

NARRATIVE

**LOT 389 – GE Encroachment Agreement
OSP 13-B –Subsurface Shoring Easement
September 17, 2024**

At its December 7, 2023 meeting, the DRB unanimously approved a single-family residence on Lot 389, TBD AJ Drive. As a condition of DRB approval, Applicant requests Town Council's approval of a new General Easement ("GE") Encroachment Agreement and a subsurface Shoring Easement Agreement to facilitate such development.

Updated Lot 389 General Easement Encroachment Agreement

In 1998, Mountain Village issued a General Easement Encroachment Agreement (recorded at Reception No. 319979) allowing "earthworks berms and trees" within the GE of Lot 389. Applicant would like to replace the existing GE Encroachment Agreement with an updated GE encroachment agreement that allows for a system of terraced engineered concrete retaining walls (rather than a taller/larger single retaining wall) as depicted on the HEARING EXHIBIT submitted herewith.

Updated Easement OSP 13-B

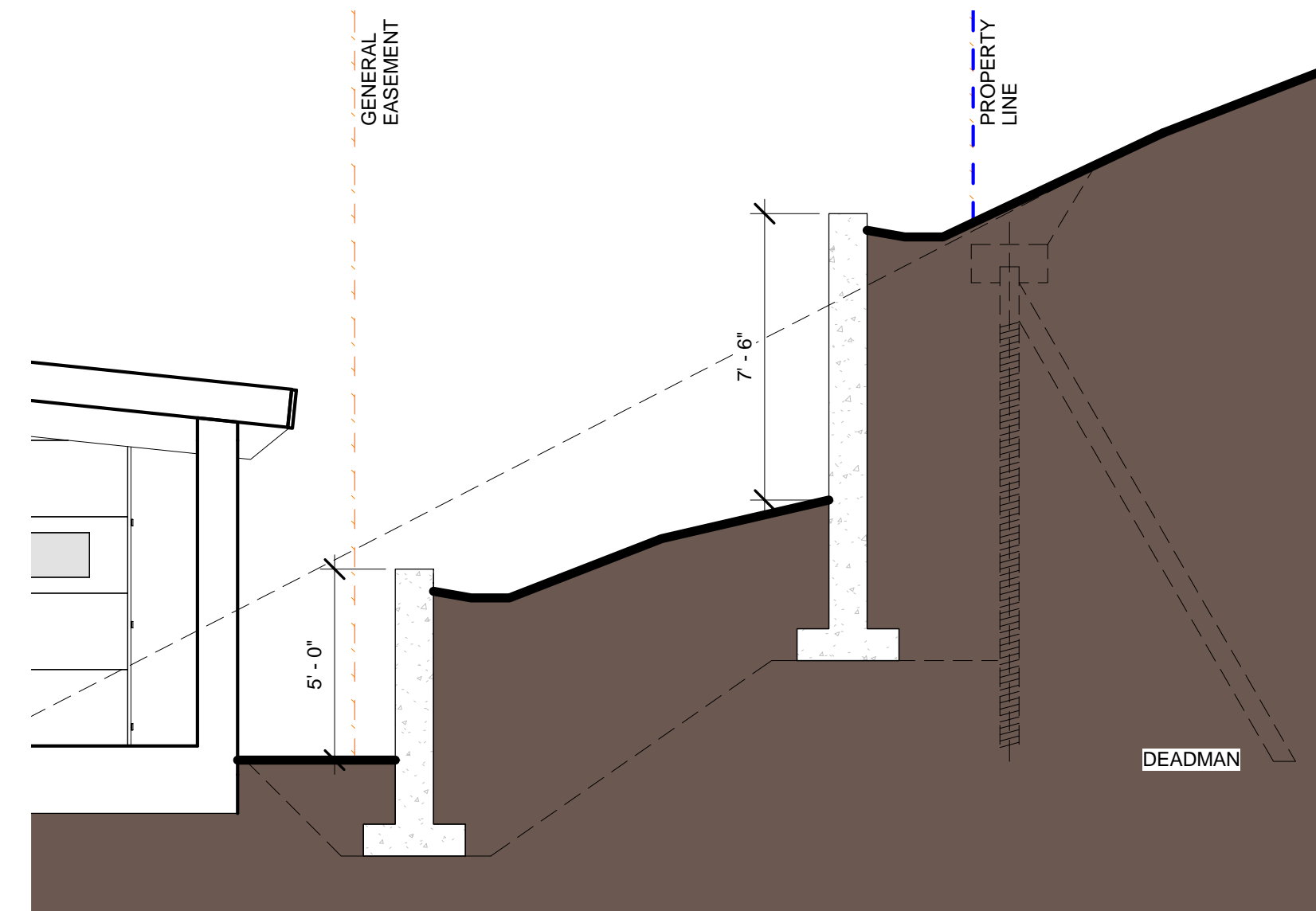
Open Space Tract OSP 13-B, owned by Mountain Village, adjoins the southern boundary of Lot 389. In 1998, a "Lot 389 earthwork easement" (recorded at Reception No. 319980) was entered between a prior owner of Lot 389 and the previous OSP 13-B owner (Telluride Ski and Golf Company). The 1998 easement allows for earthwork berms and recontouring (in conjunction with the same work in the GE of Lot 389).

Applicant would like to terminate the 1998 earthwork easement and replace it with one that allows for subsurface shoring (and includes a temporary easement for earthwork, tree removal and revegetation and related work for installing subsurface shoring) within OSP 13-B. Submitted herewith is a proposed draft Vacation and Termination of Easement and a proposed draft Subsurface Shoring Easement prepared by Applicant and reviewed by Mountain Village planning staff and attorney.

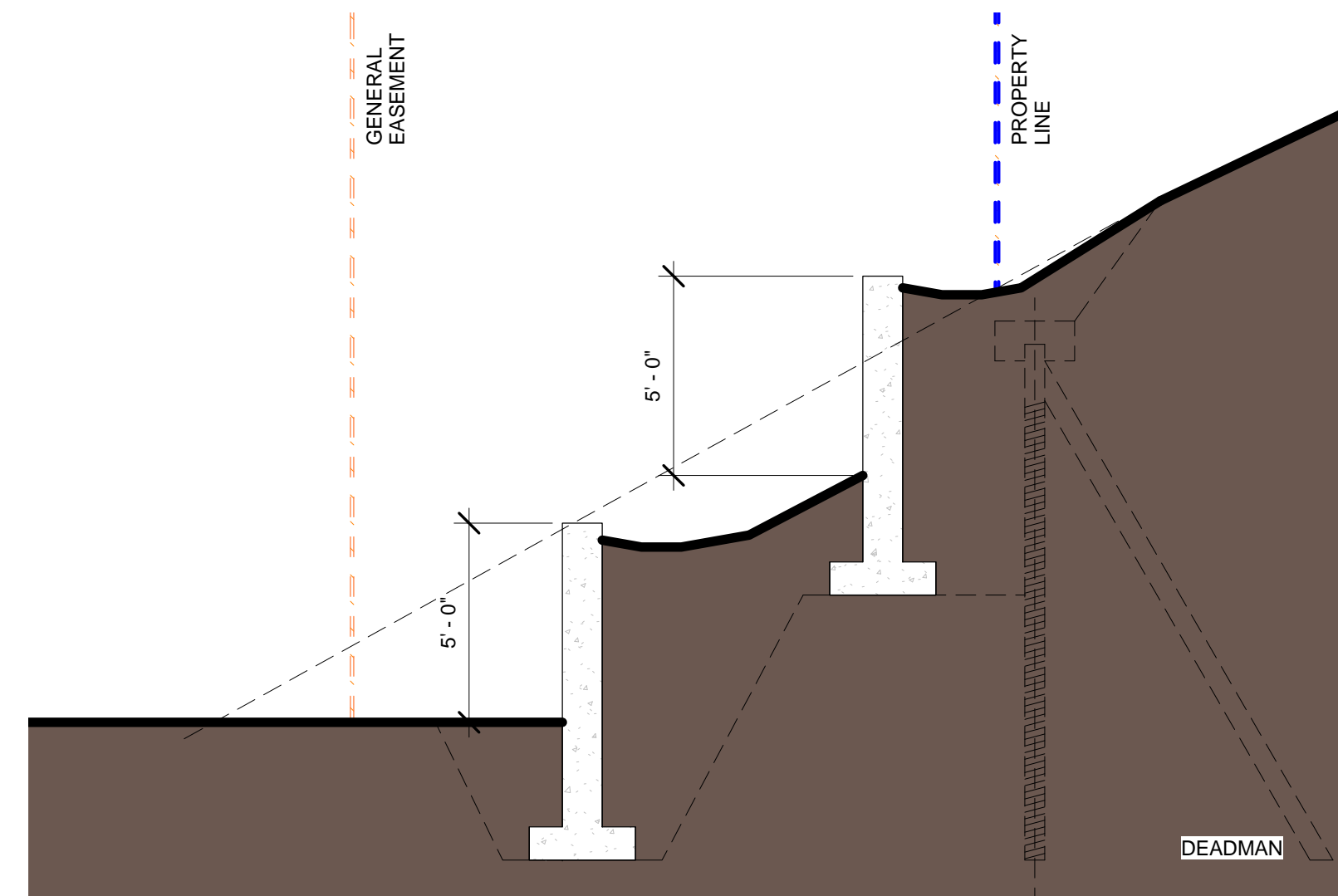
Respectfully submitted,

Law Office of Nicole Y. Pieterse, P.C., Applicant
Telluride 389, LLC, Owner

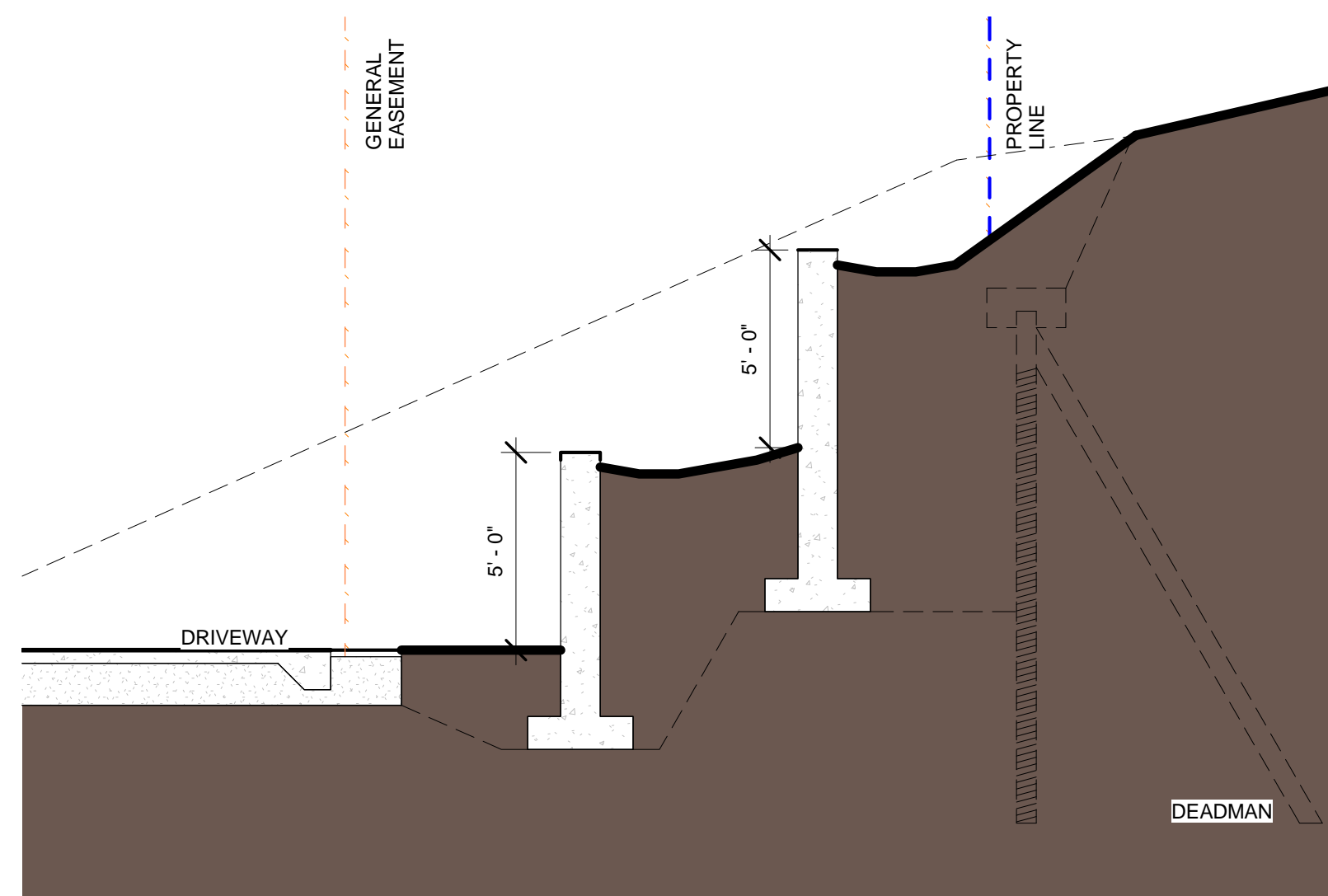
HEARING EXHIBIT



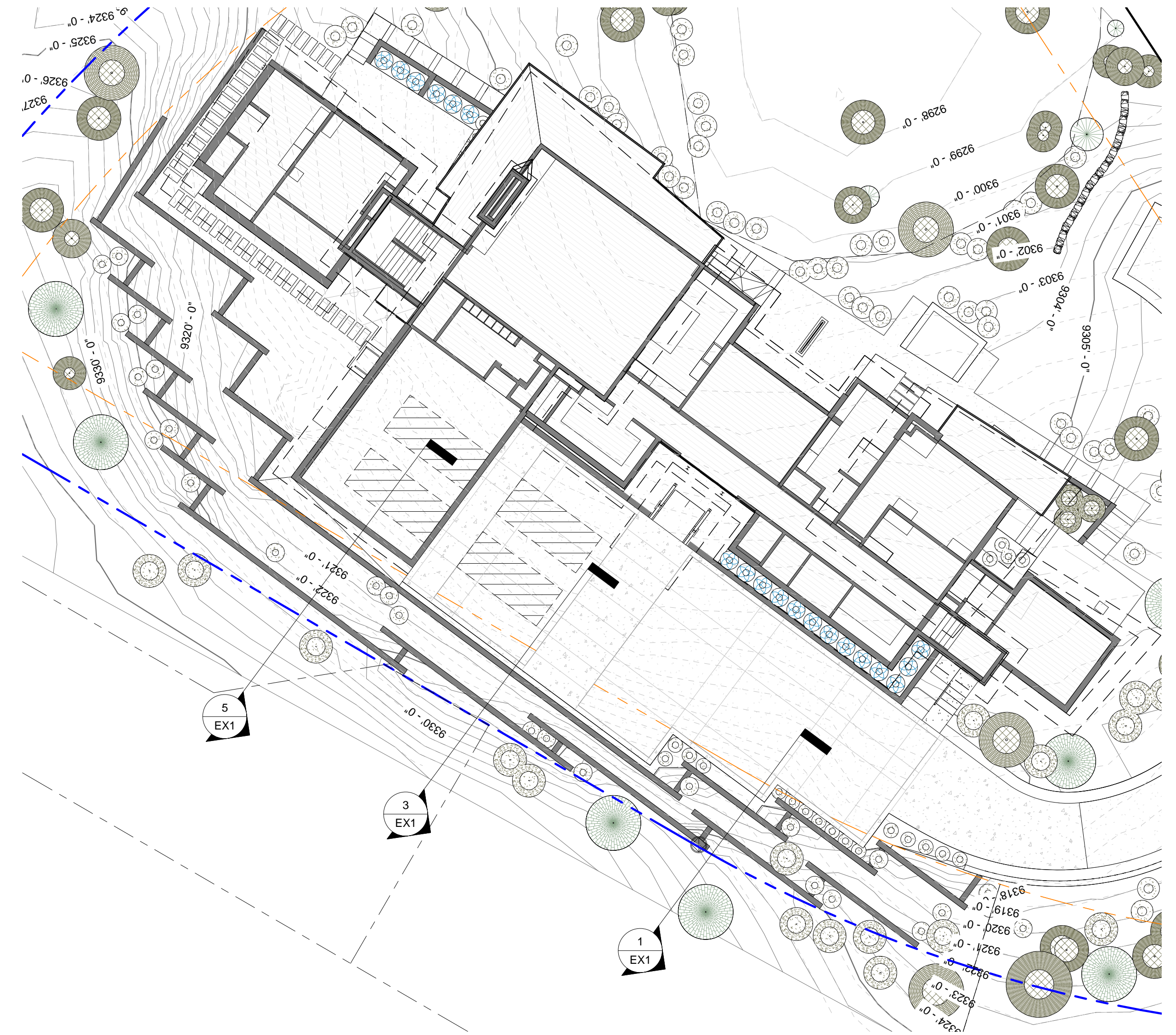
5 RETAINING WALL- TERRACED 3
1/4" = 1'-0"



3 RETAINING WALL- TERRACED 2
1/4" = 1'-0"



1 RETAINING WALL- TERRACED 1
1/4" = 1'-0"



A REFERENCE SITE PLAN
1/16" = 1'-0"

NOT FOR CONSTRUCTION



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9-5-23	SITE SECTIONS	
7-10-23	SITE SECTIONS	
3-29-23	SITE SECTIONS	
2-6-23	DRB APPLICATION	
9-20-22	DRB APPLICATION	
7-14-22	DRB PLANS	
6-28-22	DRB PLANS	
5-5-21	BEAMS AND BRACKETS	
5-4-21	ROOF DROPPED KIMBETH	
4-27-21	NEW OFFICE	
4-7-21	NEW OFFICE/ENTRY	
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2-10-21	REVISED SET	
1-12-21	WOOD FRAMED ROOF	
1-6-21	NORTH WINDOW DESIGN	
4-21-20	OPTION R	
1-20-20	REVIT 3D PLAN	
1-16-20	REVIT 3D	
12-18-19	REVIT 3D	
MARK	REV. DATE	DESCRIPTION

PROJECT NAME: **LOT 389 MOUNTAIN VILLAGE**
COLORADO 81435

SHEET DESCRIPTION: **EXHIBIT-RETAINING WALL IN GE**

SHEET NUMBER: **EX1**

PROJECT NAME:
PROJECT MANAGER:
DRAWN BY:
REVIEWED BY:
2006 JWR

Details: 477904216105

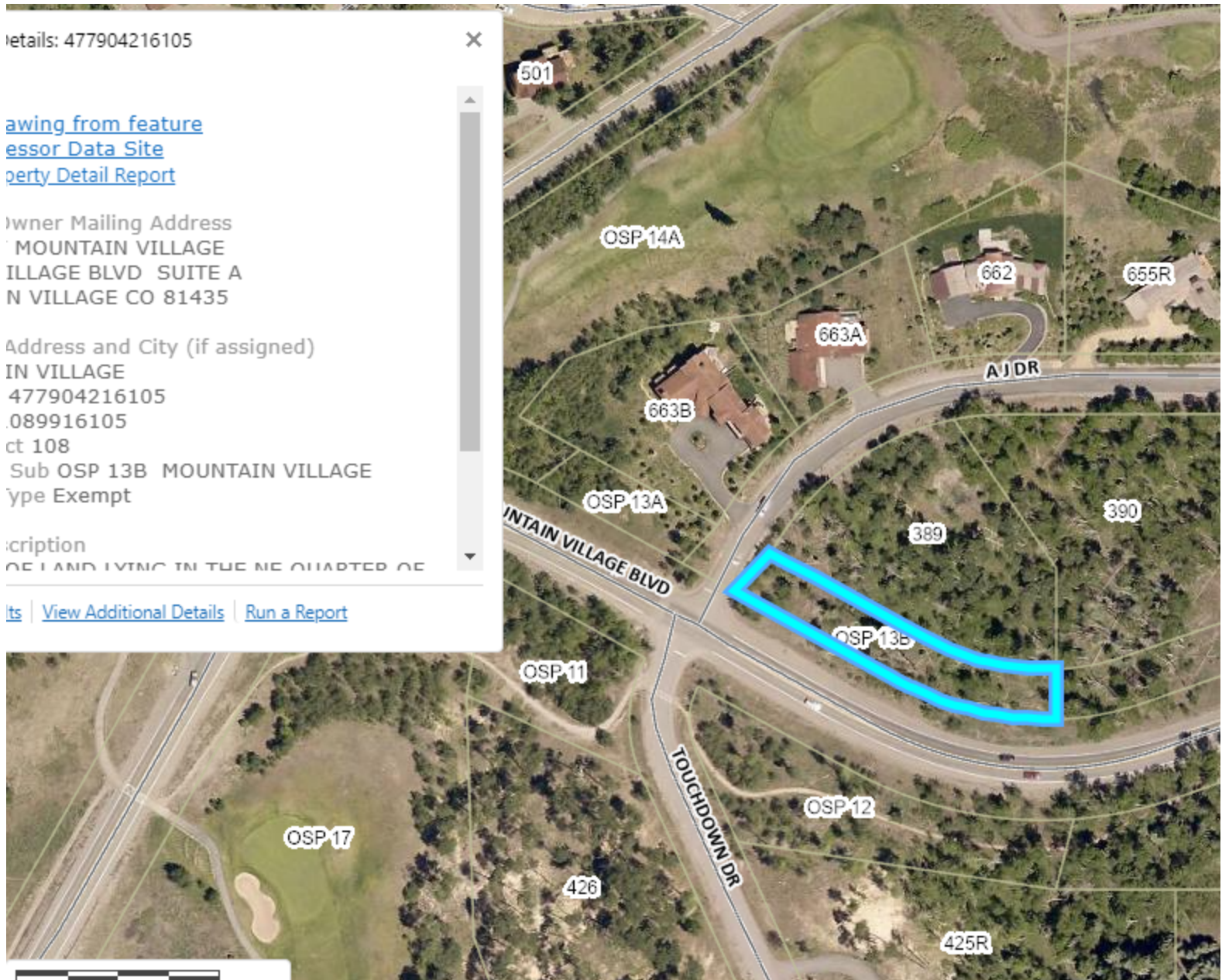
[Linking from feature](#)
[essor Data Site](#)
[Property Detail Report](#)

Owner Mailing Address
MOUNTAIN VILLAGE
VILLAGE BLVD SUITE A
N VILLAGE CO 81435

Address and City (if assigned)
IN VILLAGE
477904216105
089916105
ct 108
Sub OSP 13B MOUNTAIN VILLAGE
Type Exempt

Description
OF LAND LYING IN THE NE QUARTER OF

[View Additional Details](#) | [Run a Report](#)



SHORING EASEMENT AGREEMENT

THIS SHORING EASEMENT AGREEMENT (“**Agreement**”) is entered into on this ___ day of _____, 2024 by and between MOUNTAIN VILLAGE, a Colorado home rule municipality (“**Grantor**”), and TELLURIDE 389, LLC, a Colorado limited liability company whose address is 2881 E La Cresta Ave., Anaheim, CA 92651 (“**Grantee**,” and together with Grantor, the “**Parties**”).

WHEREAS, Grantee owns certain real property in San Miguel County, Colorado located at TBD A. J. DRIVE, Mountain Village, and legally described as:

LOT 389, TELLURIDE MOUNTAIN VILLAGE, ACCORDING TO THE INSUBSTANTIAL AMENDMENT AND FINAL PLAT FOR PRELIMINARY PLATTED LOT 389 RECORDED FEBRUARY 21, 1997 IN PLAT BOOK 1 AT PAGE 2201, COUNTY OF SAN MIGUEL, STATE OF COLORADO

(“**Lot 389**”);

WHEREAS, Grantor owns that certain open space parcel of real property located adjacent to Lot 389 and known as:

OSP 13-B, MOUNTAIN VILLAGE, COUNTY OF SAN MIGUEL, STATE OF COLORADO

(“**OSP 13-B**”); and

WHEREAS, Grantee plans to build a residence, driveway and retaining walls system on Lot 389, which retaining walls require subsurface shoring that encroaches into OSP 13-B.

WHEREAS, the Parties desire to enter into this Agreement whereby Grantee will hold easements to install and maintain subsurface shoring and associated work as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee, its successors and assigns, and its employees, contractors, and representatives, an easement (“**Temporary Easement**”) under and within OSP 13-B for subsurface shoring and for access, installation, and for earthwork, tree removal and revegetation and other reasonably ancillary uses for the limited purpose of installing subsurface shoring within OSP 13-B (the “**Work**”) in the area depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Easement Area**”). The Temporary Easement will automatically expire upon issuance of a Certificate of Occupancy for the residence to be constructed on Lot 389 or five (5) years following the date of recording this Agreement, whichever is earlier. Revegetation specifications are set forth on **Exhibit A**. Grantor further grants to Grantee, its successors and assigns, and its employees, contractors, and representatives, after completion of the Work, a non-exclusive perpetual easement on, over, across, under, and within the Easement Area to maintain, repair, and replace such subsurface shoring if and as necessary to support the viability of the retaining wall system for Lot 389 from time to time (“**Shoring Easement**”).

2. **Responsibilities of Grantee.** Grantee will perform, or cause to be performed, all Work in accordance with applicable local and state regulations, including obtaining any requisite approvals from regulatory authorities for the installation and use of the Temporary Easement.

3. **Indemnification.** Grantee shall defend, indemnify, and hold Grantor harmless from and against all personal injury, property damage, costs, expenses, liabilities and damages (including reasonable attorneys' fees and expenses of litigation) incurred by Grantor arising out of or resulting from the Work and uses associated with the easements granted herein that is caused or occasioned by the actions or omissions of Grantee, or any of its permittees, provided that any such claim, damage, loss, or expense is not caused by Grantor's own negligence.

4. **Default.** If any party fails to perform in accordance with the terms and conditions of this Agreement or is otherwise in breach or default of any of the terms or conditions of this Agreement (in any case, a "**default**"), then the non-defaulting party shall give notice of the default to the other party and that party shall have thirty (30) days thereafter in which to cure such default. If the nature of the default is not curable within such time period and the defaulting party is diligently proceeding in its efforts to cure the breach, the cure period shall be extended for a period not to exceed one hundred twenty (120) days, unless otherwise agreed by the non-defaulting party. If a default is not cured within the applicable cure period, if any, then the non-defaulting party, at its election and without obligation to do so, may take such action and expend such sums as the non-defaulting party in its ordinary business judgment may deem necessary or appropriate to cure the subject default, in whole or in part, or to protect the interests of the non-defaulting party. All sums, including attorneys' fees, incurred by the non-defaulting party in connection with the consideration or exercise of this remedy shall be due and payable from the party in default within ten (10) days after demand, from time to time.

5. **General Remedies.** Any default by a party that is not cured within any applicable cure period established in section 4 above may be enforced by any or all of the foregoing remedies, and any other remedies available at law or equity or by statute, and all such rights and remedies shall be cumulative with and non-exclusive of one another, and may be exercised concurrently or successively as the non-defaulting party may elect. No exercise of any one remedy shall constitute or be construed as an election to the bar of any other remedy. In connection with any exercise or pursuit of its remedies under this Agreement, whether or not legal proceedings are actually commenced, the non-defaulting party shall be entitled to recover from the other party any and all attorneys' fees and court costs that the non-defaulting party may incur in connection therewith.

6. **Notices.** All notices required or permitted by this Agreement shall be in writing and shall be effective and deemed received at the earliest of: (a) when actually delivered and received, personally, by mail, by messenger services or by fax delivery; (b) seventy-two (72) hours after being postmarked in the United States mail, certified, return receipt requested; (c) on the next business day after deposit for delivery by a nationally recognized overnight courier service such as Federal Express; or (d) on the date sent by e-mail, provided that a delivery receipt for the e-mail (which receipt may be automated), showing the date the e-mail was sent, is given to the sender. All such notices shall be furnished with delivery or postage charges prepaid and addressed to the respective parties as follows:

To Grantor: Town Manager
Town of Mountain Village
411 Mountain Village Blvd.
Mountain Village, CO 81435
pwisor@mtnvillage.org

With a copy to: David H. McConaughy, Esq.
Garfield & Hecht, P.C.
910 Grand Ave., Ste. 201
Glenwood Springs, CO 81601

dmcconaughy@garfieldhecht.com

To Grantee: Dennis Buccola, Manager
Telluride 389, LLC
2881 E La Cresta Ave., Anaheim, CA 92651
djbuccola@gmail.com

7. **Entire Agreement.** This Agreement memorializes and constitutes the final, complete, and exclusive agreement and understanding between the Parties. It supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral. This Agreement may not be amended or modified, except in writing and signed by the Parties.

8. **Binding Effect.** This Agreement shall be binding upon the Parties hereto, their successors or assigns, and shall not be assigned by anyone without prior written consent of the other respective parties hereto.

9. **Severability.** In the event any part of this Agreement is found to be void, illegal, invalid, or unenforceable under present or future laws, then, in such event, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though such part was deleted and shall be construed to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire agreement, including the invalidated provision.

10. **Captions.** The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provision herein.

11. **Jurisdiction; Venue.** This Agreement is made within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability. Personal jurisdiction and venue for any civil action commenced by any party to this Agreement, whether arising out of or relating to the Agreement, will be deemed to be proper only if such action is commenced in the District Court for San Miguel County, Colorado.

12. **Attorneys' Fees; Survival.** Notwithstanding anything to the contrary, should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law, the prevailing party shall be entitled to reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

13. **Non-Appropriation.** No provision of this Agreement shall be construed or interpreted: (a) to directly or indirectly obligate Grantor to make any payment in any year in excess of amounts appropriated for such year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (c) as a donation or grant to or in aid of any person, company, or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

14. **Immunity.** The Parties hereto understand and agree that Grantor neither waives nor intends to waive by this Agreement, or any provision hereof, the monetary limitations and any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

15. **Authorization.** The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

EXHIBIT A
Easement Area

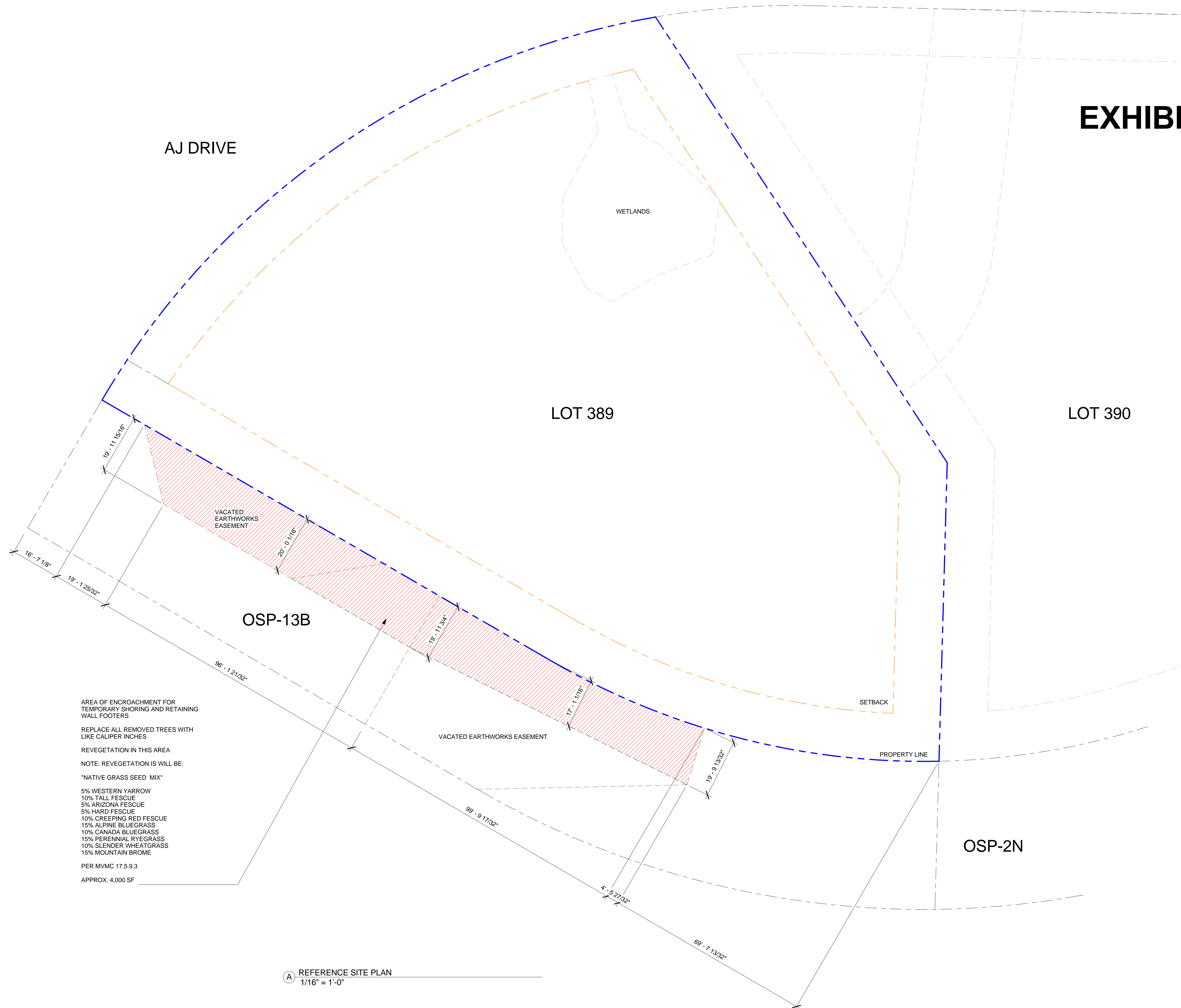
EXHIBIT A

AJ DRIVE

LOT 389

LOT 390

WETLANDS



AREA OF ENCROACHMENT FOR TEMPORARY SHORING AND RETAINING WALL FOOTERS

REPLACE ALL REMOVED TREES WITH LIKE CALIPER INCHES

REVEGETATION IN THIS AREA

NOTE: REVEGETATION IS WILL BE:

"NATIVE GRASS SEED MIX"

- 5% WESTERN YARROW
- 10% TALL FESCUE
- 5% ARIZONA FESCUE
- 5% HARD FESCUE
- 10% CREEPING RED FESCUE
- 15% ALPINE BLUEGRASS
- 10% CANADA BLUEGRASS
- 15% PERENNIAL RYEGRASS
- 10% SLENDER WHEATGRASS
- 15% MOUNTAIN BROME

PER MVMC 17.5.9.3

APPROX. 4,000 SF

REFERENCE SITE PLAN
1/16" = 1'-0"

NOT FOR CONSTRUCTION



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970.728.9724
jwesson@me.com
www.jackwessonarchitects.com

7-26-24	ENROACHMENT DIAGRAM	
2-27-24	DRB CONDITIONS	
1-17-24	ENROACHMENT DIAGRAM	
11-14-23	DRB CONDITIONS	
9-27-23	WETLANDS UPDATE	
9-5-23	SITE SECTIONS	
2-6-23	DRB APPLICATION	
9-20-22	DRB APPLICATION	
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MARK	REV. DATE	DESCRIPTION

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COLORADO 81435

SHEET DESCRIPTION: EXHIBIT A

SHEET NUMBER: EX A

PROJECT NAME:
PROJECT MANAGER:
DRAWN BY:
REVIEWED BY:
2006 JWA

EXHIBIT B

Revegetation Specifications

Native Grass Seed Mix (General Revegetation) pursuant to Mountain Village
Municipal Code Sec. 17.5.9(C)(6)(f)

Western Yarrow	5%
Tall Fescue	10%
Arizona Fescue	5%
Hard Fescue	5%
Creeping Red Fescue	10%
Alpine Bluegrass	15%
Canada Bluegrass	10%
Perennial Ryegrass	15%
Slender Wheatgrass	10%
Mountain Brome	15%

