

Herbert Kai Remediation Agreement

This Remediation Agreement (“Agreement”), effective September 27, 2022, is by and between the Mohave Valley Irrigation and Drainage District (“**MVIDD**” or “**District**”), an irrigation district formed under Arizona Revised Statutes, Title 48, Chapter 19, and Herbert Kai (“**Kai**”), the Water User, hereinafter referred to collectively as the “**Parties**” or individually as a “**Party.**”

Recitals

- A. Kai currently holds two Water Contracts (defined below) with MVIDD, entitling Kai, as the Water User, to withdraw and divert Colorado River water for use on two individual Farm Units (defined below) under the master contract between MVIDD and the United States Bureau of Reclamation.
- B. On January 11, 2022, the MVIDD Board of Directors reviewed certain deficiencies in the Kai Farm Units and voted to suspend all water deliveries to the Kai Farm Units until such deficiencies were corrected.
- C. On July 5, 2022, the MVIDD Board of Directors voted to declare Kai in default on both Water Contracts due to various uncorrected deficiencies at the Farm Units. On July 12, 2022, MVIDD notified Kai of the declaration of default and described the deficiencies in the two Notices of Default (defined below). The Notices of Default stated that the Water Contracts, pursuant to their terms, would automatically terminate if the deficiencies were not cured in full by September 13, 2022.
- D. At the September 6, 2022, MVIDD Regular Meeting of the MVIDD Board of Directors, Kai appeared and requested an extension of the cure period, promising that the deficiencies would be corrected pursuant to a detailed Scope of Work (defined below) and in accordance with the timelines determined by the Board of Directors. Upon motions reflected in the minutes of the meeting, the Board of Directors agreed to extend the cure period provided certain conditions were met. One condition was that Kai submit a draft of the Scope of Work to MVIDD Staff by no later than noon on September 13, 2022. Kai has satisfied this condition. Another such condition was the preparation and approval of this Agreement between MVIDD Staff and Kai by no later than noon on September 23, 2022, to be presented to the MVIDD Board of Directors for final review and approval at a Special Meeting of the MVIDD Board of Directors called for September 27, 2022.
- E. This Agreement implements the tentative approval of the MVIDD Board of Directors to extend the cure period if Kai Fulfills certain obligations including, without limitation, those described in Section 4 of this Agreement. If Kai does not Fulfill his obligations by the Extended Termination Date (defined below) or otherwise breaches this Agreement, the Water Contracts shall be deemed forfeited as provided below.

Agreement

The Parties, intending to be bound hereby, agree to, and incorporate by reference the Recitals above and further agree as follows:

Section 1 – Definitions

1.1 Definitions. The terms defined in the preamble have their assigned meanings, and each of the following terms has the meaning assigned to it in this section.

“Agreement” means this Remediation Agreement.

“District Supplied Meters” has the meaning assigned to it in Section 5.3.

“Extended Termination Date” has the meaning assigned to it in Section 2.2.

“Farm Unit” means one of the Farm Units individually.

“Farm Units” means the real property owned by Kai located at (i) T17N, R22W, Section 9; APN 224-19-001, as described in Water Contract 2008-07; and (ii) T17N, R22W, Section 13; APN 224-23-019, as described in Water Contract 2008-08.

“Force Majeure Event” means an event that causes a delay in Kai’s progress on his remediation obligations under Section 4 due to extraordinary weather, natural disaster, acts of God, national emergency, fire or other casualty, war, riots, acts of violence, labor strikes, or other causes not within the control of Kai or his agents.

“Fulfill” or “Fulfillment” means, with respect to each Farm Unit and its associated Water Contract, fully and timely completing the planned activities and other covenants described in Section 4 without any material defects, deviations, delays, failures, or breaches that MVIDD in its commercially reasonable discretion deems as non-compliance with this Agreement, the Water Contract, or MVIDD Regulations. For determination of fulfillment, standards of farm maintenance and management of the National Soil Conservation Service shall be the guiding standard, together with customary and reasonable practices employed in commercial agriculture in Mohave Valley.

“Initial Termination Date” has the meaning assigned to it in Section 2.1.

“Knowledge” means the best knowledge of Kai or his agents as of the time that Kai executes this Agreement.

“MVIDD Regulations” means official rules of MVIDD adopted and approved at a meeting of the MVIDD Board of Directors, MVIDD Board resolutions, and MVIDD policies, that apply to other water users under similarly situated MVIDD entitlement agreements for commercial agriculture in the Mohave Valley.

“**Notice of Cure**” has the meaning assigned to it in Section 5.1.

“**Notice of Default**” means one of the Notices of Default individually.

“**Notices of Default**” means the two separate notices of default for each of the Water Contracts sent from MVIDD to Kai, dated July 12, 2022, declaring the Water Contracts in default for the failure to comply with the Water Contracts and certain MVIDD Regulations on the Farm Units.

“**Legal Fees**” means legal fees and other staff costs that MVIDD has incurred in attempting to secure remediation of the deficiencies in the Kai Farm Units over the last two years and through the term of this Agreement, including multiple inspections, preparing notices to Kai, drafting this Agreement, and addressing the remediation of the conditions described in the Notices of Default. MVIDD has calculated this fee at \$10,000, and Kai does, by this Agreement, agree to that sum.

“**Response to Notices of Default**” means the letter from Kai to Ms. Kerri Hatz and MVIDD, dated September 2, 2022.

“**Scope of Work**” means the planned remediation obligations to be completed by Kai at the Farm Units to cure the Notices of Default, attached hereto as **Exhibit A** and incorporated by reference.

“**Water Contract**” means one of the Water Contracts individually.

“**Water Contracts**” means two separate water entitlement agreements for the Farm Units between MVIDD and Kai, identified as (i) Contract No. 2008-07 (T17N, R22W, Section 9; APN 224-19-001); and (ii) Contract No. 2008-08 (T17N, R22W, Section 13; APN 224-23-019).

Section 2 – Suspension of Termination; Forfeiture

2.1 Initial Termination Date. The Water Contracts were previously scheduled to terminate on September 13, 2022 pursuant to the Notices of Default (“**Initial Termination Date**”). At its September 6, 2022 Regular Meeting, the MVIDD Board of Directors agreed to suspend the Initial Termination Date and extend the cure periods under the Notices of Default, subject to Kai’s compliance with certain conditions, including entering into this Agreement.

2.2 Extended Termination Date. To allow Kai to Fulfill his remediation obligations under Section 4, the cure periods under the Notices of Default and the Initial Termination Date of the Water Contracts are extended until December 15, 2022 (“**Extended Termination Date**”). MVIDD shall not grant Kai any further extension of the Extended Termination Date except as allowed for by Section 2.4.

2.3 Forfeiture for Failure to Fulfill or Breach. With respect to each Farm Unit and its associated Water Contract, if Kai (i) does not Fulfill his obligations under Section 4 by the Extended Termination Date, (ii) has materially breached a representation and warranty under Section 3, or (iii) materially breaches his obligations under Section 4 prior to the Extended Termination Date, then Kai agrees to forfeit his interest in that Water Contract and agrees that MVIDD may terminate the Water Contract upon such a breach.

2.4 Force Majeure Clause. If a Force Majeure Event occurs, then MVIDD may, upon request by Kai or upon its own motion, further extend the Extended Termination Date. Any such request shall be in writing and shall state the specific cause. Extension for force majeure shall be at the discretion of the MVIDD Board of Directors but shall not be unreasonably withheld if a true Force Majeure Event exists.

2.5 Term. This Agreement shall commence on September 27, 2022 and shall expire at the earliest of: (i) 11:59 p.m. Mountain Standard Time on the Extended Termination Date (or the date of any extension of the Extended Termination Date approved by the MVIDD Board of Directors under Section 2.4), (ii) upon the issuance of a Notice of Cure for each of the Water Contracts, or (iii) any such other date agreed to by the Parties in writing.

Section 3 – Kai Representations and Warranties

Kai represents and warrants to MVIDD as follows:

3.1 Conditions at the Farm. To Kai's Knowledge, except for the conditions described in the Notices of Default and the Response to the Notices of Default, there are no conditions at the Farm Units that violate the Water Contracts or MVIDD Regulations.

3.2 Completed Remediation. To Kai's Knowledge, he has already resolved some of the issues described in the Notices of Default, as explained in the Response to the Notices of Default.

3.3 Employment of Third Parties and Farming Plans. Kai has made arrangements with two third-party contractors to assist him with Fulfilling his remediation obligations in Section 4 and to then put the Farm Units to continued productive use. Kai has made suitable arrangements for the services to be performed by the contractors to ensure that the work is timely performed in a good and workmanlike manner.

Section 4 – Kai Remediation Obligations

4.1 Remediation Obligations. Kai shall Fulfill the remediation obligations outlined in the Scope of Work. The Scope of Work is attached hereto as **Exhibit A** and incorporated herein by reference.

4.2 Continued Farming Obligations. As much as is reasonably practicable, Kai shall either directly, or indirectly through third-party contractors or lessees of the Farm Units, make plans to put the Farm Units to continued productive use.

4.3 Communication Obligations. Kai shall promptly respond to and resolve any further inquiries from MVIDD related to or arising out of this Agreement, the Water Contracts, the Notices of Default, or the Response to the Notices of Default, until the Extended Termination Date.

4.4 Access for Monitoring. Kai shall allow MVIDD to enter the Farm Units to conduct inspections and inquiries related to or arising out of this Agreement.

4.5 Installation of District Supplied Meter and Required Communications. As soon as it is reasonably practicable, but by no later than the Extended Termination Date, Kai shall install District Supplied Meters on any wells at the Farm Units at Kai's own expense. Until installing the District Supplied Meters, Kai or his agents shall send MVIDD weekly updates on his water usage, including pictures of the current hour and electric meters on the wells, so that MVIDD may estimate how much water Kai is using at the Farm Units for his remediation obligations.

4.6 General Compliance. Kai shall remain in compliance with all applicable MVIDD Regulations through the Extended Termination Date.

4.7 Payment of Legal Fees. Kai shall reimburse MVIDD for the Legal Fees. Kai shall pay the Legal Fees within three business days after approval of this Agreement by the MVIDD Board of Directors. The Parties expect the MVIDD Board of Directors to approve this Agreement at the Special MVIDD Board meeting scheduled for September 27, 2022.

Section 5 – MVIDD Covenants

5.1 Cure of Defaults. If Kai Fulfills his obligations under Section 4 with respect to a Farm Unit and its associated Water Contract, then he shall be deemed to have cured the Notice of Default for that Water Contract. At its December 6, 2022 Regular Meeting, or at such other date and time agreed to by the Parties in writing, MVIDD shall evaluate Kai's Fulfillment of Section 4 with respect to each of the Farm Units and the associated Water Contracts. If MVIDD concludes that Kai has Fulfilled his obligations under Section 4 with respect to a Farm Unit and its associated Water Contract, then it shall direct the MVIDD General Manager to send Kai a notice of cure, confirming that he has cured the Notice of Default for that Water Contract

(“**Notice of Cure**”). The MVIDD Board of Directors shall use its commercially reasonable discretion to evaluate Kai’s Fulfillment and shall not unreasonably withhold the Notice of Cure. If any remaining cures remain before the Extended Termination Date, the Board shall so note and if those remaining cures are completed to the satisfaction of the General Manager using commercially reasonable discretion, the General Manager shall issue the Notice of Cure. If Kai has not Fulfilled his obligations under Section 4 with respect to a Farm Unit and its associated Water Contract by the Extended Termination Date, the MVIDD Board of Directors or the General Manager shall note the deficiencies and inform Kai of the termination of that Water Contract.

5.1.1 Water Use After the Notice of Cure. If the MVIDD General Manager issues the Notice of Cure for a Water Contract, then Kai’s water use will return to being governed by the terms of the Water Contract and any other applicable MVIDD Regulations. The Water Contract and any other applicable MVIDD Regulations will apply to any potential future issues arising at the Farm Units. The parties agree that the Notice of Cure is only intended to reflect Kai curing the Notice of Default for the applicable Water Contract and not any other potential future issues at the associated Farm Unit not covered by the Notice of Default or this Agreement.

5.2 Continued Water Access. MVIDD shall temporarily reinstate Kai’s ability to divert and use water at the Farm Units under the Water Contracts, including use of water to irrigate crops, until the Extended Termination Date to allow Kai to Fulfill his obligations under Section 4.

5.3 District Supplied Meters. MVIDD shall provide Kai with meters to install on any wells at the Farm Units in accordance with Section 4.5 (“**District Supplied Meters**”). The Parties shall confer and make good faith efforts to deliver and install the District Supplied Meters as soon as it is reasonably practicable.

Section 6 – General Provisions

6.1 Notice. Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; emailed; sent by registered or certified mail, postage prepaid; or overnight delivery to the addresses below, charges prepaid or charged to the sender’s account to the persons in the positions executing this Agreement.

If to MVIDD:

Mohave Valley Irrigation District
Attn: Chairman and General Manager
1460 East Commercial Street Mohave Valley, AZ 86446
Email: chipsherrill@yahoo.com and office@mvidd.net (copy both)

If to Kai:

Herb Kai
P.O. Box 2305
Cortaro, AZ 85652-2305
Email: herbkai550@gmail.com

With a copy to:

Rhett Billingsley
c/o Fennemore Craig
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016
Email: rbillingsley@fennemorelaw.com

6.2 Governing Law. This Agreement shall be interpreted, governed by, and construed under Arizona state law.

6.3 Waiver. None of the provisions of this Agreement shall be considered waived, except when such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that Party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

6.4 Authority to Contract. Each Party to this Agreement represents that the person executing on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

6.5 Binding Upon Successors. This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. This Agreement is intended by the Parties to bind the land within the Farm Units.

6.6 Modifications Must be in Writing. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by the Parties.

6.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which, taken together, constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

Signatures next page.

Approved as to form:

**MOHAVE VALLEY IRRIGATION AND
DRAINAGE DISTRICT**

By: _____

Michael J. Pearce
District Counsel

By: _____

Charles B. Sherrill, Jr.
Chairman

Approved as to form:

Herbert Kai

By: _____

Rhett Billingsley
Fennemore Craig, P.C.

By: _____

Herbert Kai

Exhibit A – Scope of Work for Kai Farms

Subject Lands:

- Parcel A (see attached map): APN 224-23-019; Section 13, T17N, R22W; MVIDD Water Contract 2008-08
- Parcel B (see attached map): APN 224-19-001; Section 9, T17N, R22W; MVIDD Water Contract No. 2008-07

Owner/Lessor: Herb Kai of Kai Farms (“Owner”)

Lessee/Contractor: Richard Dorame of Dorame Farms (“Lessee”); Travis Fugitt of Travis Fugitt Farms, a Contractor with Dorame Farms (“Contractor”)

Scope of Work: Owner and Lessee/Contractor have developed the following plan to get the land into full compliance with all applicable Mohave Valley Irrigation and Drainage District (“District”) regulations. Unless specified otherwise, the following items apply to both Parcels A and B. All work shall be completed by December 15, 2022. Lessee/Contractor shall complete the following items as thoroughly as is necessary to: (i) prepare the Subject Lands to be put to continued productive use as a farm; (ii) comply with the provisions of MVIDD Water Contract Nos. 2008-07 and 2008-08; and (iii) comply with all applicable District Regulations (as defined in the agreement between the District and Owner dated September 27, 2022).

Tillage Operation: Lessee/Contractor shall:

- Clear all or substantially all old residue and from previous crops and weeds using first passes with a Semi Stubble Disk.
- Remove all or substantially all old irrigation borders using a small box scraper.
- If necessary or as needed, chisel to a depth of 10-12" to reduce compaction to aid in disking or land leveling if the soil is too compacted.

Land Grading/Leveling: Lessee/Contractor shall:

- Level fields on using a Trimble Field Level II Agriculture GPS.¹ This process involves:
 - Setting up an RTK Base Location and completing a 24-hour survey to lock in satellites and establish high accuracy correction signals.
 - Driving a tractor or tractors over a predetermined grid pattern to map elevation changes and develop a cut and fill map.
 - Reviewing collected data to form a best fit approach for moving the fewest yards of soil to achieve a field surface for efficient flood irrigation.²
 - Completing the best fit approach to level the fields in order to facilitate efficient flood irrigation.

¹ A video explaining this technology can be found at the following link:

<https://www.youtube.com/watch?v=SoBPa6GZCrk>.

² Although initial farming will be through flood irrigation, Lessee/Contractor have set a plan to engage the USDA Natural Resources Conservation Service in future years to transition these farms toward drip irrigation.

Weed Removal: To remove all remaining weeds after completing the Tillage Operation, Lessee/Contractor shall:

- Physically remove all or substantially all remaining noxious weeds along ditches (e.g., Salt Cedar).
- Apply chemicals along the ditches to prevent regrowth.

Ditch Repair and Maintenance: Following the Weed Removal, Lessee/Contractor shall:

- Clean and clear all or substantially all sand and grass out of the irrigation facility.
- Repair cracks and leaks in the cement ditches.³
- Once the major cracks and damaged sections are repaired, Lessee/Contractor shall fill the ditches with water and mark and replace all leaking canal slide gates.⁴

Well Maintenance and Repair: Prior damage/vandalization of wells on Parcels A and B have been repaired and both wells are now operational. Owner, Lessee/Contractor, and the District shall complete the following actions to communicate water use information and install District-supplied meters on the irrigation wells:

- Owner, Lessee/Contractor, and the District shall coordinate for and complete the installation of District-supplied flow meters on the irrigation wells as soon as possible.
- Prior to installation of the District-supplied flow meters, water use from each irrigation well will be measured using hour meter/electrical records. Lessee/Contractor shall take the following actions to measure and report water use from the irrigation wells to the District:
 - Before beginning water use for the activities described in this Scope of Work, Owner and Lessee/Contractor will determine pump capacity of each irrigation well and report that information to the District's General Manager.
 - On each Friday after starting use of the wells, Lessee/Contractor shall provide weekly reports of hour meter readings for each well to the District.
- Following installation of District-supplied flow meters on the wells, water use from the wells will be measured and reported to MVIDD in accordance with the requirements of MVIDD Water Contract Nos. 2008-07 and 2008-08 and all other applicable District regulations

Communications with the District: Lessee/Contractor shall:

- Promptly and thoroughly respond to all District inquiries and requests relating to the activities detailed in this Scope of Work.
- On each Friday after commencing work on the activities detailed in this Scope of Work, provide weekly updates to the District on: (i) progress made; and (ii) any issues or conditions at the Subject Lands that may cause delays.

³ The extent of these required repairs is currently unknown. After removing the tall weeds, Lessee/Contractor shall determine the scope of necessary repairs. Lessee/contractor shall repair or replace all or substantially all damaged portions of the ditches.

⁴ Lessee/Contractor is mapping and marking the ditch repairs and taking inventory as to an estimate of how many new slide gates are needed to stop leaking.