

Please return to:

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

KENNEWICK IRRIGATION DISTRICT RESOLUTION 2017-06

Approving Cross Valley Estates 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 Czebotar & Peterson Properties, LLC, a Washington Corporation (hereinafter “Developer”),

WHEREAS, the Board of Directors of KID (the Board) met in regular session on February 21, 2017, with a quorum present, and

WHEREAS, the Property is proposed for subdivision into a development known as “Cross Valley Estates” consisting 120.21 acres, of which 117.48 acres are classified as irrigable, which are proposed to be subdivided into 22 lots and legally described as follows;

- **Parcel 107882000001001**

ALL THAT PORTION OF SECTION 7, TOWNSHIP 8 NORTH, RANGE 28 EAST OF WILLAMETTE MERIDIAN, LYING SOUTHERLY OF BADGER CANYON ROAD RIGHT OF WAY, EASTERLY OF THE KENNEWICK IRRIGATION DISTRICT MAIN CANAL RIGHT OF WAY AND WESTERLY OF BADGER ROAD RIGHT OF WAY (BOUNDARY LINE ADJUSTMENT PER AUDITOR FILE #2016-016856, 6/5/2016)

hereinafter referred to as the “Property.”

WHEREAS, the Property is being developed into a residential subdivision within the 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 Developer agrees to be responsible for making 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 construct a KID approved pump station on demand from the canal system and to contribute funds towards KID’s planned storage projects in lieu of constructing a pond facility to service the Subdivision; and

WHEREAS, the Developer desires to contribute funds to KID equal to what would be the mutually agreed cost of constructing a pond facility, which is estimated at \$135,089, an amount determined by the Developers engineering consultant and verified and approved by KID; and

WHEREAS, the KID plans to develop a comprehensive plan (“Badger Canyon Irrigation System Plan”) for the general area that includes this Property, and will not be able to provide direction as to the location and specifics for an on demand pumping station and pipe distribution system as it relates to the proposed Subdivision until such time the KID completes the Badger Canyon Irrigation System and such plan is not scheduled to be available until September 1st of 2017; and

WHEREAS, the developer is desirous to farm the Property, in whole or part, until such time the developer is ready to proceed with the Subdivision or has completed the Subdivision; and

WHEREAS, the farming of the property requires the installation of irrigation facilities to receive irrigation water from the KID Main Canal; and

WHEREAS, KID agrees to provide irrigation water for the Property through the existing turnout for an on demand pumping station to be constructed and operated by the Developer for the purpose of farming and otherwise providing irrigation water to the Property until such time the KID complete the Badger Canyon Irrigation System, and, an irrigation system meeting the requirement of the KID for the Subdivision can be designed and installed by the Developer; and

WHEREAS, KID agrees, at its own costs, to make modification to the existing turnout to provide a passive primary flat screen panel and to modify the existing concrete metering box by installing a water tight connection to the concrete headwall at the end of the existing turnout pipe and extending a short piece (10 lineal feet) of 12-inch diameter steel or ductile iron pipe which be connected to by the Developer; and

WHEREAS, the Developer agrees, at its own costs, to be responsible to make the connection to the end of the 12-inch diameter steel or ductile iron pipe provided by the KID and to install an isolation valve, and all piping, pump(s), screens and appurtenances, including a flow meter, necessary for their farming irrigation system; and

WHEREAS, the Developer will be responsible for the Operation and Maintenance of their farming irrigation facilities; 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 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 "Cross Valley Estates Voluntary Mitigation Agreement" is approved.

RESOLUTION 2017-06 IS HEREBY ADOPTED by the Board of Directors of Kennewick Irrigation District, Benton County, Washington, at a regular open public meeting thereof this 21st day of February, 2017.

Gene Huffman




Patrick McGuire



David McKenzie



Kirk Rathbun



Dean Dennis

CROSS VALLEY ESTATES VOLUNTARY MITIGATION AGREEMENT

THIS AGREEMENT, made and entered into and effective this 21st day of February, 2017, by and between the parties hereto, who are identified as follows:

Czebotar & Peterson Properties, 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 in Benton County boundaries and State of Washington, legally described as follows:

- **Parcel 107882000001001**
ALL THAT PORTION OF SECTION 7, TOWNSHIP 8 NORTH, RANGE 28 EAST OF WILLAMETTE MERIDIAN, LYING SOUTHERLY OF BADGER CANYON ROAD RIGHT OF WAY, EASTERLY OF THE KENNEWICK IRRIGATION DISTRICT MAIN CANAL RIGHT OF WAY AND WESTERLY OF BADGER ROAD RIGHT OF WAY (BOUNDARY LINE ADJUSTMENT PER AUDITOR FILE #2016-016856, 6/5/2016)

hereinafter referred to as the “Property.”

WHEREAS, the Property is proposed to be developed into a residential subdivision (“Subdivision”) within the Benton County boundaries, the preliminary plat thereof described in **Exhibit A**; 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 “Cross Valley Estates” consisting approximately 120.21 acres, of which approximately 117.48 acres is classified as irrigable, which are proposed to be subdivided into 22 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 agrees to be responsible for making 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 construct a KID approved pump station on demand from the canal system and to contribute funds towards KID’s planned storage projects in lieu of constructing a pond facility to service the Subdivision; and

WHEREAS, the Developer desires to contribute funds to KID equal to what would be the mutually agreed cost of constructing a pond facility, which is estimated at \$135,089, an amount determined by the Developers engineering consultant and verified and approved by KID; and

WHEREAS, the KID plans to develop a comprehensive plan (“Badger Canyon Irrigation System Plan”) for the general area that includes this Property, and will not be able to provide direction as to the location and specifics for an on demand pumping station and pipe distribution system as it relates to the proposed Subdivision until such time the KID completes the Badger Canyon Irrigation System and such plan is not scheduled to be available until September 1st of 2017; and

WHEREAS, the developer is desirous to farm the Property, in whole or part, until such time the developer is ready to proceed with the Subdivision or has completed the Subdivision; and

WHEREAS, the farming of the property requires the installation of irrigation facilities to receive irrigation water from the KID Main Canal; and

WHEREAS, KID agrees to provide irrigation water for the Property through the existing turnout for an on demand pumping station to be constructed and operated by the Developer for the purpose of farming and otherwise providing irrigation water to the Property until such time the KID complete the Badger Canyon Irrigation System, and, an irrigation system meeting the requirement of the KID for the Subdivision can be designed and installed by the Developer; and

WHEREAS, KID agrees, at its own costs, to make modification to the existing turnout to provide a passive primary flat screen panel and to modify the existing concrete metering box by installing a water tight connection to the concrete headwall at the end of the existing turnout pipe and extending a short piece (10 lineal feet) of 12-inch diameter steel or ductile iron pipe which be connected to by the Developer; and

WHEREAS, the Developer agrees, at its own costs, to be responsible to make the connection to the end of the 12-inch diameter steel or ductile iron pipe provided by the KID and to install an isolation valve, and all piping, pump(s), screens and appurtenances,

including a flow meter, necessary for their farming irrigation system; and

WHEREAS, the Developer will be responsible for the Operation and Maintenance of their farming irrigation facilities; 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 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:

1. The Developer's Obligations. Developer:

- a. Shall construct a KID approved pump station on demand, directly from the canal system for the purpose of providing pressured irrigation water to the Subdivision prior to plat or subdivision approval.
- b. Shall pay to the KID a total sum of \$135,089 ("Total Sum") within one (1) year from the date of this agreement, an amount mutually agreed upon by KID and Developer in lieu of the costs to presently install the irrigation pond facilities for the Subdivision.
- 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:

- a. Shall provide a proportionate share of available irrigation water to the Property starting upon completion and acceptance of the KID approved pump station constructed by the Developer, per the normal operating rules, regulations, and practices of KID.
- b. Shall modify the existing turnout in order to allow for a larger screen surface area and install a watertight pipe from the existing weir box. KID shall provide the design, screen materials, and construction of the modifications to the turnout.

3. Mutual Agreement.

- a. The Developer agrees to be responsible for providing a KID approved irrigation system for their proposed Subdivision as set forth in

this Agreement. The Developer will participate as set forth in this Voluntary Mitigation Agreement and agrees to contribute funds to the KID to be used by the KID for other projects which mitigate the need for a storage pond for this Property. In return KID shall provide the Developer an on demand source of irrigation water from the existing canal turnout for the Property until such time the Subdivision irrigation systems is designed and installed, which also will be an on demand water system.

- b. The parties agree that the aforementioned recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference and shall be binding upon each of the parties, their assigned and successors.
- c. The parties agree that this agreement relates to the specific mitigation of KID's physical infrastructure improvement requirements of a storage pond for the proposed subdivision of land and does not preclude KID from imposing or providing comments or conditions of KID approval relating to the subdivision per RCW 58.17.310. Comments may include, but are not limited to;
 - i. KID asserts rights to recapture artificially-stored groundwater within the KID boundaries. KID may provide comments opposing the use of (domestic) wells drilled in the Badger Coulee area and within the Pasco Gravel units' groundwater aquifer.
 - ii. Adequate irrigation easements consistent with Kennewick Irrigation District ("KID") easement requirements shall be shown and dedicated on the face of the Final Plat.
 - iii. All existing right-of-ways or easements in favor of the United States Bureau of Reclamation ("USBR"), shall be shown on the face of the Final Plat with notes shown on the face of the Final Plat indicating: (i) "No grading may be performed and no permanent structures may be built within the USBR right-of-way or easement without an approved permit from the KID and/or the USBR when applicable", and (ii) "The property included within the subdivision is located within the boundaries of the KID and in the immediate vicinity of irrigation infrastructure. Please refer to www.KID.org for further information."
 - iv. The Developer is required to submit an irrigation distribution plan designed by a professional engineer for review and reasonable approval by the KID prior to installation. The plan may be hand drawn or computer drafted. The plan shall be accurate and to a scale not exceed one inch = 50 feet. Completion of all facilities set forth in the approved irrigation distribution plan is required prior to KID's signature on a certificate approving the Final Plat
 - v. Irrigation system installations and modifications made consistent with the approved irrigation distribution plan shall be inspected and approved prior to the KID signing the certificate approving the Final Plat. The Developer shall contact the KID to arrange an inspection at least forty-eight (48) hours in advance of the desired inspection date

- vi. Prior to recording a Final Plat for any phase of the Subdivision, the current year's real estate taxes, including KID's assessments, must be paid in full. If the Developer seeks Final Plat approval after May 31st of a calendar year, the following calendar year's estimated KID's assessments (in the amount of one hundred twenty-five percent (125%) of the current calendar year's assessment), shall be paid prior to recording the Final Plat.
 - vii. Prior to recording a Final Plat for the first phase of the Subdivision, the USBR construction loan (if any) for all adjacent parcels included within the Subdivision and owned by the Developer within the boundaries of the KID must be paid, and all other USBR requirements legally imposed by the USBR must be completed.
 - viii. The Developer shall timely pay KID all review and inspection fees applicable to the Subdivision in accordance with written KID policies and fee schedules then in place.
 - ix. Per KID Policy 4.17, "Irrigable Land Recalibration Principles", as land within the boundaries of the KID is subdivided or developed KID will remove the irrigation water allocation from impermeable surfaces, such as streets, from the plats.
4. Water Rights Unaffected; Pump Ownership Remains. This Agreement does not create, grant, transfer, modify or affect any water rights of the Developer or KID.
 5. 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.
 6. 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.
 7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

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

14. 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:

CZEBOTAR & PETERSON PROPERTIES, LLC

BY _____
TONY CZEBOTAR, MANAGING MEMBER

Date Signed: _____, 2017

STATE OF WASHINGTON)

: ss

COUNTY OF _____)

On this ____ day of _____, 2017, before me personally appeared **TONY CZEBOTAR** to me known to be the individual 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.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ____ day of _____, 2017.

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

KENNEWICK IRRIGATION DISTRICT:

By: Charles Freeman
Charles Freeman, Secretary/District Manager

Date: Feb. 21, 2017

By: Dean L. Dennis, Vice President
for Gene Huffman, President of the Board of Directors

Date: Feb. 21, 2017

As approved by Resolution of the Board of Directors in a regularly scheduled Board meeting on Feb. 21, 2017.

STATE OF WASHINGTON)

: ss

COUNTY OF Benton)

On this 21st day of February, 2017, before me personally appeared Dean L. Dennis and Charles Freeman, 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 21st day of February, 2017.

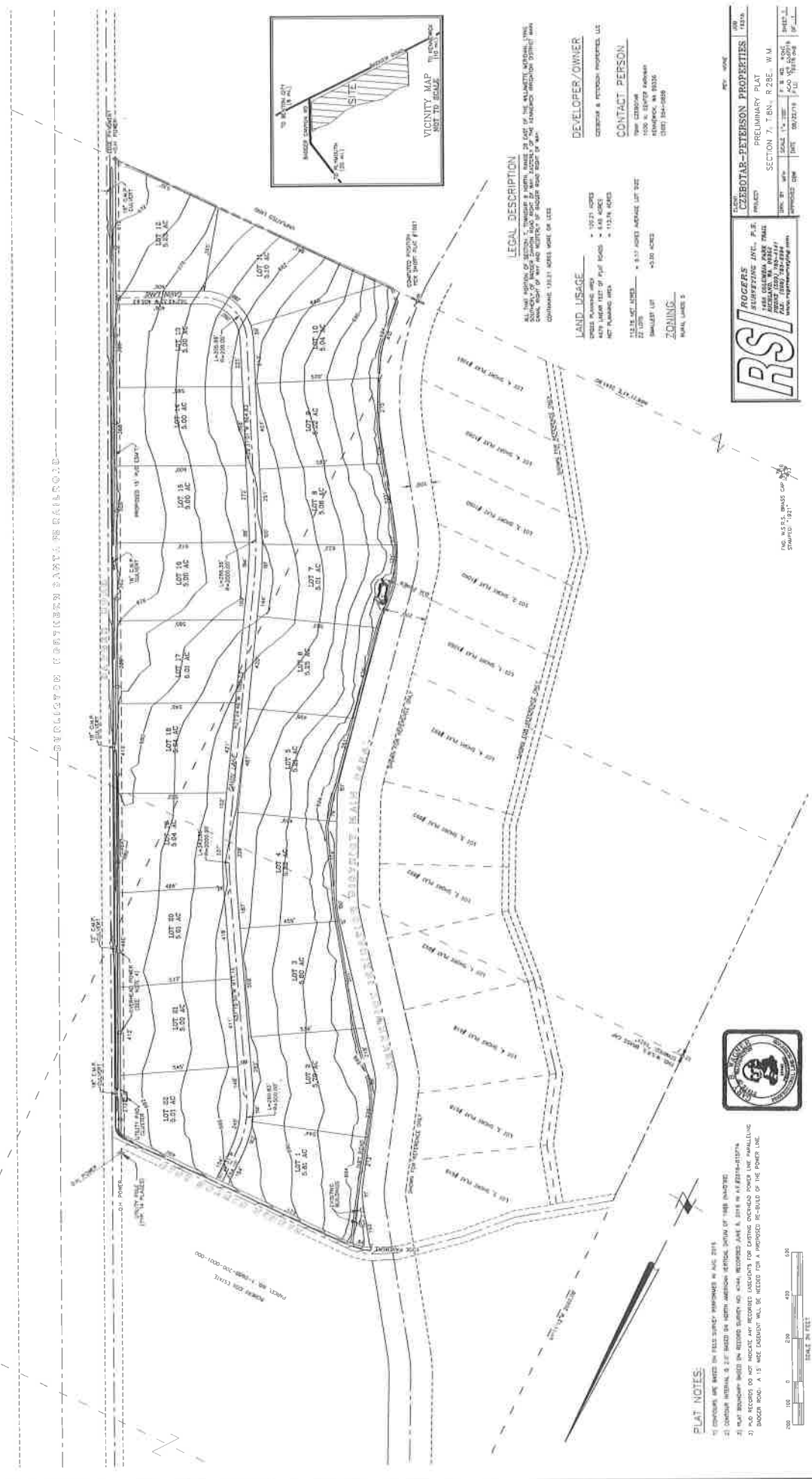


Doris K. Rakowski
NOTARY PUBLIC,
State of Washington
Residing at Kennewick, WA
My Commission Expires Apr. 1, 2020

EXHIBIT A

PRELIMINARY PLAT CROSS VALLEY ESTATES

LOCATED IN THE EAST 1/2 OF SECTION 7
TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M.
BENTON COUNTY, WASHINGTON



LEGAL DESCRIPTION

ALL THE PORTION OF SECTION 7, TOWNSHIP 8 NORTH, RANGE 28 EAST OF THE BALMATEE MERIDIAN, T18N, R28E, W1M, BENTON COUNTY, WASHINGTON, CONTAINING 113.37 ACRES MORE OR LESS.

LAND USAGE
 113.37 ACRES
 4275 SQUARE FEET OF PAVED ROAD
 NET PLANNED AREA = 113.37 ACRES

DEVELOPER/OWNER
 CZEBOTAR & PETERSON HOLDINGS, LLC

CONTACT PERSON
 TONY CZEBOVAR
 1000 N. CENTER AVENUE
 BENTONVILLE, AR 72015
 (501) 751-8800

ZONING
 RURAL LANDS 2

PLAT	DATE	PREPARED BY	SCALE	DATE	REVISION
PRELIMINARY PLAT					
SECTION 7, T. 8N., R. 28E., W.M.					



THIS PLAT WAS PREPARED BY RSI
 UNDER CONTRACT TO THE DEVELOPER

PLAT NOTES:

- 1) PROPERTY LINE SHOWN IN FIELD SURVEY INSTRUMENTS IN AUGUST 2014.
- 2) PROPERTY BOUNDARIES SHOWN IN FIELD SURVEY INSTRUMENTS IN AUGUST 2014.
- 3) ALL RECORDS OF RECORD SURVEYING AND RECORDS OF SURVEYING SHALL BE KEPT IN THE OFFICE OF THE SURVEYOR.
- 4) ALL RECORDS OF RECORD SURVEYING AND RECORDS OF SURVEYING SHALL BE KEPT FOR A PERIOD OF 10 YEARS FROM THE DATE OF RECORDING.
- 5) ALL RECORDS OF RECORD SURVEYING AND RECORDS OF SURVEYING SHALL BE KEPT FOR A PERIOD OF 10 YEARS FROM THE DATE OF RECORDING.

