, 2024

Desiree Lindstrom

Print Name
Authorized Member/Manager

STATE OF WASHINGTON)
): ss
COUNTY OF BENTON)

This record was acknowledged before me on this 8th day of July, 2024, by Desiree Lindstrom, as authorized Member/Manager of Developer.

Mardis Pemga
NOTARY PUBLIC,
State of Washington
Residing at Kennewick, WA
My Commission Expires ~~7/7/2027~~
7/7/2027
MSRP

KENNEWICK IRRIGATION DISTRICT:

Shane Leonard
SHANE LEONARD
Secretary Manager

Date Signed: July 12, 2024

Gene Huffman
GENE HUFFMAN
President of the Board of Directors

Date Signed: July 18, 2024

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on July 2, 2024

STATE OF WASHINGTON)
): ss
COUNTY OF BENTON)

This record was acknowledged before me on this 12th day of July, 2024, by SHANE LEONARD, as Secretary Manager of Kennewick Irrigation District.



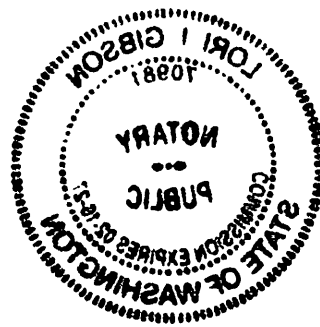
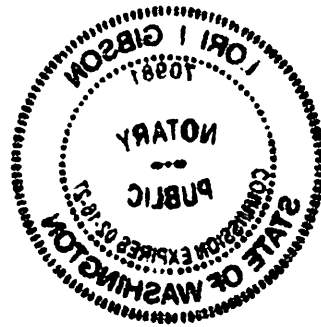
[Signature]
NOTARY PUBLIC,
State of Washington
Residing at Kennewick WA
My Commission Expires 2/16/27

STATE OF WASHINGTON)
): ss
COUNTY OF BENTON)

This record was acknowledged before me on this 16th day of July, 2024, by GENE HUFFMAN, as President of the Board of Directors of Kennewick Irrigation District.



[Signature]
NOTARY PUBLIC,
State of Washington
Residing at Kennewick WA
My Commission Expires 2/16/27



**Exhibit A
to the
Voluntary Mitigation Development Agreement
is available upon request at
Kennewick Irrigation District**