

# Ditch Crossing Agreement

## DITCH CROSSING AGREEMENT[1]

This Ditch Crossing Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between Fountain Mutual Irrigation Company, a Colorado mutual ditch company whose address is P.O. Box 75292, Colorado Springs, CO 80970-5292 (“FMIC”), and Goodwin Knight, LLC, whose address is 8605 Explorer Dr., Suite 250, Colorado Springs, CO 80920 (“Grantee”).

### RECITALS

A. FMIC is a mutual ditch company operating within El Paso County, Colorado, and holding surface water rights and water storage rights for the benefit of its shareholders.

B. The FMIC uses a ditch for the transportation and delivery of its water rights (“FMIC Ditch”) which runs through the property (Exhibit A & B) owned by Fountain Mutual Irrigation Company. An historical ditch easement recorded as Book 5506, Page 1290) exists for the benefit of FMIC for the operation, maintenance, and repair of the FMIC Ditch within and through the Property (“FMIC Ditch Easement”).

C. Grantee is constructing a private street and sidewalks, including a private extension of Landover Lane, to be built to a required El Paso County Street standard that will cross over the FMIC Ditch Easement, for the purposes of vehicular and pedestrian access and utility line crossings to the adjacent proposed multi-family residential development (Cottages at Mesa Ridge). (See Exhibit A).

In addition, a portion of the FMIC property will be utilized for the purposes of providing a private secondary fire emergency access (to be built to the required Widefield Fire District standard) and storm line crossings to the adjacent proposed multi-family residential development (Cottages at Mesa Ridge). (See Exhibit B).

D. FMIC is willing to allow Grantee to cross the FMIC Ditch Easement, and Grantee is desirous of crossing the FMIC Ditch Easement for purposes of access and utility services for the Cottages at Mesa Ridge Multi-Family Residential Development, all in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Ditch Crossing. FMIC hereby grants to Grantee a permanent license for the construction, operation, maintenance and repair of the Cottages at Mesa Ridge Multi-Family Residential Development crossing over the FMIC Ditch Easement for a width of \_\_\_\_\_ feet across said ditch at the location as generally shown on the Exhibit A map (“Ditch Crossing”). The plans and specifications for the initial construction and placement of the Ditch Crossing, and any repair of the FMIC Ditch Easement, are attached hereto as Exhibit A and are incorporated herein by reference.

2. Construction. Grantee, at its expense, shall construct the Ditch Crossing and restore the FMIC Ditch to its previously existing condition or the condition set forth in Exhibit A as applicable. The Cottages at Mesa Ridge Multi-Family Residential Development utility crossings shall be installed by Goodwin Knight, LLC and buried to a sufficient depth below the ditch pipe so as to not interfere with the operation, maintenance and repair of the ditch as it presently exists or as it may reasonably exist in the future through an open ditch or a buried pipeline. All construction shall be coordinated with FMIC to be accomplished at a time within \_\_\_\_\_ days of the execution of this Agreement at a time when the FMIC Ditch is not being used by FMIC or when such construction shall not materially interfere with the operation of the FMIC Ditch. The construction of the Cottages at Mesa Ridge Multi-Family Residential Development shall not be considered complete until accepted by FMIC, in writing, as being in compliance with the terms of this Agreement, which approval shall not be unreasonably withheld.

3. Warranty. Grantee warrants the proper design and construction of the Cottages at Mesa Ridge Multi-Family Residential Development Crossing in accordance with the approved plans and specifications of Exhibit A for a period of two years after acceptance of the completed Cottages at Mesa Ridge Multi-Family Residential Development by FMIC. Said warranty shall include latent defects. During the warranty period Grantee at its expense shall promptly cure any nonconforming design, work and/or any failure in materials or workmanship in the Project that are not caused by any negligent or intentional wrongful act or omission of FMIC in its operation and maintenance of the ditch improvements.

4. Protection of Ditch. During construction of the Ditch Crossing, Grantee shall take all necessary measures to protect the ditch and to prevent unreasonable

interruption in the use of the ditch by FMIC. Any disturbance or damage to the FMIC Ditch shall be immediately repaired by Grantee to the reasonable standards of FMIC. Grantee shall not place any trash, debris or obstructions in the FMIC Ditch.

5. Operation, Maintenance and Repair. Grantee shall repair and maintain the Project so that the integrity and use of the FMIC Ditch is not impaired any longer or more than necessary to complete the construction.

6. Nature of Work. All work to be performed under the terms of this Agreement shall be performed using quality materials and shall be performed in a workmanlike manner in compliance with industry standards and all applicable rules, regulations and requirements. The ability to use the FMIC Ditch Easement for the transport of water as desired by FMIC shall be preserved and not impaired in any manner by such work, except as coordinated through FMIC. Any repair, maintenance, or initial construction requirements of this Agreement and the reconstruction of the FMIC Ditch shall be at least equivalent to the Exhibit C specifications.

7. Deposit. To assure the proper performance of all construction, maintenance, and repair to the existing the Transmission Line (FMIC's buried pipe) underneath or to cross the FMIC Ditch Easement, and to further assure any required restoration of the FMIC Ditch Easement, Grantee shall prior to the performance of any construction, maintenance, or repair under this Agreement, place a deposit or bond with FMIC in the amount of \_\_\_\_\_ to properly restore the FMIC Ditch Easement and to perform Grantee's obligations hereunder should it fail to do so. Said deposit shall be returned by FMIC to Grantee, less any amount properly retained for repairs to the FMIC Ditch Easement, upon completion of improvements and acceptance by FMIC.

8. Crossing Fee. Upon application to FMIC for a ditch crossing or alteration of the FMIC Ditch, the Applicant shall pay a non-refundable crossing fee to FMIC of \$2,500.00, which shall be in addition to all other amounts due hereunder.

9. Existence of Ditch Easement. Grantee acknowledges the existence and validity of the FMIC Ditch Easement. Grantee shall not challenge, directly or indirectly, the existence and/or validity of the FMIC Ditch Easement or FMIC's right to use, access, and maintain such easement and distribute its water rights through said ditch. FMIC willingly grants the use and rights conveyed in this Agreement to Grantee with the understanding that Grantee's work and use will occur within the FMIC Ditch Easement. FMIC, in its discretion, may retain the FMIC Ditch in an open ditch or encase said ditch within a buried pipeline.

10. Ditch Seepage. The FMIC Ditch has been in continuous operation since inception of its water rights for the purpose of conveying water for the irrigation of lands authorized by its decrees. The parties acknowledge that as a natural phenomenon all ditches must of necessity seep water along its route, as the FMIC Ditch has done, due to the character of the land through which the ditch passes and simply as a necessary result of the historical operations of the ditch. FMIC shall not be liable to Grantee or any owner(s) of the Property as a result of ditch seepage from the FMIC ditch as long as FMIC continues to properly maintain and operate the FMIC Ditch in accordance with the requirements of Colorado law as applied in light of historical operations of the ditch. FMIC shall have no obligation to line or encase the FMIC Ditch to prevent seepage.

11. Reimbursement of Attorney's Fees and Engineering Fees. Grantee shall reimburse FMIC its reasonable attorney's fees and engineering fees incurred by FMIC in entering into this Agreement which shall be \$1,500.00 (Review Fee) to be paid upon application to FMIC to commence review of the proposed work by Grantee. The Review Fee shall be applied by FMIC directly to FMIC attorney and engineering review fees. If additional attorney's fees and engineering fees in excess of the Review Fee are incurred in the review and acceptance of the Cottages at Mesa Ridge Multi-Family Residential Development, Grantee shall pay such reasonable excess fees upon receipt of invoice from FMIC. Said invoices shall be paid by Grantee before FMIC is obligated to give final written acceptance of the ditch crossing construction.

12. Indemnity. Grantee shall hold harmless and indemnify FMIC for any and all claims, damages, causes of action and expenses, including reasonable attorney fees and costs, that are asserted against or incurred by FMIC as a result of any claim by a third party from the use, operation or existence of the Ditch Crossing or the Project.

13. Remedies. In the event of a breach of this Agreement by a party, which is not cured within 30 days after written notice, such party shall be in default of this Agreement and the non-defaulting party shall have such remedies as are available under Colorado law. The parties agree that the remedies of specific performance and injunctive relief shall be available. In the event of a breach which cannot be reasonably cured within said 30 days, the nonperforming party shall have such additional time to cure the breach as reasonably necessary, up to a maximum of 90 days, provided such party at all times diligently pursues curing its breach. Provided, however, FMIC shall not have to await the expiration of any cure period before seeking injunctive relief if the alleged breach results in the interruption of water deliveries by the ditch.

14. Attorney's Fees. In the event of any dispute between the parties concerning this Agreement or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing party shall be entitled to recover from the other party, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional such costs and expenses incurred in enforcing and collecting any judgment rendered in such action.

15. Cooperation. The parties agree to cooperate with each other in good faith in the performance of their other obligations and requirements under this Agreement and to fulfill the intent and purposes of this Agreement.

16. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understandings between the parties are incorporated and merged herein. This Agreement may be modified or altered only by the parties' written agreement.

17. Authority. All parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement.

18. No Third Party Beneficiary. This Agreement shall be for the sole benefit of the parties hereto, and no other party is entitled to have any rights or benefits by reason of this Agreement as a third party beneficiary or otherwise.

19. Assignment. This Agreement may be assigned by Grantee to the other owner of the Project. Any other assignment by Grantee shall be only with the consent of FMIC, which consent shall not be unreasonably withheld. If Grantee shall sell the property benefitted by the ditch crossing FMIC automatically agrees to consent to the assignment to any subsequent owner. Upon any assignment, and in order for the assignment to be effective, the assignee shall accept and assume the provisions and obligations of this Agreement.

20. Recording. This Agreement shall be recorded with the El Paso County Clerk and Recorders Office.

21. Binding Effect. The covenants, agreements, and obligations contained herein shall extend to, bind, and inure to the benefit of the parties hereto, as well as

their respective personal representatives, heirs, successors, and assigns.

**THIS AGREEMENT** is executed the date and year set forth above.

FOUNTAIN MUTUAL IRRIGATION \_\_\_\_\_ GRANTEE

COMPANY, a Colorado mutual ditch company

By: \_\_\_\_\_ Date  
J. Mark Watson, President

\_\_\_\_\_  
(Title)

STATE OF COLORADO )

) ss.

COUNTY OF EL PASO )

Subscribed and sworn to before me this \_\_\_ day of , 20\_\_\_, by Michael R. Thibault, as President of Fountain Mutual Irrigation Company, a Colorado mutual ditch company.

Witness my hand and seal.

\_\_\_\_\_  
(SEAL)

Notary Public

My commission expires: \_\_\_\_\_  
Date

STATE OF COLORADO )

) ss.

COUNTY OF EL PASO )

Subscribed and sworn to before me this \_\_\_ day of , 20\_\_ by

\_\_\_\_\_, as \_\_\_\_\_ of

\_\_\_\_\_ (Grantee).

Witness my hand and seal.

\_\_\_\_\_  
(SEAL)

Notary Public

My commission expires: \_\_\_\_\_  
Date

# EXHIBIT A

A parcel of land lying within the Northeast Quarter of the Northeast Quarter of Section 29, Township 15 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, described as follows:

Bearings are based upon the North line of the Northeast Quarter of said Section 29, monumented at the East end with a #6 rebar and 3.25" aluminum cap stamped "PLS 38141" and at the West end with a #6 rebar and 3.25" aluminum cap stamped "4842" and is assumed to bear S 89°57'13" W, a field measured distance of 2537.16 feet.

COMMENCING at the Northeast corner of said Section 29;  
thence S 43°58'24" W, a distance of 927.33 feet to a point on the East line of the Fountain Mutual Irrigation Company parcel recorded under Book 5506, Page 1290 of the records of said El Paso County and the POINT OF BEGINNING;

thence the following three (3) courses along the East line of said Fountain Mutual Irrigation Company parcel:

- 1) S 01°44'04" E, a distance of 64.22 feet;
- 2) 6.49 feet along the arc of a 8.00 foot radius tangent curve to the left, having a central angle of 46°29'23" and a chord that bears S 24°58'45" E, 6.31 feet;
- 3) S 48°13'27" E, a distance of 14.49 feet;

thence S 88°15'56" W, a distance of 91.58 feet to a point on the West line of said Irrigation Parcel;

thence along the West line of said Irrigation Parcel 15.87 feet along the arc of a 88.00 foot radius non-tangent curve to the right, having a central angle of 10°19'49" and a chord that bears N 06°53'58" W, 15.84 feet;

thence continuing along the West line of said Irrigation Parcel N 01°44'04" W, a distance of 2.24 feet to the most Easterly corner of Lot 1, Mesa Ridge Subdivision Filing No. 8 recorded under Reception No. 211713153;

thence continuing along the West line of said Irrigation Parcel and the East line of said subdivision N 01°44'04" W, a distance of 61.98 feet;

thence N 88°15'56" E, a distance of 80.00 feet to the POINT OF BEGINNING.

Containing a calculated area of 6,474 square feet (0.149 acres) of land, more or less.



Kirk P. Bode  
State of Colorado Professional Land Surveyor No. 38254  
For and on behalf of Barron Land, LLC

**BARRON**  **LAND**

BOUNDARY Δ MAPPING Δ SURVEYING Δ CONSTRUCTION

2790 N. Academy Blvd. Suite 311 P: 719.360.6827  
Colorado Springs, CO 80917 F: 719.466.6527

[www.BARRONLAND.com](http://www.BARRONLAND.com)

DATE: 08/05/2022

REV. DATE:

PROJECT No.: 20-035

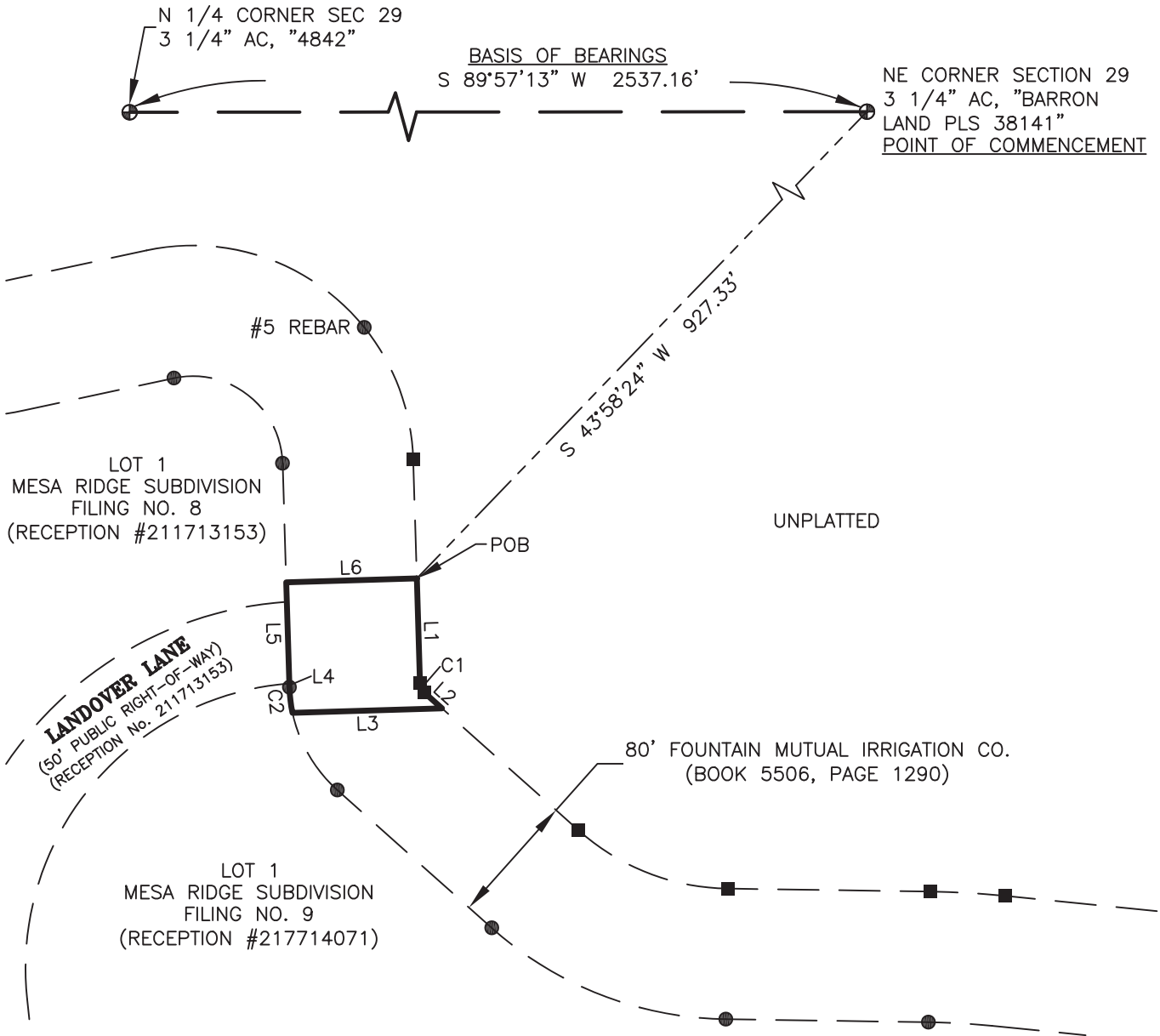
SHEET 1 OF 2



# EXHIBIT A

LINE	BEARING	DISTANCE
L1	S 01°44'04" E	64.22'
L2	S 48°13'27" E	14.49'
L3	S 88°15'56" W	91.58'
L4	N 01°44'04" W	2.24'
L5	N 01°44'04" W	61.98'
L6	N 88°15'56" E	80.00'

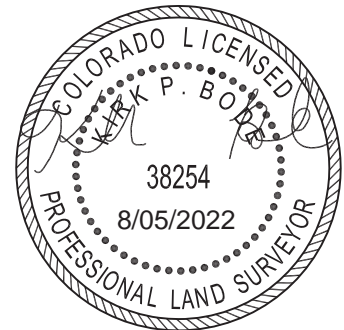
CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C1	8.00'	6.49'	S 24°58'45" E	6.31'	46°29'23"
C2	88.00'	15.87'	N 06°53'58" W	15.84'	10°19'49"



### LEGEND



- FOUND PUBLIC LAND SURVEY SYSTEM MONUMENT AS NOTED
- POB POINT OF BEGINNING
- FOUND #5 REBAR W/ORANGE PLASTIC CAP "PLS 38141"
- FOUND #4 REBAR W/RED PLASTIC CAP "ROCKWELL 19586" UNLESS OTHERWISE NOTED



1" = 100'



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# EXHIBIT B

A parcel of land lying within the Northeast Quarter of the Northeast Quarter of Section 29, Township 15 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, described as follows:

Bearings are based upon the North line of the Northeast Quarter of said Section 29, monumented at the East end with a #6 rebar and 3.25" aluminum cap stamped "PLS 38141" and at the West end with a #6 rebar and 3.25" aluminum cap stamped "4842" and is assumed to bear S 89°57'13" W, a field measured distance of 2537.16 feet.

COMMENCING at the Northeast corner of said Section 29;  
thence S 40°04'34" W, a distance of 976.14 feet to a point on the North line of the Fountain Mutual Irrigation Company parcel recorded under Book 5506, Page 1290 of the records of said El Paso County and the POINT OF BEGINNING;

thence the following five (5) courses along the North line of said Irrigation parcel:

- 1) S 48°13'27" E, a distance of 112.27 feet;
- 2) 100.02 feet along the arc of a 140.00 foot radius curve to the left, having a central angle of 40°56'07" and a chord that bears S 68°41'30" E, 97.91 feet;
- 3) S 89°09'33" E, a distance of 124.09 feet;
- 4) 46.11 feet along the arc of a 540.00 foot radius curve to the right, having a central angle of 04°53'33" and a chord that bears S 86°42'46" E, 46.10 feet;
- 5) S 84°16'00" E, a distance of 198.99 feet to a point on the West line of Mesa Ridge Parkway recorded under Book 6788, Page 538;

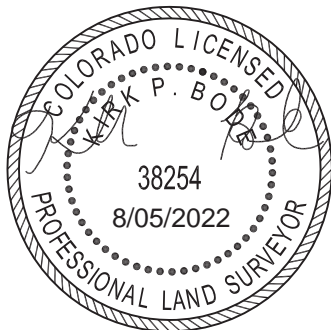
thence along the West line of said Mesa Ridge Parkway 96.64 feet along the arc of a 1096.98 foot radius non-tangent curve to the right, having a central angle of 05°02'51" and a chord that bears S 39°49'57" W, 96.61 feet to the South line of said Fountain Mutual Irrigation Company parcel;

thence the following six (6) courses along the South line of said Fountain Mutual Irrigation Company parcel:

- 1) N 84°16'00" W, a distance of 144.83 feet;
- 2) 39.28 feet along the arc of a 460.00 foot radius curve to the left, having a central angle of 04°53'33" and a chord that bears N 86°42'46" W, 39.27 feet;
- 3) N 89°09'33" W, a distance of 124.09 feet;
- 4) 157.18 feet along the arc of a 220.00 foot radius curve to the right, having a central angle of 40°56'07" and a chord that bears N 68°41'30" W, 153.86 feet;
- 5) N 48°13'27" W, a distance of 126.77 feet;
- 6) 55.53 feet along the arc of a 88.00 foot radius curve to the right, having a central angle of 36°09'27" and a chord that bears N 30°08'36" W, 54.62 feet;

thence N 88°15'56" E, a distance of 91.58 feet to the POINT OF BEGINNING.

Containing a calculated area of 49,373 square feet (1.133 acres) of land, more or less.



Kirk P. Bode  
State of Colorado Professional Land Surveyor No. 38254  
For and on behalf of Barron Land, LLC

**BARRON**  **LAND**

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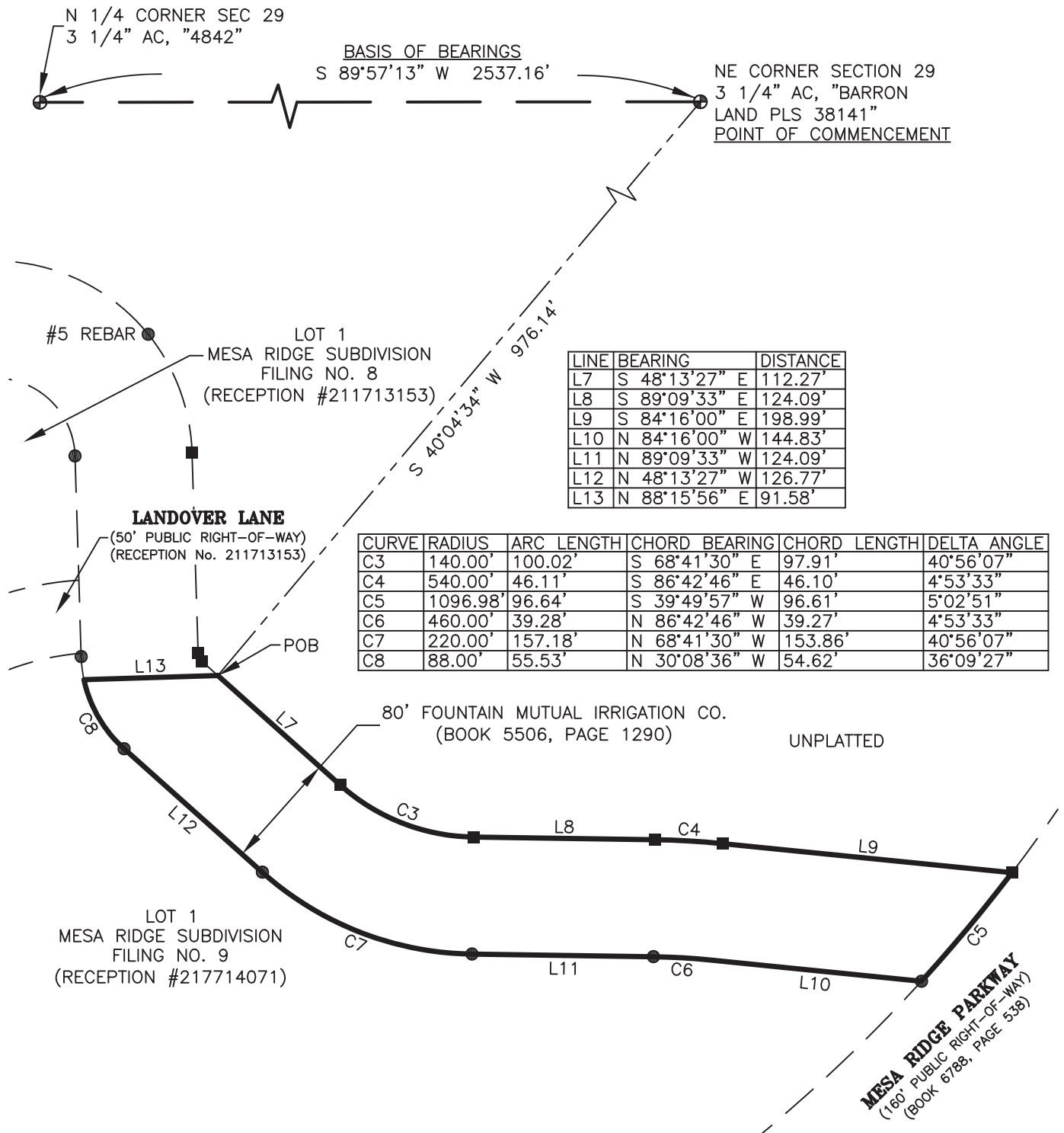
DATE: 08/05/2022

REV. DATE:

PROJECT No.: 20-035

SHEET 1 OF 2

# EXHIBIT B



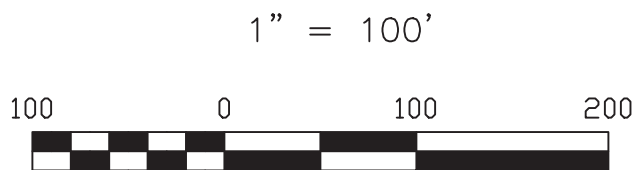
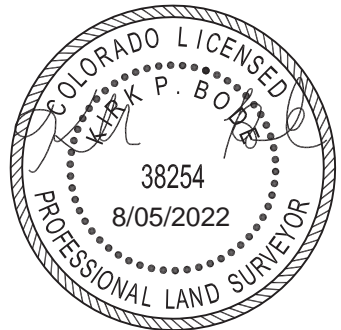
LINE	BEARING	DISTANCE
L7	S 48°13'27\" E	112.27'
L8	S 89°09'33\" E	124.09'
L9	S 84°16'00\" E	198.99'
L10	N 84°16'00\" W	144.83'
L11	N 89°09'33\" W	124.09'
L12	N 48°13'27\" W	126.77'
L13	N 88°15'56\" E	91.58'

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C3	140.00'	100.02'	S 68°41'30\" E	97.91'	40°56'07\"
C4	540.00'	46.11'	S 86°42'46\" E	46.10'	4°53'33\"
C5	1096.98'	96.64'	S 39°49'57\" W	96.61'	5°02'51\"
C6	460.00'	39.28'	N 86°42'46\" W	39.27'	4°53'33\"
C7	220.00'	157.18'	N 68°41'30\" W	153.86'	40°56'07\"
C8	88.00'	55.53'	N 30°08'36\" W	54.62'	36°09'27\"

### LEGEND



- FOUND PUBLIC LAND SURVEY SYSTEM MONUMENT AS NOTED
- POB POINT OF BEGINNING
- FOUND #5 REBAR W/ORANGE PLASTIC CAP "PLS 38141"
- FOUND #4 REBAR W/RED PLASTIC CAP "ROCKWELL 19586" UNLESS OTHERWISE NOTED



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