

**AGREEMENT, COVENANT, ACKNOWLEDGMENT  
AND LIEN REGARDING  
EARTH BACKFILL ON DISTRICT SEWER MAIN LINE  
AND POTENTIAL REMOVAL OF BACKFILL AND RETAINING WALL**

THIS AGREEMENT, COVENANT, ACKNOWLEDGMENT, AND LIEN (the "Agreement") is made and entered into by and between **Mount Werner Water and Sanitation District**, a Colorado special district, whose address is PO Box 80488-0399, Steamboat Springs, CO 80488 (the "District"), and the **5R Steamboat, LLC**, a Texas limited liability company, whose address is 5604 Banister Ct, Plano, TX 75093 and whose email address is srumsey@crossdevelopment.net ("5R Steamboat").

WHEREAS, 5R Steamboat is the owner of Lot 11B, Bear Claw Estates, the plat for which was recorded on April 21, 2020, in the office of the Routt County Clerk and Recorder at File No. 14,436 and Reception No. 808941 (such lot hereinafter referred to herein as "Lot 11B"); and

WHEREAS, the District owns and operates a central municipal sewage collection system which collects sewage and effluent from customers within its boundary (the "District Sewer System"); Bear Claw Estates is within the boundary of the District; and

WHEREAS, The District Sewer System includes a sewage main collector line, a portion of which lies from the easterly side of Edgemont Condominiums common area land thence south-southeasterly within the western public utility easement in Lot 11B bordering the west boundary of Lot 11B to Sewer Manhole No. MH 12.39.6B, thence on to Sewer Manhole No. MH 12.39.6A (such two Sewer Manholes being hereinafter referred to as the "Two Manholes"), thence continuing in a south-southeasterly direction off of said Lot 11B into the property of Norwegian Log Condominiums (all of such portion of such sewage main collector line and such Two Manholes as are located within and adjacent to said Lot 11B being hereinafter referred to as the "Sewer Main Line and Manholes"); such Sewer Main Line and Manholes are interconnected at either end with other portions of the District Sewer System in a continuous system by which District sewage and effluent is delivered by the District to and treated by the City municipal wastewater treatment plant located west of the boundary of the City; and

WHEREAS, such Sewer Main Line and Manholes, and the interconnecting District Sewer System, were constructed and installed many years ago and have been in existence in their present locations for many years including prior to the creation of the Bear Claw Estates subdivision; the District is the owner of vested rights for location, maintenance, repair, improvement, and reconstruction of such Sewer Main Line and Manholes from grants or dedications or other conveyances or entitlements vested in the District many years ago; and

WHEREAS, 5R Steamboat has caused to be constructed on Lot 11B a large duplex building (the "Duplex"), and, in connection therewith, has also caused to be constructed on Lot 11B a block retaining wall structure (the "Retaining Wall") located primarily within the westerly

public utility easement portion and southwest portion of said Lot 11B, all as shown on the map attached to this Agreement as Exhibit "A" and made a part hereof by this reference ("Map"); and

WHEREAS, the purposes of such Retaining Wall include the retention of a large fill area uphill and north-northeasterly of such Retaining Wall (the "North Fill Area") which raises the land area north-northeasterly of such Retaining Wall between such Wall and the Duplex structure to a level permitting a lawn area to exist between such Retaining Wall and the exterior of the Duplex; and

WHEREAS, in order to stabilize such Retaining Wall, 5R Steamboat caused a large volume of additional earth fill material to be installed to the south and west of the Retaining Wall, within the westerly public utility easement and southern portion of said Lot 11B, and even beyond and outside of said Lot 11B (the "South Fill Area"), the fill dirt within such South Fill Area lying over the top of the Sewer Main Line and Manholes; and

WHEREAS, neither 5R Steamboat nor its contractors or engineers or surveyors notified or advised the District of the planned and then actual installation of the fill dirt placed within the South Fill Area (the "Fill Dirt"), and such Fill Dirt was installed without the knowledge or approval of the District; placement of fill over the top of District sewer mains is not permitted by the District; and

WHEREAS, the District has now been advised that fill dirt in the North Fill Area, the Retaining Wall, and the Fill Dirt in the South Fill Area may also be installed over the existing or proposed residential sewage service line now existing or planned to be constructed to provide service to one or more buildings intended for construction on Lot 11A, Bear Claw Estates, which borders and lies east of said Lot 11B (the "Lot 11A Sewage Service Line"); the District does not and will not own or maintain or repair or use any such Lot 11A Sewage Service Line; and

WHEREAS, the installation by 5R Steamboat and its contractors of the Fill Dirt within the South Fill Area over and on top of the District's Sewer Main Line and Manholes is contrary to and in violation of the Rules and Regulation of the District, and is harmful to the District and endangers the Sewer Main Line and Manholes and the future ability of the District to repair, maintain, improve, relocate, reconstruct, or replace all or any part of such Sewer Main Line and Manholes, and the District is lawfully entitled to require the removal of all Fill Dirt over its Sewer Main Line and Manholes to a width of at least 10 feet on each side of the centerline of such Sewer Main Line and Manholes; however, such removal might de-stabilize the Retaining Wall and cause it to fail, which would cause further damage and burial of dirt over the top of the Sewer Main Line and Manholes; and

WHEREAS, in lieu of an order by the District for the removal of all Fill Dirt over its Sewer Main Line and Manholes as described above, 5R Steamboat and the District have agreed to the agreement, covenants, promises, provisions, obligations, and lien rights contained in this Agreement.



NOW, THEREFORE, IN CONSIDERATION OF the mutual agreements and acknowledgments, promises, obligations, terms, lien and provisions set forth herein, the District and 5R Steamboat hereby agree and acknowledge as follows:

1. **Retaining Wall Infrastructure, Fill Dirt Within Lot 11B and Adjacent Area.** The Retaining Wall is not constructed over the Sewer Main Line and Manholes. However, the Fill Dirt in the South Fill Area has been placed and installed over the Sewer Main Line and Manholes. If in the future the District elects or is required to excavate in the South Fill Area for the purpose of repairing, maintaining, improving, relocating, replacing, or reconstructing any of the Sewer Main Line and Manholes, the District will have to excavate deeper and wider than would be the case if the Fill Dirt did not exist, and any such deeper and wider excavation may de-stabilize and cause the Retaining Wall to lose stability and be in danger of damage or collapse. 5R Steamboat acknowledges that its rights and privileges for constructing and continuing the Retaining Wall and all fill dirt and installations within the North Fill Area and the Fill Dirt within the South Fill Area are subordinate and junior to the rights and privileges vested in the District for the District Sewer Main Line and Manholes, since such District Sewer Main Line and Manholes have been constructed and installed long prior to the construction of any improvements or structures or fill dirt on Lot 11B.
2. **Right of District to Repair, Maintain, Improve, Relocate, Replace, and Reconstruct District Sewer Main Line and Manholes.** 5R Steamboat acknowledges and agrees that the District has the absolute right and privilege to repair, maintain, improve, relocate, replace, and reconstruct the District Sewer Main and Manholes (the "District Primary Work"), even if in doing so, the District removes Fill Dirt in the South Fill Area and/or removes all or portions of the Retaining Wall and/or removes all or portions of the fill dirt in the North Fill Area and all landscaping and improvements within the North Fill Area (the "District Protective Work"). 5R Steamboat acknowledges and agrees that the District may, without any liability to 5R Steamboat or the owner(s) or tenants or occupiers of Lot 11B, perform in its sole discretion the District Primary Work and the District Protective Work if the District concludes in its sole discretion that the District Protective Work is reasonably necessary or appropriate for completion of the District Primary Work. 5R Steamboat grants to the District a perpetual license and easement, coupled with an interest, on, over, under and across all that part of Lot 11B outside of the Duplex constructed thereon, for equipment and personnel of the District or its contractors to access the District Sewer Main and Manholes and the North Fill Area and the South Fill Area in order to complete District Primary Work and/or District Protective Work.
3. **Performance by District of District Primary Work and District Protective Work.** If the District determines in its sole discretion that the District Protective Work must be accomplished in connection with performance of District Primary Work, the District shall not have any obligation or liability to the owner(s), tenants, or occupiers of Lot 11B to replace or reconstruct the Fill Dirt on the South Fill Area, the Retaining Wall, or the fill dirt on the North Fill Area, and may return the land surface area over the top of the District Sewer Main and Manholes and 10 feet on each side of such Sewer Main to the



land level in existence prior to the creation of Bear Claw Estates or the original sale of Lot 11B to 5R Steamboat. The Fill Dirt from the South Fill Area may all be removed from Lot 11B by the District and disposed of off-site in its sole discretion. If the District determines in its sole discretion that the District Protective Work must be accomplished in connection with performance of District Primary Work, the District shall not have any obligation or liability to the owner(s), tenants, or occupiers of Lot 11B to replace or reconstruct the Retaining Wall or the fill dirt in the North Fill Area or any landscaping or improvements within the North Fill Area, all of which may be removed from Lot 11B by the District and disposed of off-site in its sole discretion.

4. **Security of District Sewer Main Line and Manholes.** The Parties further acknowledge and agree that the District is not the fee simple owner of the land within the westerly public utilities easement area within said Lot 11B, and that 5R Steamboat shall be responsible to keep appropriate legal permission in the District for the existing Sewer Main Line and Manholes and all future Work of the District related thereto. 5R Steamboat shall not construct or repair or improve or reconstruct the Retaining Wall or the fill dirt within the North Fill Area or the Fill Dirt within the South Fill Area for any reason without the prior written approval and permission of the District and shall not install any structures or any landscaping other than ordinary grass thereon. If any such approval and permission of the District is granted, then 5R Steamboat shall use best practices and good faith not to disturb or adversely affect or damage the Sewer Main Line and Manholes, shall promptly at its cost repair and restore to District specifications any damage or injury to such Sewer Main Line and Manholes proximately caused by 5R Steamboat or its employees or contractors, and shall restore the maximum depth of ground cover over the Sewer Main Line and Manholes to the surface land level in existence prior to the creation of Bear Claw Estates or the original sale of Lot 11B to 5R Steamboat, including if necessary or appropriate in the sole discretion of the District the removal of the Retaining Wall and the fill dirt in the North Fill Area and the Fill Dirt in the South Fill Area in accordance with specifications prepared by consulting engineers of the District.
5. **All Costs and Expenses To Be Borne By 5R Steamboat and Successor Owners of Lot 11B.** Hereafter, all cost and expense incurred by the District to accomplish District Primary Work and District Protective Work shall be borne by 5R Steamboat and its successor owners of Lot 11B, jointly and severally, and shall not be the ultimate responsibility or cost of the District. If the District incurs any initial cost or expense in the performance of District Primary Work and/or District Protective Work, it shall deliver an invoice for such cost and expense to the fee simple owner(s) of such Lot 11B at the respective addresses of such owner(s) set forth in the records of the Routt County Assessor's office, and such owner(s) shall be jointly and severally liable to the District to reimburse such cost and expense within 30 days after delivery of such invoice. For all purposes of this Agreement, the "cost or expense" of the District shall mean and include (i) all costs for equipment, material, supplies, piping, manholes, machinery, vehicles, and employees of the District or its contractor, (ii) all surveying and engineering and legal costs incurred by the District related to such District Primary Work and District



Protective Work, (iii) all costs of obtaining governmental permits and approvals to perform such District Primary Work and District Protective Work, (iv) all costs for efforts of the District or its contractors to protect the Duplex building on Lot 11B and on all properties and structures adjacent to Lot 11B in connection with performance of the District Primary Work and District Protective Work, and (v) an hourly rate of \$80/hr for all time expended by the District Manager and senior District management employees related to preparing and planning for and performing District Primary Work and District Protective Work (such \$80/hr rate to be adjusted upwards annually by the Denver-Aurora-Lakewood "all items" CPI changes from and after 2023)(all such "cost and expense" described in this sentence being hereinafter referred to as the "District Work Costs").

6. **Acknowledgment by 5R Steamboat and Its Successors; Acknowledgment by District.** 5R Steamboat, for itself and its successors in ownership of Lot 11B, acknowledges and grants permanent permission to the District for the continued existence, installation, construction, improvement, maintenance, repair, relocation, and reconstruction of the District Sewer Main Line and Manholes on Lot 11B. Until the District determines in its sole discretion to perform District Primary Work and/or District Protective Work, the District acknowledges and grants terminable permission to 5R Steamboat and its successors in ownership of Lot 11B to keep in place and maintain in good condition and repair the Retaining Wall and fill dirt in the North Fill Area. 5R Steamboat and its successor in ownership of Lot 11B shall at all times keep the Retaining Wall and the fill dirt and landscaping in the North Fill Area in good and safe and stable condition, at the cost of the owners of said Lot 11B.
7. **Repair and Improvement of Manholes.** The Fill Dirt in the South Fill Area as installed has left the Two Manholes of the District in poor condition. 5R Steamboat shall at its sole cost and expense construct and install upgrades and improvements to the Manholes, in conformance with specifications to be provided by the District, to remedy the poor condition of the Two Manholes to the requirements of the District as determined in the sole discretion of the District. Such remedial work shall be accomplished by 5R Steamboat by no later than November 17<sup>th</sup>, 2023. If such remedial work is not accomplished to the satisfaction of the District by such date, then the District may accomplish such remedial work at the cost and expense of 5R Steamboat, in which case the District will invoice 5R Steamboat for such cost and expense and 5R Steamboat shall promptly reimburse the District for such cost and expense in the manner described in Section 5 above.
8. **No District Liability or Responsibility for Lot 11A Sewage Service Line.** The Parties mutually acknowledge that the District has no liability or responsibility for the present or future Lot 11A Sewage Service Line. 5R Steamboat agrees to cooperate with the present and future owners of Lot 11A of Bear Claw Estates to resolve any issues or problems with respect to the Lot 11A Sewage Service Line to the extent actually or potentially adversely affected by the Retaining Wall or the fill dirt on the North Fill Area or the Fill Dirt on the South Fill Area. Any such Lot 11A Sewage Service Line may tap onto and



connect into the Sewer Main Line and Manholes at a location approved by the District in its sole discretion, and any such tap or connection shall be made in accordance with District Rules and Regulations and specifications, without endangering or adversely affecting the Sewer Main Line and Manholes, and at the sole cost and expense of the owner or owners or either or both said Lot 11A and Lot 11B and not at the expense or cost of the District. 5R Steamboat or the owner of Lot 11A shall promptly reimburse the District for all of its cost and expense incurred in connection with any such tap or connection, which shall be deemed part of District Work Costs.

9. **Lien and Foreclosure.** Delinquent and unpaid District Work Costs which are the liability of the owner(s) of said Lot 11B as described above, and interest accrued and accruing thereon, and any attorneys' fees of the District collectible as herein provided, shall all constitute and be deemed a lien on and against the entirety of said Lot 11B until the same is paid. Such lien shall be deemed perfected when the District has advanced such District Work Costs and has recorded in the real property records of Routt County a lien statement, executed and acknowledged by the District Manager or Board Chairman, identifying the delinquent owner(s) of Lot 11B and his or her or their addresses as identified in the records of the Routt County Assessor's office, the description of said Lot 11B, and the amount of the past-due and unpaid District Work Costs, the then amount of accrued interest thereon and a statement that such interest shall continue to accrue as hereinafter provided, and the then amount of accrued attorney's fees of the District in relation to the District Primary Work and District Protective Work. Such lien shall be perpetual until fully paid and released of record by a release instrument executed by the District. Such lien may be foreclosed in the same manner as foreclosure of a mortgage in Colorado. Such lien shall have a priority date as of the date of recording of the statement of lien. In any action to foreclose such lien, the District shall record a lis pendens against Lot 11B and shall further be entitled to recover its reasonable attorneys' fees as part of any judgment and lien against the delinquent owner(s) of Lot 11B. The lien of the District shall be subordinate to any and all liens and encumbrances (including without limitation the lien of any mortgage or deed of trust) executed and recorded in the real property records of Routt County prior to the recording by the District of the statement of lien for such District Work Costs, and shall be senior to any interest, lien, or encumbrance of or against Lot 11B recorded subsequent to the date of recording of such District statement of lien. However, the sheriff's sale or public trustee sale of all of part of Lot 11B as a result of foreclosure of a mortgage or trust deed, which shall pursuant to the preceding sentence extinguish the lien of the District for its District Work Costs, shall not in any manner relieve any owner from such owner's personal liability for payment to the District of District Work Costs, interest thereon and attorneys' fees incurred during the period of ownership by such owner of such interest in Lot 11B.

10. **Miscellaneous.**

- (a) Notice to the District required or permitted hereunder shall be in writing and shall be deemed given if sent by ordinary mail, postage prepaid, or by email transmission, to the District Manager, Mount Werner Water and Sanitation District, P.O. Box 880339, Steamboat Springs,



Colorado 80488-0339, email address falfone@mwwater.com. Notice to 5R Steamboat required or permitted hereunder shall be in writing and shall be deemed given if sent by ordinary mail, postage prepaid, or email transmission, to 5R Steamboat, 5604 Banister Ct, Plano, TX 75093, email address as set forth in the opening paragraph of this Agreement. Either party may change its mailing or email address by notice given in the manner set forth in the preceding sentence. Notice to successor owner(s) of Lot 11B shall be in writing and shall be deemed given if sent by ordinary mail, postage prepaid, to the respective address(es) of such owner(s) as set forth on the records of the Routt County Assessor's office.

(b) No officer, official or agent of the District has the power to amend, modify or alter this Agreement or waive any of its conditions or to bind the District by making any promise or representation not contained herein.

(c) This Agreement shall not be assigned or transferred by the District or 5R Steamboat. This Agreement may be amended only by a written document approved by resolution of the Board of Directors of the District and by execution of such document by the District and all owner(s) of Lot 11B.

(d) No waiver by a party of any term or condition of this Agreement shall be effective unless in writing and signed by the party to be charged therewith, and no waiver by a party shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision enforceable by any party hereto.

(e) This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto concerning the subject matter hereof. This Agreement is binding upon the District and upon 5R Steamboat and upon all successor owner(s) of Lot 11B, and shall inure to the benefit of the District, and this Agreement "runs with the land" and encumbers Lot 11B in perpetuity.

(f) The properly authorized officers, agents, contractors and representatives of the District shall during business hours have access to Lot 11B outside of the physical Duplex structure thereon for the purpose of inspection, surveying and engineering services.

(g) 5R Steamboat shall promptly reimburse the District for all legal fees incurred by the District in negotiating, preparation, and finalizing this Agreement, such reimbursement to be made within 30 days of billing from the District for such fees.

(h) All District Work Costs invoiced from the District to 5R Steamboat or a successor owner of Lot 11B under this Agreement and not paid within 30 days after notice of such invoice is delivered by the District shall bear interest at the rate of 1 and ½ percent per month (1.5%/mo) until paid in full, and the obligation of 5R Steamboat and its successor owners and lien described hereinabove shall extend to and include all such accrued and accruing interest.

- (i) The Article headings are descriptive only and neither amplify nor limit the substantive material of this Agreement.
- (j) If any part of this Agreement is determined to be invalid by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect, and the District and owners of Lot 11B shall attempt to amend this Agreement to carry out the intent of the invalid provision as closely as possible and in accordance with applicable law.
- (k) If any legal action is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover its costs of litigation and discovery (including expert witness fees) and including its reasonable attorneys' fees.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized representative on the respective dates set forth below, and this Agreement shall be fully effective from and after the date of execution by the last party to sign.

5R STEAMBOAT, LLC, a Texas limited liability  
Company

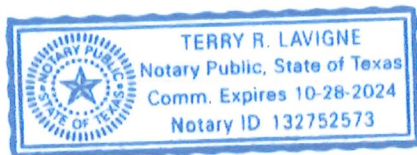
Date: 12/8/23

By: [Signature]  
General Manager

STATE OF TEXAS )  
 ) ss.  
County of DENTON )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of DEC. 2023, by STEVE RUMSEY, as General Manager, of 5R Steamboat, LLC, a Texas limited liability company.

WITNESS my hand and official seal  
My commission expires: 10/28/2024



[Signature]  
Notary Public



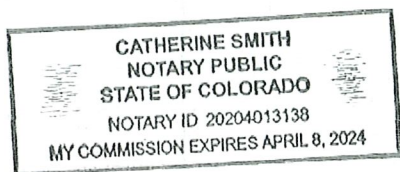
MOUNT WERNER WATER AND SANITATION  
DISTRICT


By:   
General Manager

STATE OF COLORADO                    )  
                                                  ) ss.  
County of Routt                        )

The foregoing instrument was acknowledged before me this 13 day of  
December 2023, by Frank Alfone, as General Manager of the Mount Werner Water and  
Sanitation District, a Colorado special district.

WITNESS my hand and official seal.  
My commission expires: 4/8/24



  
Notary Public

- NOTE:
1. SITE PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS TAKEN FROM THE CONTRACT PLANS PREPARED BY LANDMARK CONSULTANTS, INC. LAST DATED 10/12/2022.
  2. NORTH ARROW DIRECTION IS APPROXIMATE. REFER TO CONTRACT PLANS FOR ACTUAL HEADING.
  3. REFER TO CONTRACT PLANS FOR ALL HORIZONTAL ALIGNMENT AND ACTUAL SITE GEOMETRY.

LEGEND

TOP OF WALL

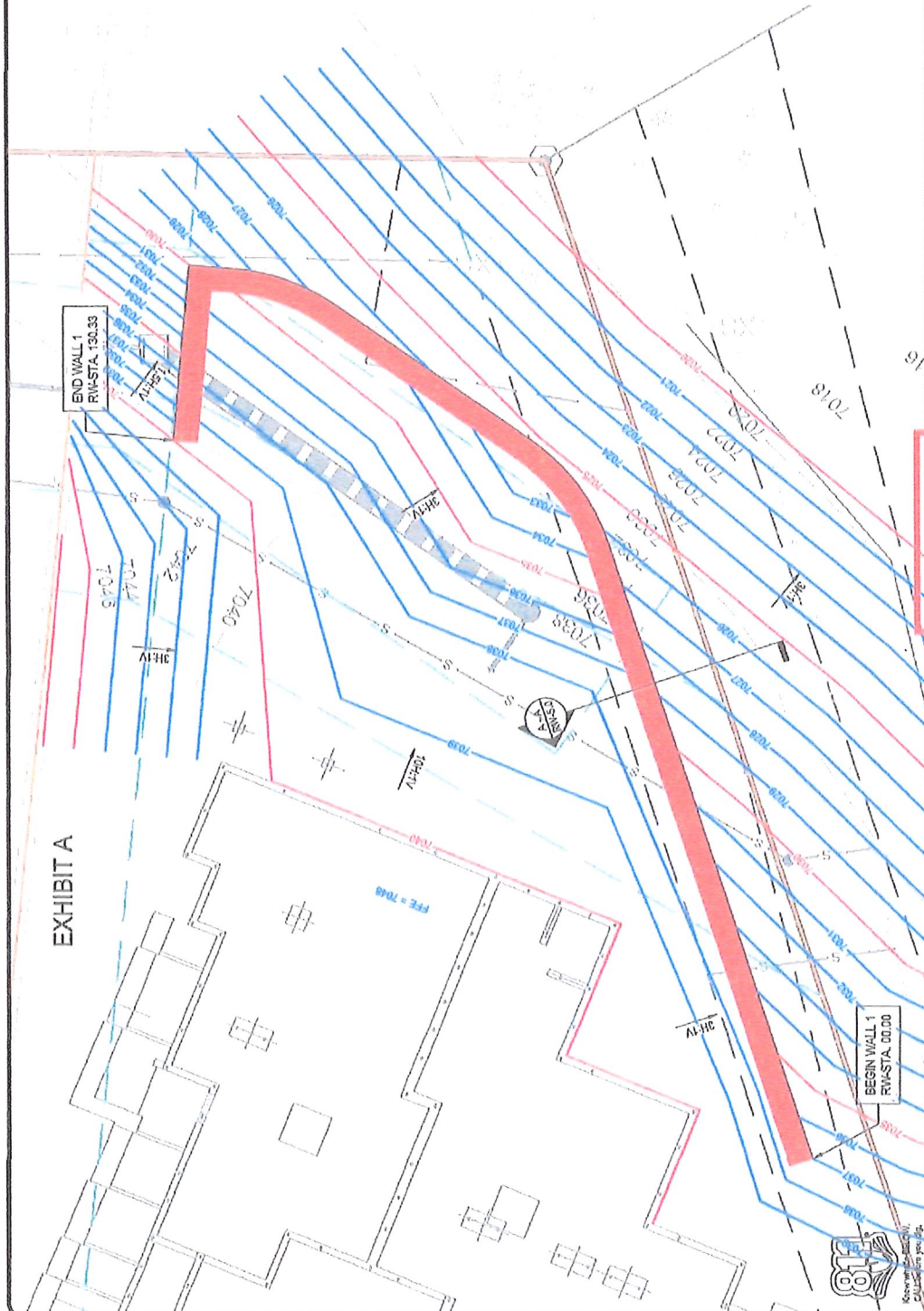


EXHIBIT A

END WALL 1  
RW-STA. 130.33

BEGIN WALL 1  
RW-STA. 00.00

THIS DRAWING IS BEING FURNISHED FOR THIS SPECIFIC PROJECT ONLY. ANY PARTY ACCEPTING THIS DOCUMENT DOES SO IN FULL KNOWLEDGE THAT IT SHALL NOT BE REPRODUCED IN WHOLE OR IN PART, NOR DISCLOSED TO OTHERS WITHOUT THE WRITTEN CONSENT OF GEOWALL DESIGNS.

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**Geowall DESIGNS**  
"BUILT FROM THE GROUND UP"  
MINNEAPOLIS, MN 55405  
TEL: 763.477.4749  
WWW.GEOWALLDESIGNS.COM

THE WALL LOCATION PLAN VIEW

PROJECT: RUNSEY DUPLEX - ADD WALL  
STEAMBOAT SPRINGS, CO

DATE: 07 NOV 2022  
SCALE: 1" = 10'

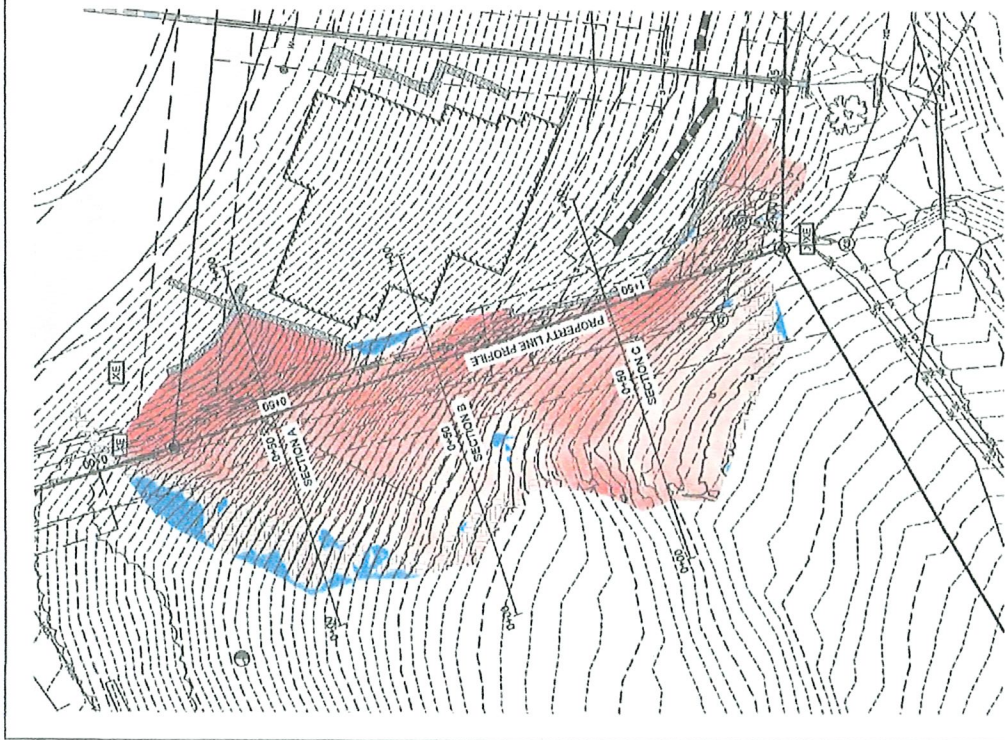
PROJECT NO: 22852.003  
SHEET NO: RWA-3.0



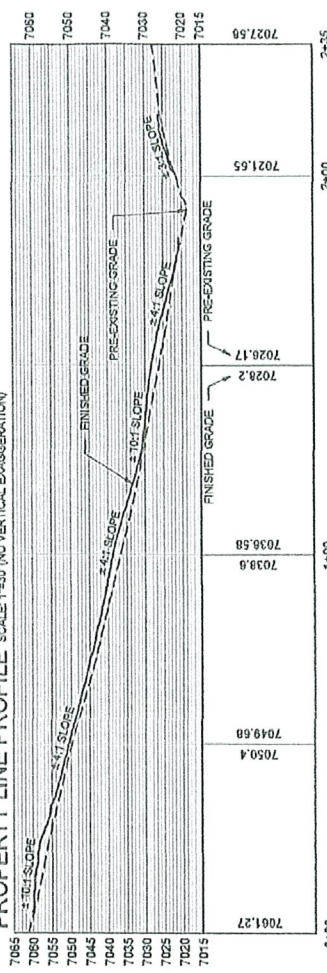
**REVIEWED FOR CODE COMPLIANCE**  
**07/03/2023**

No.	Rev.	Revised	Drawn	Check	By
7					
6					
5					
4					
3					
2					
1	07 NOV 2022	RELEASED FOR CONSTRUCTION			

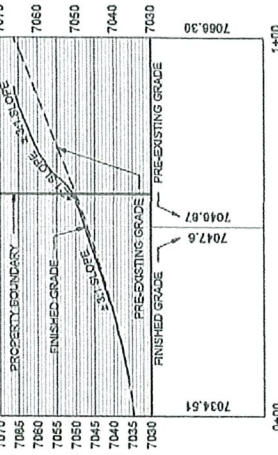




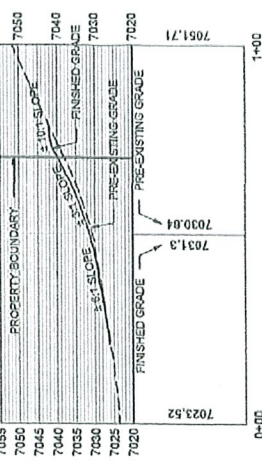
PROPERTY LINE PROFILE SCALE: 1"=30' (NO VERTICAL EXAGGERATION)



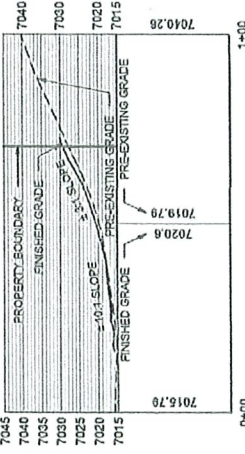
SECTION A SCALE: 1"=30' (NO VERTICAL EXAGGERATION)



SECTION B SCALE: 1"=30' (NO VERTICAL EXAGGERATION)



SECTION C SCALE: 1"=30' (NO VERTICAL EXAGGERATION)



1"=30'

NOTE: THIS EXHIBIT DOES NOT REPRESENT A  
GUARANTEED SURVEY. IT IS INTENDED ONLY TO  
SHOW THE ENCROACHMENT CONCEPT.

PROJECT:	2005-010	NO.	DATE:	BY:	DESCRIPTION:
DATE:	7/24/23				ENCROACHMENT
DRAWN BY:	BC				EXHIBIT
CHECKED BY:	AJS				11/29/23



CIVIL ENGINEERS | SURVEYORS  
141 9th Street - P.O. Box 774543  
Steamboat Springs, Colorado 80477  
(970) 871-3654 www.LANDMARK-CC.com

ENCROACHMENT EXHIBIT  
BEAS & WYLLIES  
2408 SKEET LANE  
CITY OF STEAMBOAT SPRINGS  
COUNTY OF ROUTT  
STATE OF COLORADO

SHEET  
1b  
OF 1 SHEET

