



BOATER ACCESS EASEMENT AGREEMENT

This Boater Access Easement Agreement (this "Agreement") is made and entered into this 6th day of July, 2020 (the "Effective Date") by and between the TOWN OF CRESTED BUTTE, COLORADO (the "Town"), a Colorado home rule municipality, on the one hand, and CYPRESS FOOTHILLS, LP ("Cypress"), a Texas limited partnership, and the Aperture Homeowners Association, Inc., a Colorado nonprofit corporation ("Aperture HOA" and together with Cypress herein "Owners"), on the other hand. The Town and Owners are sometimes referred to herein as a "Party" or collectively as the "Parties."

I. Recitals

- A. Cypress subdivided certain real property located along the Slate River in Gunnison County, Colorado resulting in Plat of Aperture, recorded on August 1, 2017, at reception number 648057 in the Office of the Gunnison County Clerk and Recorder (the "Plat").
- B. The "East Parcel" of the Plat consists of residential lots, a lot owned by the Aperture HOA, and open space. The Aperture HOA owns the Open Space areas shown on the Plat, including "Open Space 1," which includes the Slate River corridor.
- C. Open Space 1 is referred to herein as the "Property."
- D. The West Remainder Parcel, as shown on the Plat, has been annexed into the Town. Cypress retained ownership of the "Applicant Retained Land" and conveyed to the Town the "Town Parcels," all as shown on the Final Plat of the Slate River Subdivision, recorded Sept. 10, 2020, at reception number 669207 in the Office of the Gunnison County Clerk and Recorder. The Town Parcels include "Town Parcel 6(b)."
- E. There will be a "Boat Launch" located on Town Parcel 6(b) that will provide the exclusive access to the Easement Location as defined more specifically below. Restrictions on the uses of Town Parcel 6(b) will be contained in the instrument conveying the Boat Launch from Cypress to the Town. Accordingly, this Agreement only pertains to the Easement Location, as defined more specifically below.
- F. Cypress and the Town have entered into a "Pre-Annexation Agreement" recorded at reception number 638399 and two amendments thereto recorded respectively at reception numbers 643828 and 656557 (collectively the "Pre-Annexation Agreement").
- G. Cypress and the Town have also entered into an "Annexation Agreement" recorded Sept. 10, 2020, at reception number 669205 in the Office of the Gunnison County Clerk and Recorder.
- H. Section 6.4.1.6. of the Pre-Annexation Agreement and subsection B.2.1 of the Annexation Agreement provide that Cypress and the Town shall enter into a "Boater Access Easement Agreement" in order to allow public use of the surface of the Slate River as it flows through the Easement Location, as defined more



specifically below. The obligation to enter into the Boater Access Easement Agreement is also binding on the Aperture HOA, as Cypress's successor.

- I. This Agreement constitutes the Boater Access Easement Agreement contemplated by the Pre-Annexation Agreement and the Annexation Agreement.
- J. The effect of this Agreement is to make the Easement Location as defined more specifically below, available, in accordance with the terms and conditions contained herein, free of charge to the Town of Crested Butte, Colorado, and any individuals the Town authorizes to use the Easement for the recreational purposes set forth herein consistent and in accordance with C.R.S. § 33-41-101, *et seq.*

II. Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the foregoing recitals, which are incorporated herein by this reference, the Town and Owners agree as follows:

- 1. Grant of Easement. Owners hereby convey to the Town a non-exclusive easement over and across the location shown on **Exhibit A** ("Easement Location") for the purpose of providing recreational use along the surface of the Slate River as it flows through the Property (the "Easement"). For purposes of clarification, and as shown on **Exhibit A**, the Easement does not include any portion of the east bank of the Slate River, the west bank of the Slate River south of the Pyramid Avenue bridge across the Slate River, or the bed of the Slate River. Nor does it include any portion of the Pyramid Avenue bridge across the Slate River. The scope of this Agreement does not include, and this Agreement does not address, access to the Easement Location. Nothing in this Agreement is intended to provide a right of access to the Easement Location, and nothing in this Agreement is or shall be construed as promoting, facilitating, authorizing, or aiding and abetting access to the Easement Location from public or private property, including but not limited to Owners' private property and the private property of third parties. Cypress or the Aperture HOA shall have the right to construct a fence along the River Trail adjacent to the west bank of the Slate River similar to fencing along other sections of the Rec Path used to separate the Rec Path from adjacent private property.
- 2. Use of the Easement. Use of the Easement shall be subject to the following conditions:
 - a. Commercial use of the Easement for revenue is not permitted.
 - b. The Town and Owners shall develop signage to prevent trespassing by users of the Easement on Owners' private property. The type and location of such signage shall be approved by the Town and Owners, shall be consistent with this Agreement, and shall, to the extent possible, be consistent with signage posted upstream and downstream from the Easement. The Town shall be responsible for the installation of signage and cost thereof of on Town Parcel 6(b). Owners shall be responsible for



- the installation of signage and the cost thereof on Open Space Parcel 1 or elsewhere on the East Parcel.
- c. Boats within the Easement Location shall be limited to non-motorized, hand-carried watercraft such as paddle boards, kayaks, canoes, small non-commercial rafts, inner tubes, and the like.
 - d. The Easement shall not be used when the water level in the Slate River is so low that the river cannot be floated without touching the bed or banks of the river as it passes through the Easement Location.
 - e. The Town shall continue to participate in educational efforts by the Slate River Working Group to ensure that potential users of the Easement are aware of the proper uses of the Slate River, the scope of this Agreement, as well as those uses that are prohibited altogether.
 - f. No fishing from any location outside of the Easement Location into Easement Location.
 - g. No stopping, anchoring intentional slowing, or exiting watercraft is permitted at any location within the Easement Location. This Agreement does not give any person any right to touch the bed or banks of the Slate River.
 - h. Dogs and other domestic animals are not permitted within the Easement Location.
 - i. The Easement may be used only between sunrise and sunset.
 - j. No excessive noise, amplified noise, or speakers shall be permitted within the Easement Location. Those using the Easement shall be quiet within the Easement Location and respectful to the owners and users of the adjacent private property.
 - k. Any use of Owners' property, the Easement, or Easement Location inconsistent with this Agreement constitutes trespassing, except that floating the Slate River consistent with this Agreement shall not constitute trespassing.
3. Parties Right to Enforce Against Third Parties; But No Obligation. Each Party has the right, but not the obligation, to enforce, through any means available in law or equity, the terms, conditions, and restrictions in this Agreement, including but not limited to those terms, conditions, and restrictions set forth in paragraph two above, against any third party purporting to use the Easement and Easement Location pursuant to this Agreement. In addition, Owners hereby expressly reserve the right to pursue any and all remedies available in law or equity against any person accessing or using Owners' property, the Easement, or the Easement Location in a manner that is inconsistent with this Agreement.
4. Liability and Restoration Obligation. Consistent with paragraph 3 above, any person the using the Easement is liable for any damage to Owners' private property or any other private property caused by such person's use of the Easement, including but not limited to any damage to any water feature, diversion, storage, conveyance, or measuring structure or device, fences, bridges, fish, fishing improvement, fish habitat structure, or other improvement. In the



event that any person using the Easement causes damage to Owners' real or personal property, or any other person's real or personal property, such person shall be obligated to restore the damaged property to the same condition it was in prior to such damage, or if such restoration is not possible, the such person shall replace the damaged property.

5. Fishing Improvements; No Floating Obstructions. Nothing in this Agreement shall prohibit Owners, their successors, or assigns from making natural or artificial improvements to fish habitat in accordance with applicable law or otherwise making diversions or appropriations of water, diversion structures, or any other improvements, alterations, fencing, or other modifications to any portion of Owners' property in accordance with applicable law, as long as such improvements, alterations, fencing, or other modifications do not obstruct floating on the Slate River, and such improvements do not adversely affect the Town's water rights in the Slate River, or the Town's rights and interests in its real property located adjacent to the west bank of the Slate River that Cypress conveys to the Town; provided however that nothing shall prevent Owners from installing reasonable "floater friendly" fencing on their property, across the Slate River or elsewhere, to control cattle, enhance privacy, or for other purposes.
6. No Interest in Land or Access to Other Private Property; No Waiver of Other Rights. The Parties are voluntarily agreeing to the river access and use authorized by this Agreement. Accordingly, the Town, together with any person it authorizes to use the Easement, shall not make a claim at any time to any interest or estate of any kind or extent in the Property except as set forth in this Agreement. This Agreement is not intended to authorize, and does not authorize, the Town, or any person the Town authorizes to use the Easement, to enter any other private property, and by entering into this Agreement, Owners are not approving, agreeing to, or acquiescing in, the use of private property owned by third parties. The Parties acknowledge and agree that nothing in this Agreement shall preclude any Party from pursuing any right or remedy such Party may have against any person engaging in conduct outside the scope of the uses and activities permitted by this Agreement.
7. Notice of Terms and Conditions. The Town shall exercise reasonable means to ensure that any person it allows to use the Easement is provided with notice of the terms and conditions contained in this Agreement, including but not limited to posting this agreement on the Town's website and posting a sign containing the rules and regulations for the use of the Easement contained herein at the Boat Launch. This sign will also state the same information as other signs the Town has placed along the Slate River informing river users of potentially dangerous conditions and proper floating etiquette. The Town acknowledges that it is familiar with the Property and the Easement Location, including the Slate River as it flows through the Property. The Town is entering into this Agreement with full knowledge of the dangers, risks, and hazards associated with the use of rivers in general and in particular with the use of the Slate River as it flows through the



Property, and the Town agrees to inform users of the Easement and the Slate River of the dangers, risks, and hazards associated with the use of the Slate River and of rivers in general, and in particular with the use of the Slate River as it flows through the Property.

8. **Indemnification and Enforcement.** Owners and the Town agree that the intent of this Agreement is to provide to Owners and the Town, their successors, and assigns, the protection afforded by C.R.S. § 33-41-103. Owners and the Town do not: (a) extend any assurance that the Easement Location is safe for any purpose; (b) confer upon any person using the Easement Location the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person. Owners assume no liability for the safety and welfare of anyone on the Property at any time. The Easement granted herein is granted solely to the Town of Crested Butte, Colorado. The Town may allow, in its discretion, anyone or no one to use the Easement.

By using the Easement, a person (other than the Town) is agreeing to indemnify, defend and hold harmless Owners, the owners of lots within the Aperture subdivision, as well as their agents and employees from and against any and all claims, deaths, injuries, damages, losses, suits, actions, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs and expenses of litigation as such fees, costs, and expenses are incurred) arising out of or in connection with such person's use of the Easement and Easement Location. The Town, for itself, and any person it allows to use the Easement, agrees to use the Property as permitted herein at its own risk, and releases Owners, their agents, employees, successors, and assigns, from any claims for any accident, injury, illness, or damage to the fullest extent permitted by law.

9. **Insurance.** For the duration of this Agreement, the Town agrees to maintain comprehensive general liability insurance that provides coverage for any claims arising from the use of the Easement and any and all activities within the Easement Location, including but not limited to any injury to or death of any person, or damage to the Property or other private property resulting from any use of the Easement. The amount of such coverage shall be at least equal to the limits of recovery set forth in C.R.S. § 24-10-114 and shall name Owners and the owners of lots within the Aperture subdivision as additional insureds. Each year this Agreement is in effect, and prior to January 31st, the Town shall furnish to Owners, their successors, or assigns as applicable, a certificate of insurance verifying and confirming that such insurance is in full force and effect and will remain in full force and effect throughout the year, that such insurance covers all use of the Easement and all activities within the Easement Location, and that Owners and the owners of lots within the Aperture subdivision are named as an additional insured on such policy.



10. Subsequent Restrictions. In the event the Town subsequently imposes or agrees to more restrictive terms and conditions on the public's use of the Slate River, such subsequent, more restrictive terms and conditions shall apply to the use of the Easement and the Easement Location.
11. Remedies. In the event of a breach of this Agreement, the non-breaching party shall have all rights and remedies available at law and in equity, including but not limited to the recovery of damages and/or the right to specifically enforce this Agreement.
12. Privileges and Permission Not Exclusive. The privileges and permission granted to the Town in this Agreement are not exclusive, and Owners reserve the right at any time to grant to others the same or similar permissions or privileges.
13. Governmental Immunity and Colorado Recreational Use Act. In entering into this Agreement, the parties intend to maximize to the extent permitted under the law the protections afforded to the parties by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, and the Colorado Recreational Use Statute, C.R.S. § 33-41-101 *et seq.*, as from time to time amended.
14. No Third-Party Beneficiaries. The Easement granted herein is granted to the Town and is not granted to the public at large. There are no direct intended third-party beneficiaries of this Agreement that are entitled to enforce the terms hereof. Members of the public are not granted any rights under this Agreement. Members of the public may be permitted to use the Easement by the Town pursuant to the terms of this Agreement, but no charge may be required by the members of the public. Accordingly, the purpose of this Agreement is to indirectly permit, without charge, the use of the Easement by the public within the meaning of C.R.S. § 33-41-103(1).
15. Duration. The Easement shall be perpetual in duration.
16. Appurtenant Easement. The Easement shall run with the Easement Location and shall be appurtenant to the Easement Location. The terms of this Agreement shall be binding upon the heirs, assigns, successors and personal representatives of the parties.
17. Recording. This Agreement shall be recorded by the Town in the real property records of Gunnison County, Colorado.
18. Effective Date. This Agreement shall be effective as of the Effective Date.
19. Authority. The persons executing this Agreement on behalf of the parties do hereby covenant and warrant that such persons are duly authorized and have the full right and authority to enter into this Agreement on behalf of the parties.



20. Waiver of Defects. In executing this Agreement, the parties waive all objections they may have over defects, if any, in the form of this Agreement, the formalities for execution, or over the procedure, substance or form of the resolutions adopting this Agreement.
21. Entire Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the parties with respect to the Easement and Easement Location and represents the total integrated agreement between the parties with respect to such subject matters.
22. Modification. This Agreement shall not be amended or modified, except by subsequent written agreement of the parties approved by resolutions of the Town Council.
23. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.
24. No Waiver. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.
25. Notices. Any notice or other information required by this Agreement to be sent to a party shall be sent by facsimile, e-mail, overnight courier or certified mail to the following:

Cypress Foothills, LP
Attention: Cameron Aderhold
8343 Douglas Ave., Suite 200
Dallas, Texas 75225
Facsimile: 214-283-1600
cameron.aderhold@cypressequities.com

with a copy to:

Cypress Foothills, LP
Attention: Brian Parro
8343 Douglas Ave., Suite 200
Dallas, Texas 75225
Facsimile: 214-283-1600
brian.parro@cypressequities.com

with a copy to:

Law of the Rockies
Attention: Marcus J. Lock
525 North Main Street



Gunnison, Colorado 81230
Facsimile: 970-641-1943
mlock@lawoftherockies.com

Aperture Homeowners Association, Inc.
Attention: Cameron Aderhold
8343 Douglas Ave., Suite 200
Dallas, Texas 75225
Facsimile: 214-283-1600
cameron.aderhold@cypressecurities.com

with a copy to:

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Facsimile: 214-283-1600
brian.parro@cypressecurities.com

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Law of the Rockies
Attention: Marcus J. Lock
525 North Main Street
Gunnison, Colorado 81230
Facsimile: 970-641-1943
mlock@lawoftherockies.com

Town of Crested Butte
Attention: Town Manager, Dara MacDonald
507 Maroon Avenue
P.O. Box 39
Crested Butte, Colorado 81224
Facsimile: 970-349-6626
dmacdonald@crestedbutte-co.gov

with a copy to:

Town Attorney
Sullivan Green Seavy, LLC
Barbara J. B. Green or John Sullivan
3223 Arapahoe Ave. Suite 300
Boulder, Colorado 80303
Barbara@sullivangreenseavy.com or John@sullivangreenseavy.com



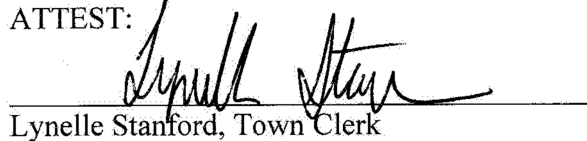
Notice shall be effective when actually received by the party intended to be notified. A party may change the recipient for notice by providing notice of such change in accordance with this paragraph.

26. Attorneys' Fees; Costs. In any action arising out of or relating to this Agreement, its interpretation, or enforcement, the substantially prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in such dispute.
27. Governing Law; Venue. This Agreement and all rights conferred and obligations imposed hereunder shall be interpreted and construed in accordance with the laws and internal judicial decisions of the State of Colorado. The sole venue in any dispute shall be the District Court for Gunnison County, State of Colorado.
28. Electronic Reproductions; Counterparts. For purposes of enforcement of terms of this Agreement, electronic reproductions of this Agreement shall be deemed to be originals. This Agreement may be executed in multiple counterparts, each of which, when taken together shall constitute one and the same instrument.

WHEREFORE, the parties hereto have executed and entered into this Agreement by their duly authorized representatives on the date first written above.

TOWN OF CRESTED BUTTE, COLORADO

By: 
James A. Schmidt, Mayor

ATTEST: 
Lynelle Stanford, Town Clerk

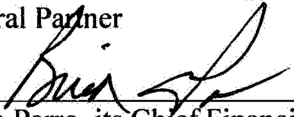
(SEAL)





CYPRESS FOOTHILLS, LP,
a Texas limited partnership

By: CYPRESS FOOTHILLS, GP, LLC,
a Delaware limited liability company, its
General Partner

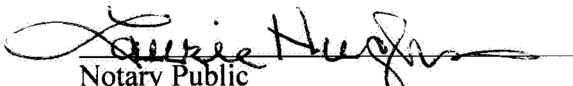
By: 
Brian Parro, its Chief Financial Officer and Vice President

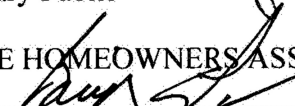
STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 18 day of JUNE, 2020, by Brian Parro as Chief Financial Officer and Vice President of Cypress Foothills, GP, LLC, which is the General Partner of Cypress Foothills, LP.

Witness my hand and official seal.

My commission expires: 11.20.2020


Notary Public

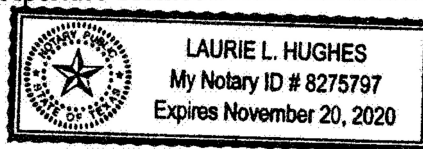
APERTURE HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation
By: 
Brian Parro, President

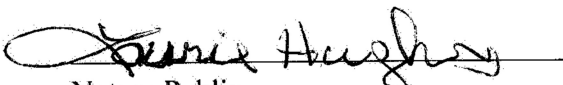
STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 18 day of June, 2020, by Brian Parro, as president of Aperture Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 11.20.2020

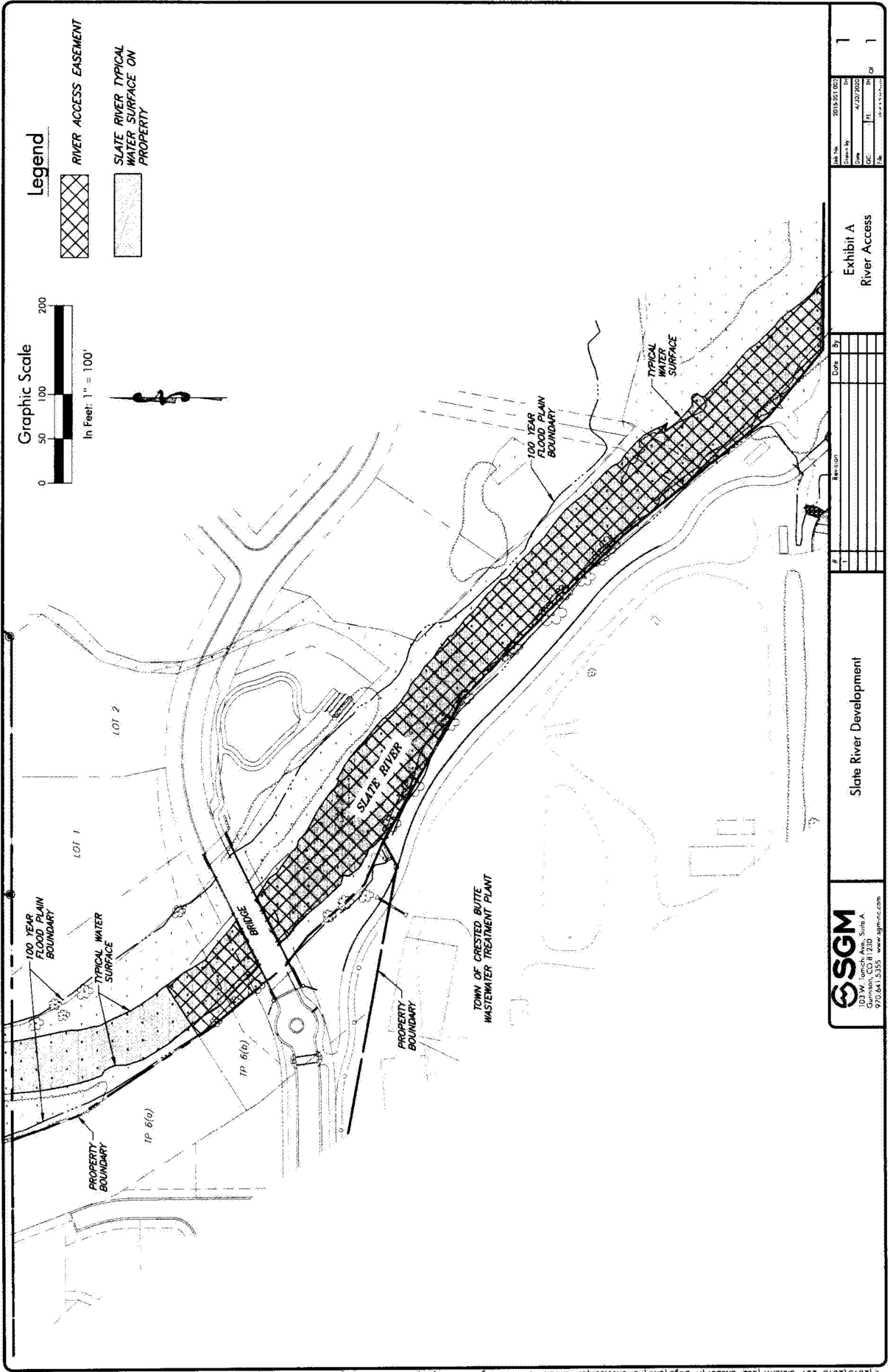



Notary Public



Boater Access Agreement – Exhibit A

RIVER ACCESS MAP



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