



TO: CVCS Board of Directors

FROM: Peter Kampa, General Manager

DATE: November 16, 2021

SUBJECT: Item 7c) Updated status report of the CVCS / Copper Valley Partners Interim Operating Agreement

RECOMMENDED ACTION

Staff will provide an update of the status of the Interim Operating Agreement and proposed remaining efforts to prepare the final operating agreement and site plan.

BACKGROUND

The term of the Interim Operating Agreement with CV Partners expires soon and the agreement should be extended for another year. The main remaining work to prepare the final agreement and site plan is the final identification of the physical areas of maintenance responsibility for each party. The historical documentation reveals that the district accepted road easements and improvements by resolution for each phase of the development upon completion. Unfortunately there are not graphic representations or lists of the improvements dedicated; only reference to approved plans and legal descriptions.

Based on the documentation reviewed, staff recommends that the final site plan delineate the responsibility areas of CVCS as only the areas and infrastructure within the easements (right of way) dedicated to the district. The site plan will then reference the service and infrastructure responsibilities contained in each public easement. All landscape maintenance work on private property will be the responsibility of the property owner, who may choose to contract with the district for certain maintenance services adjacent to or affecting the right of way. Access to wetland areas for mosquito control and maintenance work will also be contained in a separate agreement.

District Engineer Gritz will be asked to assist in the preparation of the final site plan which should take no more than six months to complete. It is recommended that the interim agreement be placed on the December meeting agenda for a one year extension.

**INTERIM OPERATING AND COST
SHARING AGREEMENT**

THIS INTERIM OPERATING AND COST SHARING AGREEMENT (“AGREEMENT”) is entered into on this 18th day of February, 2020 by and between the CV Saddle Creek, LLC, CV Saddle Creek Holdings, LLC and Saddle Creek Golf Club, LLC herein collectively referred to as “Owner”, and the Copper Valley Community Service District (formerly Saddle Creek Community Services District) herein referred to as “CSD”. The Owner and CSD may each be referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

A. WHEREAS, Owner is the legal owner of certain real property located in the development commonly known as the Copper Valley Resort located in Copperopolis, California. The ownership includes the existing 18-hole golf course, Clubhouse, Sports Center, certain undeveloped but improved lots, and undeveloped property within the boundaries of the approximately 890-acre Resort property collectively referred to herein as (the “Property”);

B. WHEREAS, the CSD was formed in 1995 pursuant to Resolution 95-03 by the Local Agency Formation Commission (“LAFCO”) of the County of Calaveras, State of California and Pursuant to sections 56000 and 61000 et seq. of the California Government Code;

C. WHEREAS, the CSD has the authority to perform governmental services pursuant to California Government Code Section 61600 and other specific services that may be approved by the CSD Board of Directors, including but not limited to the maintenance of the access control gate, roads, street lights, and storm drains located within the Property and maintenance of landscaping and wetland easements within the portions of the Property not owned by Owner (“Common Areas”);

D. WHEREAS, the CSD and Owner enjoy a cooperative working relationship and have historically worked to jointly address the Property’s operational needs and costs;

E. WHEREAS, Owner and the CSD have not been able to identify survey maps or other instruments that would allow them to precisely define which areas of the Property are owned and/or to be maintained by the CSD;

F. WHEREAS, Owner and the CSD wish to engage professional service providers to create a Site Map, which will accurately and permanently define the Parties’ respective ownership and maintenance rights and responsibilities throughout the Property;
***Site Map in process by CSD**

G. WHEREAS, the Parties anticipate that, on or before December 31, 2020 and upon the creation and acceptance of the Site Map, the Parties will execute a formal Operating and Cost Sharing Agreement delineating the rights and responsibilities of the Parties and

incorporating the Site Map;

H. WHEREAS, in the interim, and while Owner and the CSD endeavor to create the Site Map, the Parties wish to document certain historical and present business and financial arrangements between the Parties for the ongoing operation of the Property;

I. WHEREAS, the Parties hereto have agreed in principle to certain provisions relating to the operations, duties, costs, equipment usage, utilities, water, stormwater management, wetland management and permitting, wildlife habitat, road and Common Area maintenance and previous costs paid on behalf of the CSD by the Owner; and

J. WHEREAS, the Parties intend to formalize, in writing and in greater detail following the creation of the Site Map, the general terms and conditions of their understanding regarding mutual, cooperative interests, with such future agreement(s) to require final approval of the CSD Board of Directors before such Agreement becomes in full force and effect.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Term

The Term of this Agreement shall be retroactive to August 1, 2019 and run through December 31, 2020. The Parties anticipate entering into an agreement which shall replace this Agreement prior to the expiration of the Term; however, should the Parties fail to enter such an agreement to succeed this Agreement, the Parties may extend the Term upon mutual agreement. *Term was extended to 12/31/2021

2. CSD office property/CCWD lease

- a. The Owner pays an annual lease payment to the Calaveras County Water District ("CCWD") to lease the approximately 7-acres of land where the CSD office facilities, maintenance facilities, and equipment storage is located which area is shared with the golf course maintenance building and equipment yard. The current lease with CCWD is being renegotiated but it is anticipated that it will be in the approximate amount of \$4,000.00 per year.
- b. It is hereby agreed that the Owner shall pay 60% and the CSD shall pay 40% of the annual lease. *Yes, this took place 2020

3. Office Building and Equipment ownership

- a. The Owner currently owns the portable office building trailer which the CSD occupies as its offices. The Owner hereby agrees to donate the office building trailer to the CSD. The CSD shall accept the office building trailer in "as is" condition with no warranty as to its condition by the Owner. The donation value of the office building trailer shall be deemed to be \$5,000.00.
*Owner has not completed the transfer of the office building to CSD.

- b. The Owner owns a CASE Front loader. The Owner shall continue to own the equipment but hereby grants the CSD usage rights on a case by case basis for various projects performed on the property. The Owner will maintain the equipment. *We have used it 6 times this year with no issues.
 - c. The Owner currently owns a 2000 Freightliner Water Truck California License Plate # 6A09122 Vehicle ID#1FV3HJAA6YHB19548. The Owner hereby donates the water truck valued at approximately \$35,000.00 to the CSD. In exchange for the donation of the truck to the CSD, the Owner shall have usage rights on an as needed basis. In addition, the CSD shall be required to provide the following: *The water truck transfer has not been completed, it can not be transferred due to CA CARB compliance issues.
 - i. CSD, at its discretion will endeavour to Water street trees on Owner properties and cul-de-sacs where no irrigation exists.
 - ii. CSD to provide water truck for fire prevention/suppression purposes.
 - iii. CSD shall provide dust suppression on the dirt roads within the Property
 - iv. CSD shall make it available in case of golf course irrigation emergencies.
 - d. The PG&E power and CCWD water are provided to the office and maintenance area used by the CSD. The utility bills have all been previously paid 100% by the Owner. The Parties agree that beginning on the effective date of this Agreement, the utility cost shall be paid by both Parties at 60% to the Owner and 40% to the CSD. Owner will bill the CSD monthly for their portion of the utility bills. *we are paying our portion on time to CV
 - e. The joint facilities are not serviced by sewer but is serviced with a septic tank and pump system. The Parties agree to share the cost of the maintenance of the septic system at the same 60%/40% ratio. Included in this cost sharing is the recent pump replacement and service in March 2019 in the amount of \$2500.00. *we split one bill last year for this
 - f. CSD to reimburse Owner for fuel costs related to Mosquito abatement, general Common Area maintenance, storm drains maintenance. In 2019, certain fuel was advanced to the CSD in the amount of \$512.51 as of June 14, 2019 and is understood by owner this amount will increase until the new fiscal year and those increases will be tracked. This amount shall be reimbursed to Owner upon the execution of this Agreement. *completed
4. **Gate operations and location** *There are no issues with gate at this time
- a. The main gate and gatehouse are owned by the CSD. The Owner currently funds 100% of the cost of the gatehouse attendants. The Owner is not obligated to continue the cost of the gate attendants and may at its absolute discretion terminate the gatehouse attendants. The Owner shall from time to time elect to change the operational hours of the attendants at its sole and absolute discretion, with advance notice and coordination with CSD. The gates shall be operated in the automatic-closed mode when the gatehouse is unattended.
 - b. The CSD owns the physical building, gates and Right of way.
 - c. CSD pays electrical, water and sewer, phone for the building.

- d. The Owner may consider gate relocation, at their expense at a future date to provide unfettered access to commercial uses such as the golf course and restaurant.
- e. The CSD is required to maintain the gate and phone/access system at its cost.

5. Construction gate ownership and operation *There are no issues at this time

- a. The Owner owns equipment, provides power and phone cost
- b. CSD operates and manages access and maintenance *We may want to consider upgrades and charge cost to CV*
- c. To be improved to CSD standards and dedicated for ownership in future; or eliminated if alternate access provided in future development

6. Water Meters and Accounts

- a. All Common Area owned by the CSD have historically and are now served by CCWD water meters in the name of Owner. Due to the substantial increase in water and sewer fees enacted by CCWD, the CSD shall share in the cost of the water. Owner and CSD have reviewed each of the meters and the area that is irrigated and have come to a mutual agreement as to the estimated water used through each meter for public purposes (Common Areas) versus water used for the Owner's private purposes. The water consumption estimates attributable to CSD and Owner are based on the conditions existing as of the date of this Agreement, as proximately shown on the draft site drawings, attached hereto as Exhibit A, and the parties agree to perform additional estimations and adjust the percentages attributable to each based on changed conditions, as further described below. The Owner agrees to continue to keep the meters in the name of the Owner, however the CSD hereby agrees to pay the following allocation of the water on the following meters effective at the CCWD billing for water consumption following the effective date:

Location	% of Total CCWD Bill Paid by CSD	CCWD Account No.
Entry Sales	80%	017737-000
Roundabout	50%	017736-000
Oak Creek Dr	50%	017747-000
Rockridge Parking	40%	017738-000
Oak Creek Landscape	40%	017740-000

Water bills from CCWD will be paid by Owner in accordance with CCWD rules and regulations. Following payment, Owner will bill CSD for their proportional cost in accordance with the percentages above, as adjusted in Section 6. Billing and payment for CCWD water meter costs are further detailed in Section 6 below.

The water meter SN55927116 serving the Gatehouse shall be paid 100% by CSD and said account will be transferred by Owner to CSD in a timely manner.

The water meters SN68078732 (Mitchell Lake Ct) and NE94724023 (3828 Little John) are to be paid 100% by Owner.

*No issues with water bills, they pay them, bill us then we pay them back

- b. The Parties agree to work cooperatively to transfer ownership of private irrigation and landscape areas to appropriate property owner(s). *This will be in final agreement
- c. CSD to continue to maintain Common Areas as currently configured, and has full authority to modify, control, repair, improve and discontinue irrigation in Common Areas, as well as to modify Common Area landscaping as desired by CSD. CSD will only operate, maintain, and be responsible for costs associated with public Common Areas.
- i. An Interim Site Map is to be developed by CSD depicting the Common Areas and areas privately owned by Owner, as those areas are currently understood; which shall be attached hereto as Exhibit A. Owner is assumed to have ownership of and be responsible for the portion of the irrigation system and landscape on private property. CSD is assumed to have ownership of and be responsible for the portion of the irrigation system and landscape on public property.
 - ii. The irrigation systems served by the common meters service both the public and private areas of Exhibit A. For its convenience, Owner may request that CSD provide maintenance of the common irrigation on the private areas shown in Exhibit A. CSD shall bill Owner for time and materials, at the then current labor rates contained in the CSD Miscellaneous Fees Schedule, and materials at cost if supplied by CSD.
 - iii. Exhibit A shall only serve the purpose of depicting ownership and maintenance responsibilities for the term of this Agreement. The Parties intend to jointly execute a permanent Site Map as part of a permanent Operating and Cost Sharing Agreement, as more fully described in Section 15, below, at the end of the term of this Interim Agreement.
- d. Both Owner and CSD shall fund and provide responsible operation and maintenance of irrigation system and landscape served by the shared meters in the private and public areas respectively. CSD shall not be responsible to maintain or irrigate, or pay for irrigation water for areas outside the Common Area shown in Exhibit A.
- i. The CSD and Owner shall maintain responsibility for operation and maintenance of their respective irrigation system components, and shall maintain such systems in good working order to ensure operating efficiency and compliance with water conservation and use requirements of the water provider. Irrigation system leak repairs and other water wasting system defects shall be repaired by the responsible party on identification if serious and for minor waste as quickly as possible but in no case in excess of seven days of written notification of the leak. Failure to address water waste as described above shall result in water billing adjustments as described in Section 6 herein.
 - ii. Irrigation System Modifications/Notifications. Either party proposing modifications to their respective irrigation system in a manner that may change water use shall notify the other party in advance. Either party may

past records unclear,
will work with district
engineer to list and map
infrastructure and
locations only in ROW

No issues or
concerns here

request an evaluation of respective water usage by the other party when irrigation system modifications are completed. Owner and CSD agree to make repairs and improvements to their respective irrigation systems as needed, in a timely manner to maximize water conservation, repair leaks or watering inefficiencies.

- e. CSD continues to pay partial share of cost on irrigation meter serving Saddle Creek II; which is in their name. *continues to go well, we pay as they bill

7. Billing and Payments for Water Bills – Timing and adjustments

- a. Owner shall pay all water bills received in accordance with CCWD rules. Upon payment, Owner shall submit the paid water bill along with an invoice to the CSD for its proportional share per the shared meter table above. CSD shall pay Owner for each bill in a timely manner, normally within 30 days of receipt.
 - i. In the event of dispute on any invoice, CSD shall pay the undisputed portion of the invoice within 30 days, and the parties shall endeavor to resolve billing disagreements in a timely manner.
 - ii. In the event that inefficient watering or leaks are allowed to remain longer than allowed above, the billing for the noncompliant party shall be adjusted up by the estimated water lost or wasted during the duration of the event.
 - iii. Either party can request a reevaluation of estimated water use through the common meters, and the parties will conduct such evaluation in a timely manner. In the event an adjustment to proportional billing is necessary, such adjustment will be made at the next CCWD billing cycle.

8. Stormwater management – CSD responsible for DI (drain inlets), culverts and related infrastructure

- a. The Owner is responsible for stormwater management outside of road right-of-way.
- b. Standards on culvert exit to be modified for future projects to avoid erosion.
- c. The Owner shall assist in troubleshooting and implementing a remedy for odor occurring on Rockridge, and to be responsible for pond improvements if determined necessary/responsible for odor.

*CSD replaced and repaired all DI's

9. Wetlands and 404 Permit Management

- a. 404 Permit, Compliance Coordination is CSD responsibility and permit compliance is the responsibility of Owner. Any studies, reports, improvements, modification, inspections, testing or violation related work or fines resulting from or issued by any state or federal agency are the responsibility of Owner.
- b. The Owners shall provide pond maintenance records, water quality results to the CSD.
- c. Maintenance and Inspection Plan to be developed collaboratively between CSD and Owner regarding operating responsibility.

No issues or
conflict here

- i. General inspection provided by CSD.
- ii. Improvements and major maintenance provided by Owner with CSD guidance
- d. Owner to maintain and comply with NPDES General Permit currently in place in Golf Resort name (Aquatic Pesticides)
 - i. Owner owns wetland property and permit responsibility.
- e. CSD monitors and enforces pond water levels (water supplied/paid from Owner contract with CCWD); see Roger Pito wetlands report 2016

10. Wildlife habitat easements

- a. CSD responsible for administration/encroachment under deed restriction.
- b. CSD performs cleaning, weed management and mowing.
 - i. Fee for service charged to those who either do not maintain or contract with CSD. no formal evidence that the CSD has authority to administer this land use restriction, need formal legal opinion

11. Operation of roads

- a. Roads maintenance the responsibility of CSD.
 - i. Encroachment permit may be required for heavy construction equipment/work
- b. Owner, at their sole discretion and approval shall agree to assist financially when road improvement priorities/work scope are adjusted to suit development/sales needs
- c. CSD to review road maintenance plans and priorities with Owner.

12. Common Area (public) maintenance (Exhibit A)

- a. CSD pays electricity for irrigation timers.
- b. CSD Operates and maintains irrigation. no issues here
- c. CSD Maintains Landscaping.
- d. CSD pays for water through shared meters owned by Owner, billed to CSD at the percentages above.
- e. Owner at their sole discretion and approval shall agree to assist financially when landscape improvement priorities/work scope are adjusted to suit development/sales needs.

13. Open space parcels

- a. Owner pays water and power for irrigation (parcels shown on Exhibit B, attached hereto)
- b. CSD maintains irrigation and landscape.

14. Reimbursement of costs advanced:

The Owner has paid certain costs addressed in this Agreement, in calendar year 2019. The Parties agree upon the approval of this Agreement to settle any outstanding financial issues. The following is a list and the estimated amounts:

- Fuel charges by CSD on Owner fuel system- \$512.51 (TBD)
- Irrigation Clocks on #18 owned by CSD- \$7,500.00
- 40% of Septic system pump at yard- total-\$2500.00
*Completed

15. Cost Sharing for Survey and Associated Work *Pending

The Parties wish to commission a comprehensive survey of the Property, and associated study and review of all documents related to the Property, to create a Site Map of the property that clearly depicts all property lines, Common Areas, easements, and roads existing on the Property ("Mapping Project"). The Parties intend to jointly approve a final Site Map and associated documents through the execution of an Operating and Cost Sharing Agreement, which shall replace this Agreement when executed. In furtherance of the Mapping Project, the Parties recognize the need to secure services from surveyors, engineers, a title company, and administrative professionals, to obtain and review documents related to the Property's development, subdivision, dedication, and/or sale, and to accurately describe, depict, and record the rights and responsibilities of the Parties. The Parties shall procure and share the cost of those services as follows:

- a. CSD will lead the Mapping Project and shall identify and retain all service providers it requires to complete the Mapping Project.
- b. CSD shall provide Owner copies of proposals, cost estimates, fee schedules, and/or equivalent documentation provided by prospective service providers prior to contracting for any service. Owner may provide input regarding the proposed scope of services to be rendered, but CSD shall have discretion to define the scopes of services and to enter contracts for those services.
- c. The costs of those services rendered in furtherance of the Mapping Project shall be split equally (50%-50%) between the Parties. CSD shall provide Owner with a monthly summary of payments made to all Mapping Project service providers, with back-up documentation such as invoices or requests for payment attached. CSD shall designate on the summary and, within thirty (30) day of receipt, Owner shall pay to CSD as reimbursement its equal portion of those costs.

16. Document Sharing * Pending

Owner shall provide CSD copies of any documents in its possession that are germane to the Mapping Project, including but not limited to maps of the Property, plans, as-built drawings, property descriptions, easement documents, dedication offers, grant documents, deeds or other ownership documents, and documentation related to maintenance of the Property. Upon request, Owner may inspect and copy any documents or records related to the Property that CSD or the Mapping Project service providers obtain from Calaveras County or through other public records searches.

17. Upgrades and Permitting

Should permits be required to perform work needed to separate infrastructure servicing both the Owner's property and Common Areas, as determined during or at the conclusion of the Mapping Project, the costs to apply for and obtain those permits shall also be split equally. Should infrastructure servicing both the Owner's property and Common Areas remain, the Parties also agree to equally share the engineering and/or other costs associated with defining each Party's responsibility to maintain that infrastructure and the split of costs associated with its use.

18. Legal and Other Party-Specific Costs

Notwithstanding the provisions of Sections 15, 16, and 17, above, the Parties shall bare their own costs for legal counsel or other service providers hired to represent the interests of only one Party or services retained by only one Party.

19. CSD Board Approval

This Agreement is contingent upon the Board of Directors of the CSD final approval.

20. Amendment

This Agreement can only be modified by written agreement of the parties.

21. Binding on Successors and Assigns

This Agreement shall be binding on the Parties and all successors and assigns.

22. Notices

Any notice required or permitted to be given by one party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g., Federal Express), postage or fee paid, as appropriate, addressed to the parties below:

To Owner:

Mr. Tom Hix and Michael Fletcher
CV Development Partners, LLC
100 Town Square Road, Second Floor
Copperopolis, CA 95228

To CSD:

Mr. Peter Kampa, GM
1000 Saddle Creek Drive
Copperopolis, CA 95228

23. Default and Dispute Resolution

Should either party fail to perform an obligation under this Agreement, it shall be deemed a default of this Agreement. Either Party shall have reasonable time, but in no instance more than thirty (30) days, to cure any non-monetary default upon notice of the default from the other Party. Monetary default, meaning the failure to timely pay

any amount due the other Party under this Agreement, shall incur a ten percent (10%) per annum penalty, to be paid to the non-defaulting Party.

The Parties agree that it is mutually beneficial to mediate disputes prior to resorting to litigation. In the event of a dispute between the Parties as to any provision of this Agreement, the Parties shall endeavor to mediate the dispute within sixty (60) days or as soon as practical upon a Party providing notice of the dispute to the other. Mediation shall occur in Calaveras County, California, or as close to the Property as possible, with a mutually-agreed-upon mediator.

24. Surviving Provisions

Should any provision of this Agreement be found void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement and hereby the Board of Directors of the CSD shall be required to approve this Agreement to make it valid.

Owner: _____

By: _____

THOMAS HIX
Authorized Signatory

Dated: 3/11/20

CSD: _____

By: _____

Board President
Roger K. Goldman

Dated: 2/18/2020

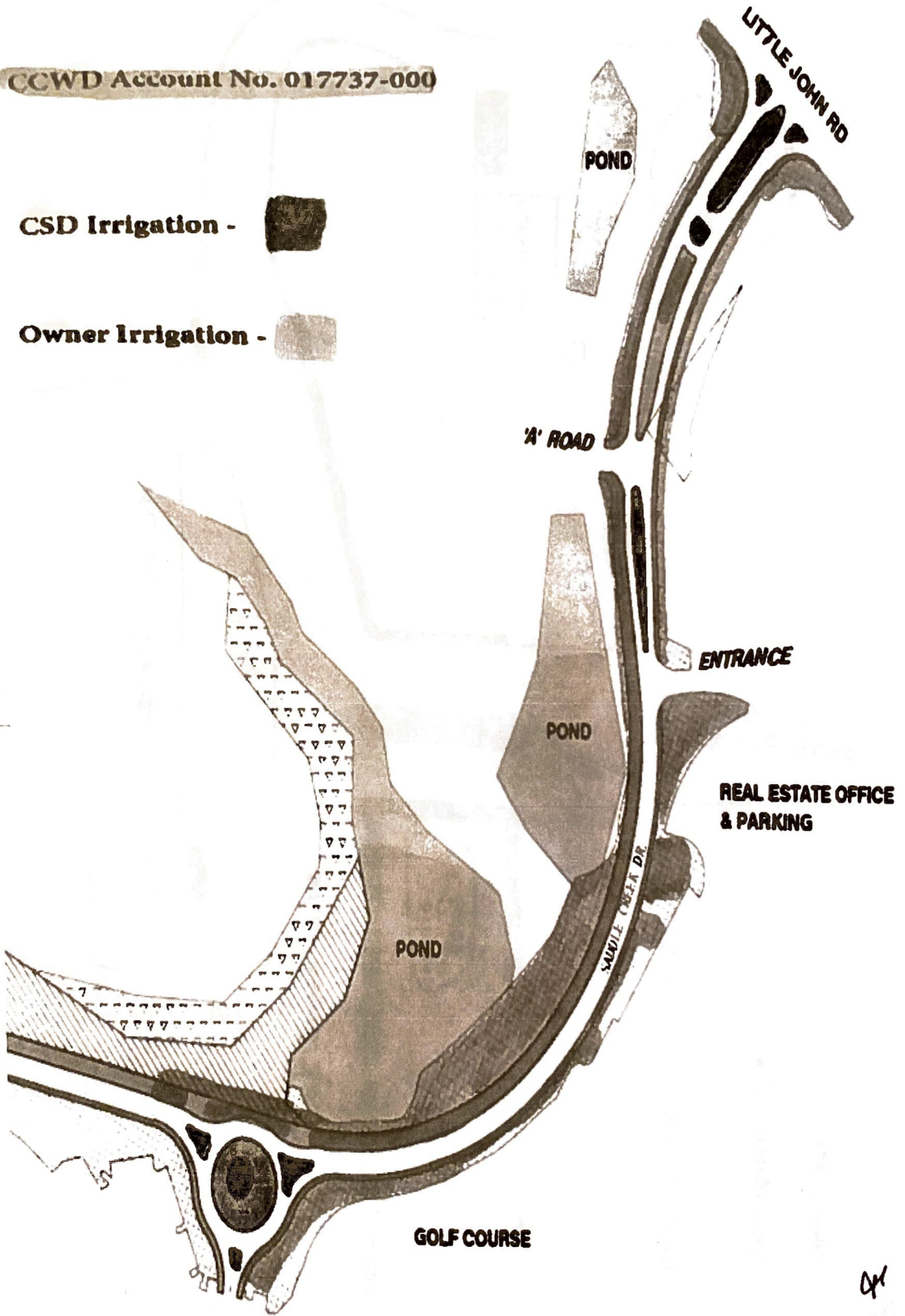
EXHIBIT A

CCWD Account No. 017737-000

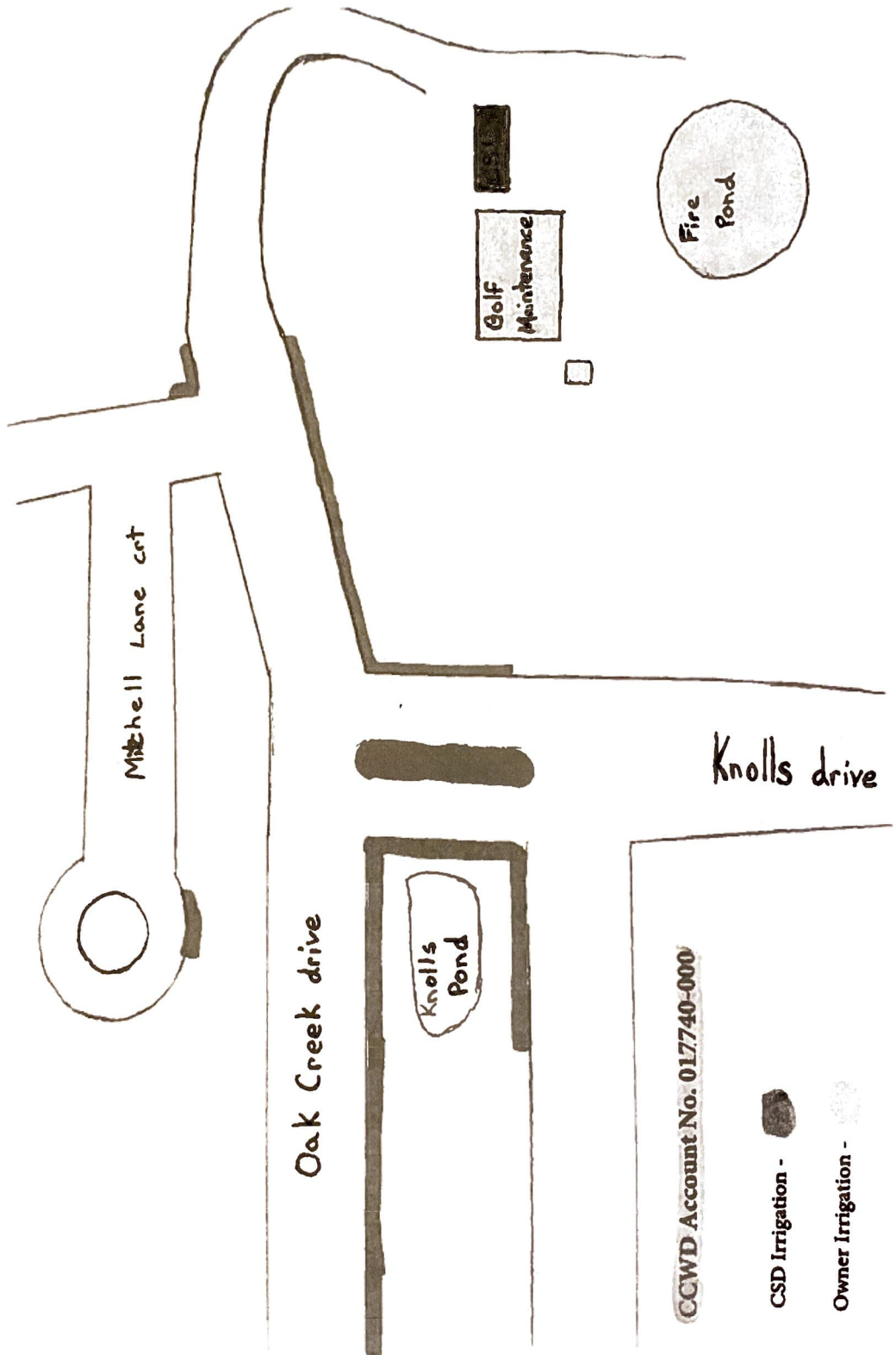
CSD Irrigation -



Owner Irrigation -



dx



CCWD Account No. 017740-000



CSD Irrigation -



Owner Irrigation -

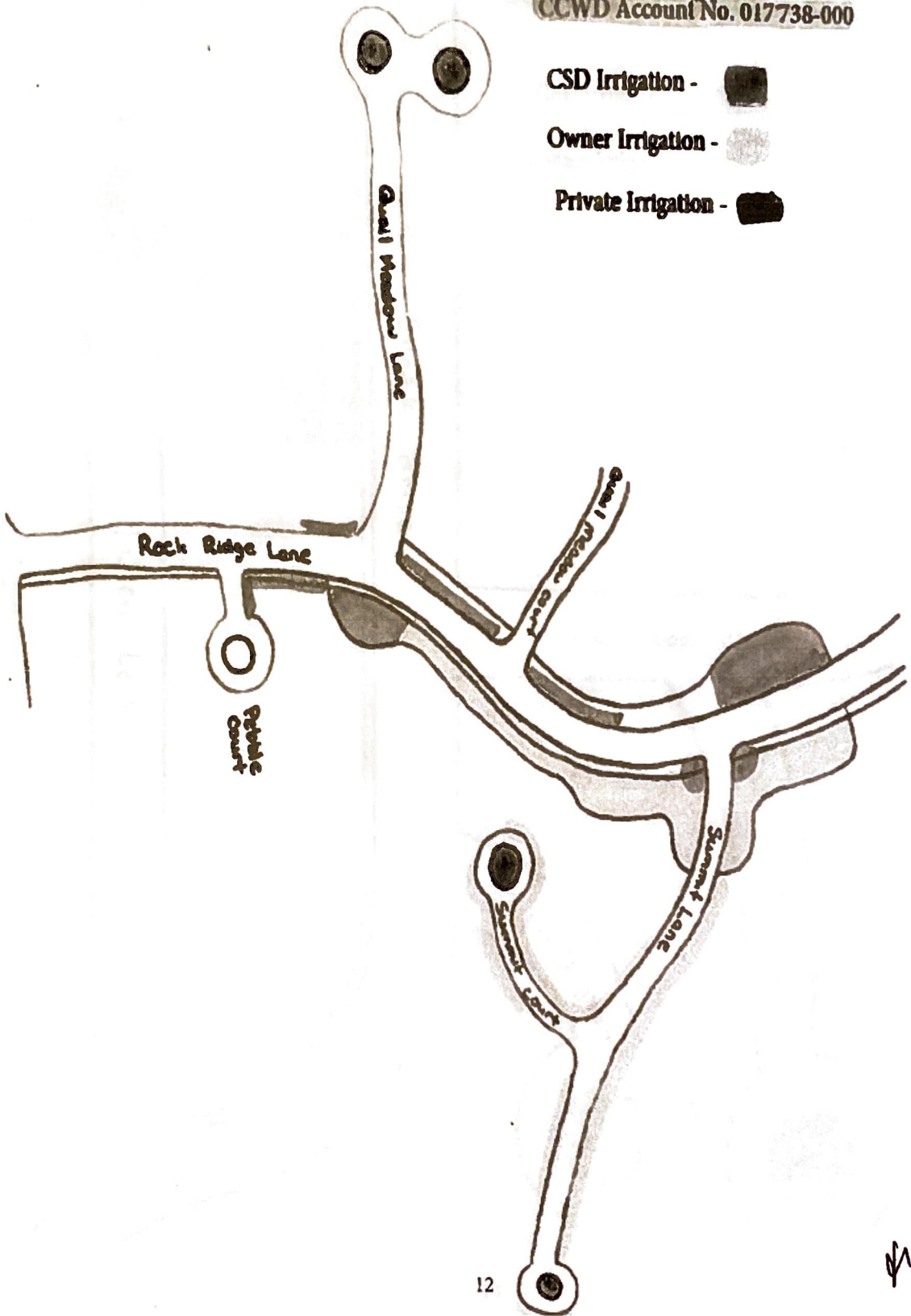
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CCWD Account No. 017738-000

CSD Irrigation - 

Owner Irrigation - 

Private Irrigation - 



CCWD Account No. 017747-000

CSD Irrigation -



Owner Irrigation -



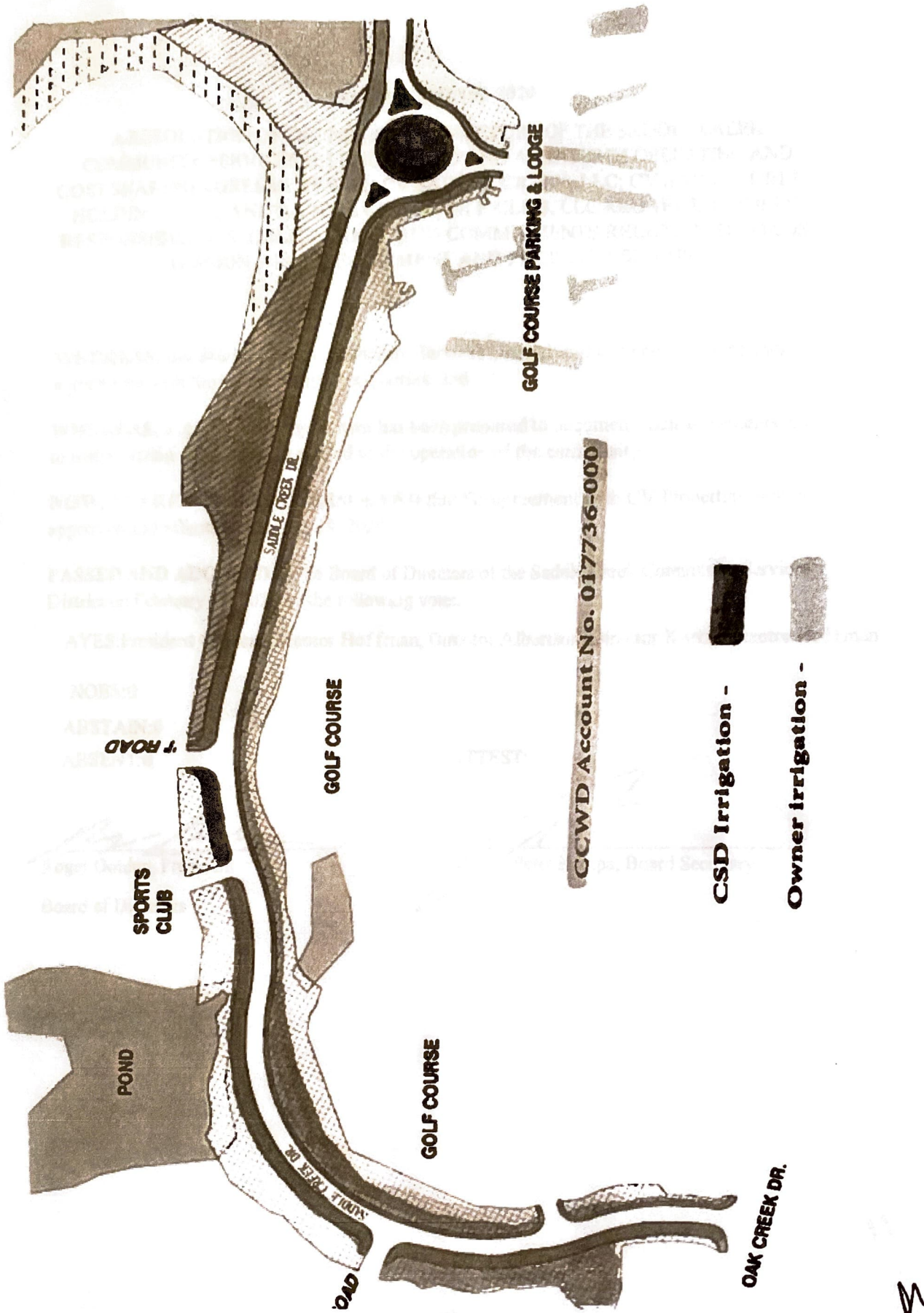
Oak Creek drive

Fallen Leaf Ct

Oak Wood Place

Oak Wood Ct

Leaf Crest Ct.



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RESOLUTION 02-2020

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SADDLE CREEK COMMUNITY SERVICES DISTRICT APPROVING AN INTERIM OPERATING AND COST SHARING AGREEMENT WITH CV SADDLE CREEK, LLC; CV SADDLE CREEK HOLDINGS, LLC AND SADDLE CREEK GOLF CLUB, LLC REGARDING ROLES, RESPONSIBILITIES, OBLIGATIONS, AND COMMITMENTS RELATED TO ROADS, COMMON AREAS, EQUIPMENT AND PROPERTY SHARING

WHEREAS, the Saddle Creek Community Services District wishes to document certain agreements with the Copper Valley properties; and

WHEREAS, a draft interim agreement has been prepared to document such agreements and to make certain commitments related to the operation of the community.

NOW, THEREFORE, BE IT RESOLVED that the agreement with CV Properties et al is approved and effective February 18, 2020.

PASSED AND ADOPTED by the Board of Directors of the Saddle Creek Community Services District on February 18, 2020 by the following vote:

AYES: President Golden, Director Hoffman, Director Albertson, Director Kurtz, Director Hoffman

NOES: 0

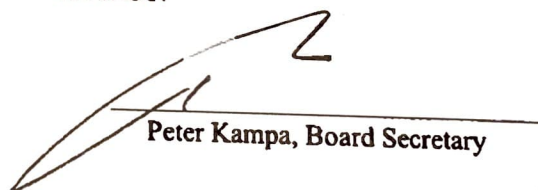
ABSTAIN: 0

ABSENT: 0

ATTEST:


Roger Golden, President

Board of Directors


Peter Kampa, Board Secretary