

**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 2025-10 Approving Voluntary Mitigation Agreement for Short Plat 2024-15

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 29, Township 8, Range 30

Additional legal is on page _____ 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)

129801000001004

Property Tax Parcel ID is not yet assigned.

Additional parcel numbers on page 4 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 Administrative Manager
Kennewick Irrigation District
2015 South Ely Street
Kennewick, WA 99337*

KENNEWICK IRRIGATION DISTRICT RESOLUTION 2025-10

Approving Voluntary Mitigation Agreement for Short Plat 2024-15

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

Section 1. RECITALS AND FINDINGS.

1.1 The Board of Directors of KID (the Board) met in regular session on February 18, 2025, with a quorum present.

1.2 Relating to that property owned by Developer in the Benton County (“BC”), County of Benton, and State of Washington, tax parcel numbers: 1-2980-100-0001-004. The Property is proposed for subdivision into a development known as “Short Plat 2024-15” (“Subdivision”) consisting approximately 65.76 acres, of which 65.65 acres is classified as irrigable, which are proposed to be subdivided into 2 lots. In addition, the Developer owns parcel 1-2980-100-0001-003 which is not part of the Subdivision, however, KID desires an irrigation easement upon said property; and

1.3 The Property is being developed to separate the original farmhouse from the farm property within the BC 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 with 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 complete irrigation facilities.

1.8 KID submitted a comment letter on December 6, 2024 requesting that the BC incorporate certain conditions into its final decision approving the subdivision.

1.9 In exchange for easements to further the Finley West Irrigation Master Plan, KID agrees to make irrigation improvements on the Property, which include the installation of one 2-inch service connections to the proposed lot 1 of the Subdivision and one 2-inch service connection to parcel 1-2980-100-0001-003.

1.10 The Developer and KID mutually agree that it is in each of their best interests for the Developer to dedicate to KID an Irrigation Facilities Easement by deed for a 15-foot easement located along the west property line of parcel 1-2980-100-0001-003 and the west and south property line of parcel 1-2980-100-0001-004.

1.11 The KID cannot issue and sign an irrigation district certificate for any short plat unless the KID Board of Directors approves, by resolution, an acceptable security that creates a lien against the Property.

Section 2. APPROVAL OF VOLUNTARY MITIGATION AGREEMENT.

2.1 The Developer and KID mutually agree that it is in their best interest for the Developer and KID to enter into the attached Voluntary Mitigation Agreement entitled, "SHORT PLAT 2024-0015 VOLUNTARY MITIGATION DEVELOPMENT AGREEMENT".

2.2 The attached Voluntary Mitigation Agreement describes the terms and conditions.

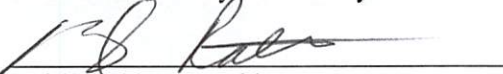
Section 3. IMPLEMENTATION.

3.1 The KID Board of Directors hereby adopts and approves the attached Short Plat 2024-15 Voluntary Mitigation 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.

Section 4. REPEALER; FUTURE ACTIONS.

4.1 Any KID act prior to and inconsistent with this Resolution is hereby superseded and repealed. Nothing in this Resolution shall limit the future authority of KID to modify, rates charges and assessments.


RESOLUTION 2025-10 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 18th day of February 2025.


Kirk Rathbun, President


David McKenzie, Director


Gene Huffman, Vice President


Arland Ward, Director


Griffin Hanberg, Director

SHORT PLAT 2024-015
VOLUNTARY MITIGATION DEVELOPMENT
AGREEMENT

THIS AGREEMENT, made and entered into and effective this 18th day of February 2025 by and between the parties hereto, who are identified as follows:

JEM Orchards, 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 County of Benton ("County"), and State of Washington, tax parcels numbered 1-2980-100-0001-004 and 1-2980-100-0001-003 (not part of short plat), legally described below as:

1-2980-100-0001-004

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 29; THENCE SOUTH 00°35'37" EAST, ALONG THE EAST LINE OF SAID SECTION 29, FOR 767.11 FEET, TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°35'37" EAST, CONTINUING ALONG SAID EAST LINE FOR 1222.56 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER; THENCE SOUTH 89°40'49" WEST, ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER FOR 672.86 FEET; THENCE SOUTH 00°34'21" EAST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER FOR 662.88 FEET, TO THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 89°39'45" WEST, ALONG SAID SOUTH LINE FOR 1682.77 FEET TO THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 29; THENCE NORTH 00°31'05" WEST, ALONG SAID EAST LINE FOR 870.52 FEET; THENCE NORTH 89°42'54" EAST FOR 1111.88 FEET; THENCE NORTH 00°31'05" WEST FOR 1016.13 FEET; THENCE 89°40'53" EAST FOR 1241.51 FEET OT THE TRUE POINT OF BEGINNING.

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 29; THENCE SOUTH 00°35'37" EAST, ALONG THE EAST LINE OF SAID SECTION 29, FOR 30.00 FEET TO THE SOUTH RIGHT OF WAY MARGIN OF GAME FARM ROAD; THENCE SOUTH 89°40'53" WEST, ALONG THE SOUTH RIGHT OF WAY MARGIN OF SAID GAME FARM ROAD, FOR 1240.54 FEET; THENCE SOUTH 00°31'05" EAST FOR 876.84 FEET, TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°31'05" EAST, CONTINUING ALONG SAID LINE, FOR 876.39 FEET; THENCE SOUTH 89°42'54" WEST, FOR 1111.88 FEET TO THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 29, THENCE NORTH 0°31'05" WEST, ALONG THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 29 FOR 876.39 FEET; THENCE NORTH 89°42'54" EAST OF 1111.88 FEET, TO THE TRUE POINT OF BEGINNING.

and the short plat shown on Exhibit A, hereinafter referred to as the "Property."

WHEREAS, the Property is proposed for subdivision into a development known as "Short Plat 2024-15" ("Subdivision") consisting 65.76 acres, of which approximately 65.65 acres is classified as irrigable, which is proposed to be subdivided into 2 lots; and

WHEREAS, the Subdivision is within Benton County 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 KID desires to obtain a 15-foot irrigation easement on parcel 1-2980-100-0001-003 which is not included within the short plat; and

WHEREAS, prior to the submittal of the short plat the KID and the Developer had a verbal agreement regarding the dedication of easements in exchange for irrigation services;

and

Whereas, KID approves a variance from Procedure 4.0 for the irrigation service to lot 2 from the requirements of the Finley West Irrigation Master Plan (KID Resolution 2024-43) because lot 2 can utilize the traditional irrigation delivery system, Lot 2 will continue to be operated as farmland and KID is not prepared to install the transmission pipeline required to provide pressurized or on-demand service to lot 2; and

WHEREAS, the Developer and KID mutually agree that in exchange for an easement KID will install a two-inch irrigation service per KID standards for proposed lot 1 and parcel 1-2980-100-0001-003 and credit the Finley West Irrigation Master Plan surcharge (Resolution 2024-43) for said services; and

WHEREAS, the Developer and KID mutually agree that it is in each of their best interest for the Developer to dedicate a fifteen-foot irrigation easement along the west property line of parcel 1-2980-100-0001-003 and the west and south property line of parcel 1-2980-100-0001-004; and

WHEREAS, the KID cannot issue and sign an irrigation district certificate for the Short Plat 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 dedicate to KID an Irrigation Facilities Easement by deed for a 15-foot easement located along the west property line of parcel 1-2980-100-0001-003 and the west and south property line of parcel 1-2980-100-0001-004. The Easement Document shall be prepared by KID and signed by the developer. Please refer to Exhibit B.

2. KID Obligations. KID shall:

- a. Provide a proportionate share of available irrigation water to the Subdivision starting in April 2025 per KID normal operating procedures.
- b. Install within 6 months, one, two-inch irrigation service for the proposed lot 1 located along the Game Farm Road frontage, and piping from that service to the proposed lot 1 that will be privately owned and maintained, as shown on Exhibit C.
- c. Install within 18 months, one, two-inch irrigation service for the

parcel 1-2980-100-0001-003 either located along the Game Farm Road frontage and piping from that service to parcel 1-2980-100-0001-003, that will be privately owned and maintained, or within the dedicated 15-foot irrigation easement on the west property line of the subject property as shown on Exhibit C.

- d. Provide credits for 6 EIU's, 3 for each parcel receiving a 2" service connection, for the proposed lot 1 and parcel 1-2980-100-0001-003 in fulfillment of the requirements of the Finley West Irrigation Master Plan.

3. Mutual Agreements.

- a. Upon mutual execution of this Agreement, this Agreement shall only apply to the Property described as the subdivision 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 of December 6, 2024.
- c. KID agrees to credit the Finley West Irrigation Master Plan Surcharge 3 EIU's for Lot 1 of the Subdivision and Parcel 1-2980-100-0001-003. However, in the event that parcel 1-2980-100-0001-003 and Lot 2 of the Subdivision further subdivides in the future, it will be subject to KID Resolution 2024-43 Finley West Irrigation Master Plan.
- d. KID approves, at this time, a variance from Procedure 4.0 for the irrigation service to lot 2 from the requirements of the Finley West Irrigation Master Plan (KID Resolution 2024-43) due to the following:
 - i. Lot 2 can utilize the traditional irrigation delivery system.
 - ii. Lot 2 will continue to be operated as farmland.
 - iii. KID is not prepared to install the transmission pipeline required to provide pressurized or on-demand service to lot 2.

- 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 be 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:
JEM ORCHARDS, LLC

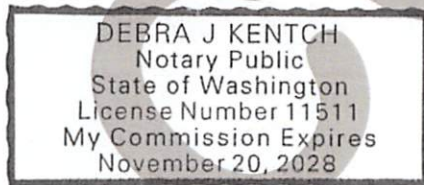
James M. Hazen
Signature

Date Signed: 2/24, 2025

JAMES M HAZEN
Print Name
Authorized Member/Manager

STATE OF WASHINGTON)
Walla Walla : ss
COUNTY OF BENTON)

This record was acknowledged before me on this 24th day of February
2025, by James M. Hazen, as authorized
Member/Manager of Developer.



Debra J. Kentch
NOTARY PUBLIC,
State of Washington
Residing at Laurel
My Commission Expires 11/20/2028

KENNEWICK IRRIGATION DISTRICT:

Shane Leonard
SHANE LEONARD
Secretary Manager

Date Signed: 3/4, 2025

Kirk Rathbun
KIRK RATHBUN
VICE-President of the Board of Directors

Date Signed: 3/4, 2025

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on February 18, 2025

STATE OF WASHINGTON)
COUNTY OF BENTON)
: ss

This record was acknowledged before me on this 4th day of March, 2025, by SHANE LEONARD, as Secretary Manager of Kennewick Irrigation District.



NOTARY PUBLIC,
State of Washington
Residing at _____
My Commission Expires 2/16/27

STATE OF WASHINGTON)
COUNTY OF BENTON)
: ss

This record was acknowledged before me on this 4th day of March, 2025, by KIRK RATHBUN, as President of the Board of Directors of Kennewick Irrigation District.

GEORGE HUFFMAN
Vice



NOTARY PUBLIC,
State of Washington
Residing at _____
My Commission Expires 2/16/27