

ENCROACHMENT LICENSE AGREEMENT

This Encroachment License Agreement ("Agreement") is entered into this 2 day of December, 2022, by and between the **EAGLE RIVER WATER AND SANITATION DISTRICT**, a political subdivision of the State of Colorado ("Licensor") and **Mark William Young and Beth Ann Bovino** ("Licensee" and, together with Licensor, the "Parties").

WHEREAS, Licensor is the owner of a sewer easement recorded in the public records of the Eagle County, Colorado, Clerk and Recorder's Office, at Reception No. 899588, and described on **Exhibit A** attached hereto (collectively, the "Easement"); and

WHEREAS, Licensee is the fee owner of real property encumbered by the Easement (the "Property") which is located at **Lot 2A, a Re-subdivision of Lot 51 of the South Minturn Addition Subdivision (also known as: 996 Main St, Minturn, CO)**; and

WHEREAS, Licensee proposes to encroach upon Licensor's Easement for the benefit of Licensee's Property by locating a flagstone patio and step and a roof overhang, improvements thereon, the area, nature, and purpose of the encroachment ("Encroachment") being more fully described on **Exhibit B** attached hereto (the area of the Encroachment being referred to as the "Encroachment Area"); and

WHEREAS, Licensor generally prohibits encroachments into Licensor's easements, but recognizes extenuating circumstances occasionally make such an encroachment appropriate; and

WHEREAS, Licensor has, in this case, determined to consent to the Encroachment upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. **Consent to Encroachment**. Licensor hereby consents to the Encroachment as fully described on Exhibit B. Any and all rights granted to Licensee under this Agreement shall be exercised at Licensee's sole cost, risk, and expense, and shall be subject to the dominant and continuing right of Licensor to use any and all of the Encroachment Area for Licensor's purposes; and shall further be subject to all prior deeds, easements, dedications, conditions, franchises, covenants, restrictions, encroachments and claims of title of record that may affect the Encroachment Area. Nothing contained in this Agreement shall be deemed to grant, convey, create, or vest in Licensee any real property interest in the land; including, but not limited to, any fee, leasehold interest, easement, servitude, or irrevocable license.

2. Use of Encroachment Area. Licensee agrees that it will utilize the Encroachment Area solely for the Encroachment purposes described on Exhibit B, and for no other purpose.

3. No Interference. All costs associated with modification, removal or damage to Licensee's Encroachment by the Licenser related to Licenser's use of the Easement (and all incremental costs initially incurred by Licenser in attempting to avoid the modification, removal, or damage to Licensee's Encroachment) shall be solely the responsibility of Licensee. Licensee, in the performance and exercise of its rights under this Agreement, shall not damage or interfere in any way with the use, operation, maintenance, repair, or replacement of any facility that is owned, operated, and maintained by Licenser or its assignees within the Easement. Should Licensee's Encroachment cause Licenser's use of the Easement and related facilities to be more costly, or to be interfered with or damaged, Licensee shall, within thirty (30) days of billing, pay all costs and expenses associated with Licenser's more costly use or with Licenser's repair of any damage to Licenser's facilities or removal of any interference. Under any and all circumstances, all work that is necessary to repair any damage to or remove any interference with the Licenser's facilities shall be at Licensee's sole cost and expense. Licenser, in emergency situations, may, at Licensee's sole cost and expense, repair any and all damage to and remove any and all interference with the Licenser's facilities without prior notice to Licensee. In using its Easement, Licenser agrees to make a reasonable effort to avoid damage to Licensee's Encroachment, but Licenser shall not be liable for any damage to the Encroachment. In the event Licenser incurs additional costs as a result of any efforts to avoid damage to Licensee's Encroachment, Licensee shall within thirty (30) days of billing, pay all costs and expenses associated with such efforts.

4. Compliance with Laws. Licensee shall comply with all federal, state, and local laws in the exercise and performance of its rights and obligations under this Encroachment Agreement.

5. Encroachment Policy. This Encroachment Agreement is subject to the reasonable terms and conditions of any encroachment policy as it may now exist or may subsequently be amended by the Licenser at its sole discretion and without notice.

6. Indemnification and Waiver. To the extent authorized by law Licensee hereby agrees to indemnify, defend, protect, and hold harmless Licenser, its officers, and employees, from and against any and all claims, damages, losses, liabilities, fines, penalties, of whatsoever kind or nature, including, but not limited to reasonable attorneys' fees that are incurred by Licenser and that arise in connection with Licensee's activities that are undertaken, authorized or obligated pursuant to this Agreement. Such liability shall specifically, without limitation, extend to claims of third parties arising from the presence of the Licensee's Encroachment

7. Limitation on Licensors's Liability. Licensors shall have no liability to Licensee or third persons related to Licensee's Encroachment, including, but not limited to, damages to the Licensee's improvements resulting from Licensors's dominant use of the Encroachment Area or from the repair of Licensors facilities or the installation of any additional facilities in the future within the Easement.

8. Termination. Licensors may terminate this Agreement at any time, without notice, by recording in the Eagle County, Colorado, Clerk and Recorder's Office a notice of termination of Encroachment License Agreement if Licensors determines that the Licensee's improvements interfere with Licensors's current or prospective use of the Easement. Licensors shall endeavor, but not be obligated, to provide Licensee with thirty (30) days' notice of its intent to terminate the Agreement.

9. Successors and Assigns. The rights and obligations of this Agreement shall be appurtenant to and deemed to run with the Property, or until such earlier time as the Licensors terminates this Agreement or abandons the Easement. This Agreement shall be recorded against the Property in accordance with the laws of the State of Colorado.

10. Integrated Agreement. This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter hereof. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

11. Property Access. Independent of any other rights held by Licensors, Licensee grants Licensors the right to access the Easement for maintenance, repair, and replacement on and across the Property.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, duly authorized representatives of the Parties have executed this Agreement as of the date first set forth above.

LICENSOR

By: Linn Brooks
Linn Brooks, General Manager of Eagle
River Water and Sanitation District

LICENSEE

By: William Mark Young
Name: WILLIAM MARK YOUNG
Title: OWNER

ACKNOWLEDGEMENT

New York
STATE OF ~~COLORADO~~)
COUNTY OF New York) ss.

The foregoing instrument was acknowledged before me this 50 day of November, 2022, by William Mark Young as ~~_____~~ of LICENSEE.

Witness my hand and official seal.

My commission expires: 12-26-25

Constance Andonian
Notary Public

CONSTANCE ANDONIAN
Notary Public, State of New York
No. 01AN4960360
Qualified in Westchester County
Commission Expires December 26, 20 25

EXHIBIT A

(Description of Easement)

CLAIM OF EASEMENTS

WHEREAS, the Eagle River Water and Sanitation District ("District") operates and maintains underground sewer lines and appurtenances across and under certain real property situated in the County of Eagle, State of Colorado, including that area primarily located within the Town of Minturn and described in the Exhibits attached hereto, which consist of the following:

- Exhibit A. Legal description of the sewer main, ten (10) feet each side of which the District claims a sewer easement (the "Sewer Easements").
- Exhibit B. (B-1 and B-2) Two survey maps showing the location of the sewer main and the Sewer Easements which the District claims; with certain shaded areas showing previously recorded sewer easements.
- Exhibit C. List of Property Owners, which list is keyed by number to the Lots on Exhibit B.
- Exhibit D. (D-1 through D-41) Forty-one (41) specific lot-by-lot descriptions of the Sewer Easements being claimed; and

WHEREAS, the District has operated and maintained the sewer main facilities shown on Exhibits A, B and D openly for over thirty (30) years of uninterrupted adverse use, greatly exceeding the eighteen (18) year period under § 38-41-101(1), C.R.S., giving rise by statute to this claim of prescriptive easement rights; and

WHEREAS, in the alternative, the owners of the properties affected by the Sewer Easements, or the predecessors in title (collectively "Owners") knew of and acquiesced to the District's original construction of the sewer facilities within the Sewer Easements giving rise to the claim of easement by acquiescence; and

WHEREAS, the District believes the Owners have known of the continuing existence of the sewer main as a result of the District's regular open operation and maintenance of the sewer facilities in the Sewer Easements, and the existence of manholes locating the sewer mains, which findings thereby together establish by Colorado law, an easement by acquiescence, by prescription, or otherwise.

NOW THEREFORE, the District claims non-exclusive, perpetual Sewer Easements ten (10) feet each side of the sewer main described in Exhibit A, and generally drawn as shown on Exhibit B and Exhibits D-1 through D-41; based upon the law of Prescription and Acquiescence. The Sewer Easements burden each of the properties shown on Exhibits A, B and D-1 through D-41, and shall run with the land and shall constitute a continuing burden against the property interests encumbered by the Sewer Easements.

Pursuant to this claim of Sewer Easements, the District claims the right to construct, remove, replace, add to, maintain, repair, operate, change or alter underground sewer lines and appurtenances on and across the Sewer Easements, which are ten (10) feet on each side of the existing sewer main as described on the Exhibits attached hereto.

The address and facsimile number for purposes of notice to the District is as follows:

Eagle River Water and Sanitation District
846 Forest Road
Vail, Colorado 81657
Fax: (970) 476-4089

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899588
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Teak J Simonton Eagle, CO
173



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Teak J Simonton Eagle, CO 173 R 561.00 D 0.00

Approved this 23rd day of Sept., 2004 by the Board of Directors of the Eagle River Water and Sanitation District.

By: Frederick Sackbauer
Frederick S. Sackbauer, President
P.

ATTEST:

Patrick Dauphinais
Patrick Dauphinais, Secretary

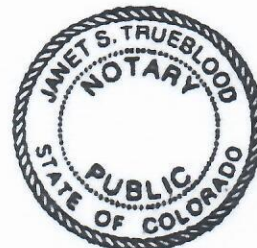
STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The above Easement Claim was subscribed and sworn to before me this 23rd day of September, 2004.

Witness my hand and official seal.

My commission expires: May 16, 2006

Janet S. Trueblood
Notary Public



MY COMMISSION
EXPIRES MAY 16, 2006

EXHIBIT A

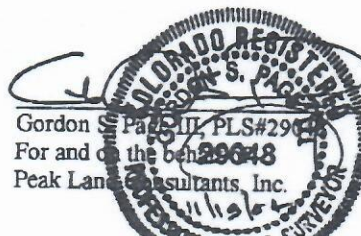
Legal Description

A 20.0 foot wide sanitary sewer easement lying 10.0' on both sides of the following described centerline of an existing sanitary sewer line which the side lines are shortened or lengthened at the intersection with the following recorded properties located in the Southwest Quarter of Section 26, Township 5 South, Range 81 West of the 6th Principal Meridian, Block C, Booco's Addition to Minturn, as recorded February 14, 1891 in Book 248 at Page 15, 210 Eagle Street as recorded February 2001 at Reception No. 749569, Lot 2, 292 Main Street Minor Subdivision as recorded December 6, 1996 at Reception No. 609199, Lot 10-12, Block G, Booco's Addition to Minturn as recorded June 19, 1996 at Reception No. 593842, a Parcel of land recorded July 1, 1998 at Reception No. 661584, a Parcel of land recorded July 1, 1998 at Reception No. 661584, a Parcel of land recorded May 2, 1979 at Reception No. 181292 in the Offices of the Eagle County Clerk and Records Office; Town of Minturn, County of Eagle, State of Colorado, being more particularly described as follows:

Commencing at the Southeast corner of Lot 11 Block 2, per the Plat of Booco's 2nd Addition to Minturn as recorded October 10, 1901 in Plat Book 23 in the Offices of the Eagle County Clerk and Records Office, whence the Southeast corner of Lot 2 Block 2 of said Booco's 2nd Addition to Minturn bears N 45°20'00" W a distance of 465.00 feet forming the basis of bearing for this description; thence S 68°20'38" E a distance of 352.97 feet to a point on the Easterly boundary line of Lot 6, Block 3, said Booco's 2nd Addition to the town of Minturn, also being the True Point of Beginning for this description; thence along an existing sanitary sewer line the following sixteen (16) courses:

- 1) N 48°30'54" W a Distance of 57.95 feet to an existing sanitary manhole thence;
- 2) N 37°06'54" W a Distance of 186.25 feet to an existing sanitary manhole thence;
- 3) N 37°27'10" W a Distance of 49.93 feet to an existing sanitary manhole thence;
- 4) N 17°29'29" W a Distance of 37.89 feet to an existing sanitary manhole thence;
- 5) N 40°03'20" W a Distance of 102.27 feet to an existing sanitary manhole thence;
- 6) N 41°50'49" W a Distance of 313.74 feet to an existing sanitary manhole thence;
- 7) N 44°58'46" W a Distance of 122.03 feet to an existing sanitary manhole thence;
- 8) N 19°20'51" W a Distance of 29.32 feet to an existing sanitary manhole thence;
- 9) N 39°14'08" W a Distance of 152.83 feet to an existing sanitary manhole thence;
- 10) N 38°16'23" W a Distance of 279.72 feet to an existing sanitary manhole thence;
- 11) N 30°01'59" W a Distance of 234.95 feet to an existing sanitary manhole thence;
- 12) N 29°58'12" W a Distance of 189.72 feet to an existing sanitary manhole thence;
- 13) N 25°19'11" W a Distance of 221.11 feet to an existing sanitary manhole thence;
- 14) N 26°01'42" W a Distance of 168.71 feet to an existing sanitary manhole thence;
- 15) N 47°27'35" W a Distance of 106.08 feet to an existing sanitary manhole thence;
- 16) S 88°44'20" W a Distance of 102.90 feet to an existing sanitary manhole, said manhole being the point of Terminus for this description.

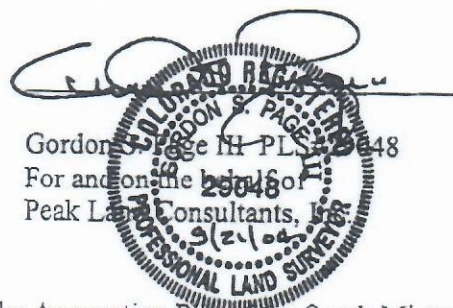
Excepting those portions lying within said Block C, Booco's Addition to Minturn, as recorded February 14, 1891 in Book 248 at Page 15, 210 Eagle Street as recorded February 2001 in Reception No. 749569, Lot 2, 292 Main Street Minor Subdivision as recorded December 6, 1996 in Reception No. 609199, Lot 10-12, Block G Booco's Addition to Minturn as recorded June 19, 1996 in Reception No. 593842, a Parcel of land recorded July 1, 1998 in Reception No. 661584, a Parcel of land recorded July 1, 1998 in Reception No. 661584, a Parcel of land recorded May 2, 1979 in Reception No. 181292, Public Rights-of-Ways and U.S. Highway No. 24.



Legal Description Lot 51

A 20.00 foot wide Sanitary Sewer Easement lying 10.00 feet Northerly and Southerly of the following described centerline of an Existing Sanitary Sewer line, located in the Lot 51, Per the Annexation Plat of the South Minturn Addition to the Town of Minturn, Colorado, as recorded March 1, 1978, in Book 267, Page 397, also being part of the Northeast Quarter of Section 35, Township 5 South, Range 81 West of the 6th Principal Meridian, Town of Minturn, County of Eagle, State of Colorado, the sides of said Easement lengthens and shortens at its Boundaries, said centerline being more particularly described as follows:

Commencing at the Southwesterly corner of Lot 51, per the Annexation Plat of the South Minturn Addition to the Town of Minturn; Whence the Northwesterly corner of Lot 51 bears N 38° 31' 53" E a distance of 209.92 feet, said line being the Basis of Bearing for this description; Thence N 38° 31' 53" E a distance of 164.0 feet more or less to a point on the centerline of an existing sanitary sewer main, said point also being the True Point of Beginning; Thence along the centerline of said existing sanitary sewer main S 85° 51' 27" E a distance of 49.54 feet; Thence S 61° 37' 05" E a distance of 94.58 feet to the Point of Terminus said Parcel containing 0.017 Acres more or less.



NOTE: Peak Land Surveying has relied upon the Annexation Plat of the South Minturn Addition for the properties as described hereon. The recorded deeds for the each parcel contains errors and insufficient dimensions to accurately place said deed for the descriptions and exhibits attached. A Land Survey is required to accurately place said deeds.





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EXISTING SANITARY
SEWER MAIN

SANITARY SEWER
MANHOLE #0400

T.P.O.B.
10.0'

S65°42'19"E - 138.44'

S85°51'27"E
49.54'

SANITARY SEWER
MANHOLE #0380

10.0'

10.0'

S61°37'05"E - 94.58'

SAN.

SAN.

LOT 50
(SOUTH ADDITION TO MINTURN)
(BASIS OF BEARING)
N38°31'53"E - 209.92'
(164.0')

LOT 51
(SOUTH ADDITION TO MINTURN)

S38°52'09"W - 231.91'

LOT 52
(SOUTH ADDITION TO MINTURN)

P.O.C.

R=2825.0'
DELTA=2°42'19"
L=133.78'
CH=133.37'
CB=S56°39'08"E

U.S. HIGHWAY NO. 24
(80' R.O.W.)

SCALE: 1" = 40'

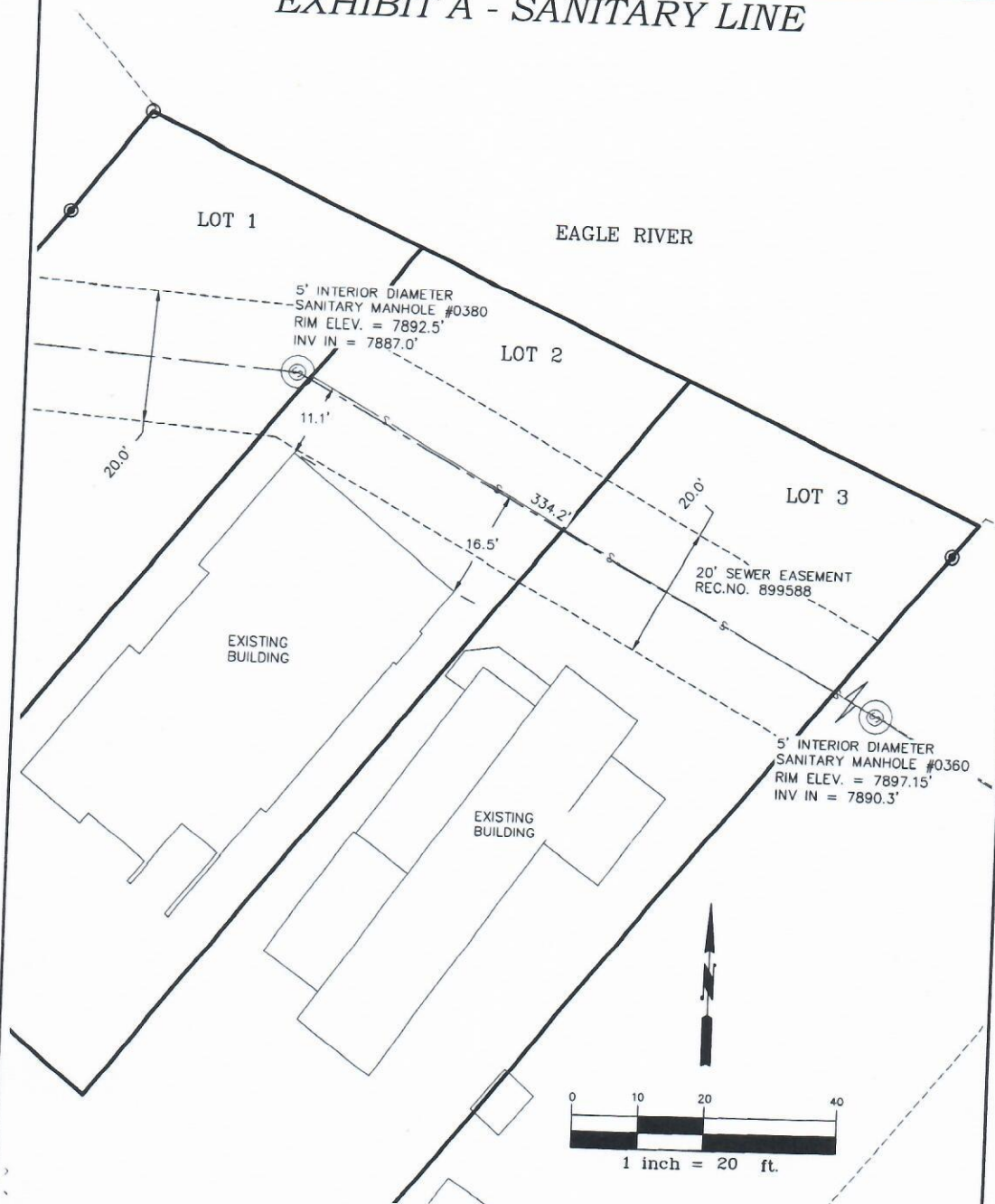
EXHIBIT - SANITARY SEWER EASEMENT
LOT 51 - SOUTH ADDITION TO MINTURN
TOWN OF MINTURN, COUNTY OF EAGLE, COLORADO



EXHIBIT B

(Description of Encroachment)

EXHIBIT A - SANITARY LINE



NOTE: SANITARY MAIN LINE LOCATION IS BASED ON ACTUAL
FIELD LOCATION AND MEASUREMENTS PERFORMED ON 10-19-22.



EXHIBIT A - SANITARY LINE
Lot 1-3, South Minturn Addition, A Resubdivision
of Lot 51 South Minturn Addition
Town of Minturn, County of Garfield, State of Colorado

DRAWN BY: RPK

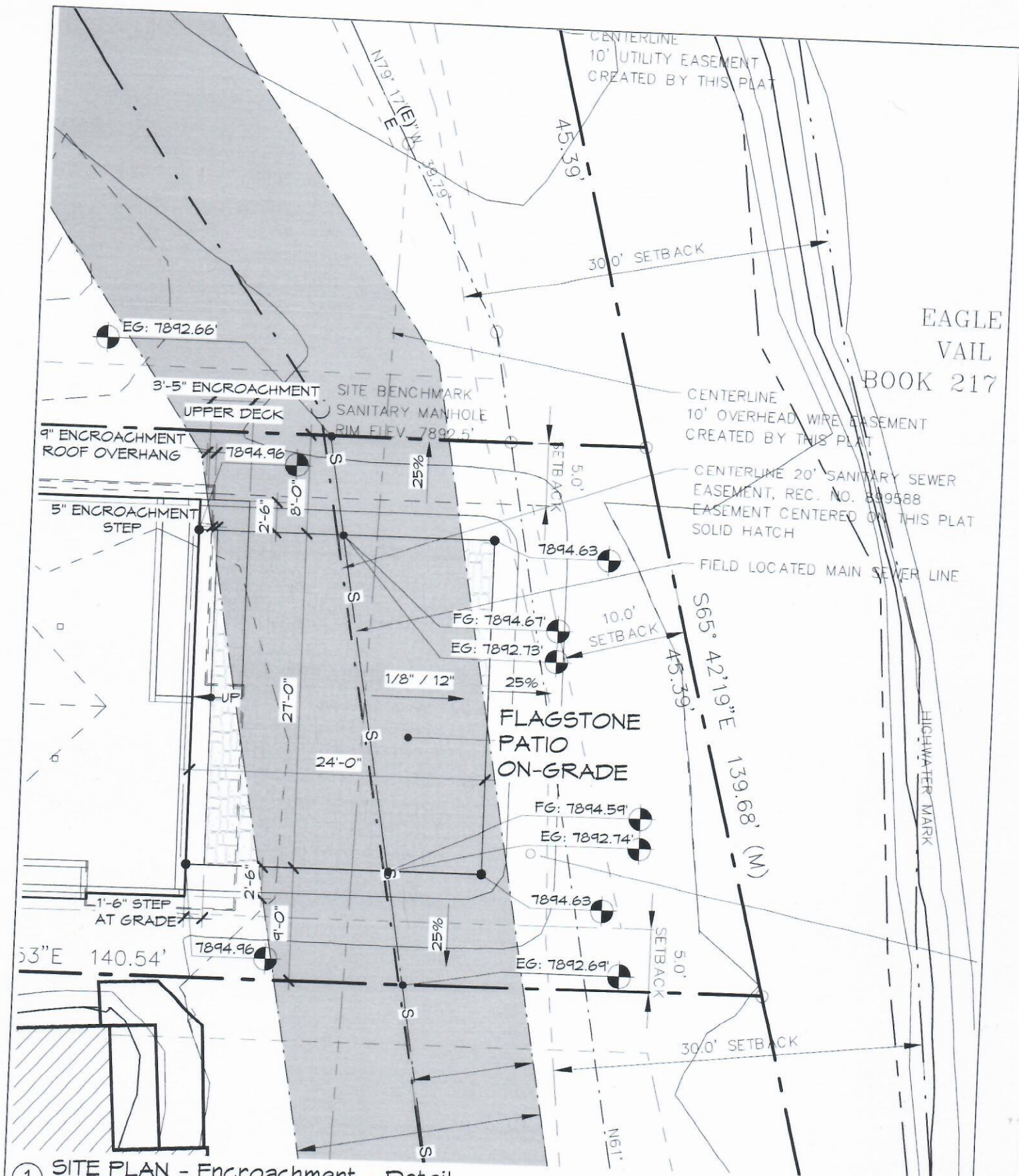
DATE: 10-20-22

SHEET 1 OF 1

DWG NAME:
201129-SMA San Line

KIPP LAND SURVEYING

RANDY KIPP P.L.S.
P.O. Box 3154
Eagle, CO 81631
(970) 390-9540
email: randy@kipplandsurveying.com
web: kipplandsurveying.com



① SITE PLAN - Encroachment - Detail
1" = 10'-0"

A2

Bovino-Young Residence

Parcel number: 2103-351-02-060
South Minturn Addition, Lot 2 A Resub of Lot 51
996 Main Street
Minturn, CO 81645

mpp design shop, inc.

PO Box 288
Gypsum, CO 81637
(970) 390-4931
michael@mppdesignshop.com

Project #: 2010
Date: 11/07/22
Drawn by: mpp