



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: May 6, 2024 Staff Member/Dept: Paige Nied, Associate Planner
Planning and Building Department

Agenda Item: Recommendation to review and approve Right-of-Way Encroachment Agreement #24908 between the City of Ketchum and Giacobbi Square LLC.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #24908 between the City of Ketchum and Giacobbi Square LLC.

Reasons for Recommendation:

- The Chateau Drug Design Review application (File No. P24-024) was administratively approved on April 29, 2024, for minor exterior renovations associated with the building permit (File No. 24-KET-00138) for a 205 square foot addition and interior remodel.
- Deliveries for Chateau Drug have historically been conducted in a manner that blocks 5th Street and Leadville Ave. These deliveries often occur during peak traffic periods and create significant safety issues for vehicles, pedestrians, and bicyclists due to the lack of sight distance and ability to use designated travel lanes.
- Chateau Drug is currently undergoing a renovation which includes the reconfiguration of the loading dock, delivery patterns, and surface parking area along 5th Street and Leadville. No new improvements to the right-of-way along the 5th Street are proposed. Staff find that the reconfiguration of the parking and loading areas reduce safety concerns from the 5th Street and Leadville Ave intersection, remove parking space encroachment into the 5th Street right-of-way, and allow for limited obstruction of traffic during deliveries.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

None OR state impact here: None

Financial Impact:

None OR Adequate funds exist in account. | There is no financial requirement from the city for this action.

Attachments:

1. ROW Encroachment Agreement #24908 with exhibits

**RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:**

City Clerk, City of Ketchum
PO Box 2315
Ketchum Idaho, 83340

(Space Above Line For Recorder's Use)

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24908

THIS AGREEMENT, made and entered into this ____ day of ____, 2024, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and Giacobbi Square LLC, ("Owner"), whose mailing address is 101 Bullion Street Suite 3C, Hailey, Idaho 83333 and who owns real property located at 451 E 5th Street ("subject property").

RECITALS

WHEREAS, certain improvements exist within Ketchum's right-of-way adjacent to the 5th Street side of the subject property including a rolled curb, asphalt surface, and portions of surface parking spaces as shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Existing Improvements") and;

WHEREAS, deliveries for businesses located at the subject property have historically been conducted in a manner that blocks the intersection of 5th Street and Leadville Ave. These deliveries are often during peak traffic periods and are creating significant safety issues for vehicles, pedestrians, and bicyclists due to lack of sight distance and ability to use travel lanes as designated and;

WHEREAS, the subject property is undergoing a renovation which includes reconfiguration of the loading dock and delivery patterns for the building and reconfiguration of the surface parking area along 5th Street and Leadville Ave as shown in Exhibit "B" attached hereto and incorporated herein (collectively referred to as the "proposed improvements").

WHEREAS, no new improvements to the right-of-way along 5th Street are proposed;

WHEREAS, following completion of the proposed improvements, Owner wishes to continue the use of the Existing Improvements and right-of-way on 5th Street for deliveries as shown on Exhibit "B".

WHEREAS, Ketchum finds that said use of the Existing Improvements will temporarily impede the use of said public right-of-way during deliveries, however, the reconfiguration of the parking and loading areas reduce safety concerns from the 5th Street and Leadville Ave intersection, remove parking space encroachment into the 5th Street right-of-way, and allow for limited obstruction of traffic during deliveries. Therefore, such use is permitted subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to use the Existing Improvements on 5th Street as shown in Exhibit "B" adjacent to the subject property until notified by Ketchum.

2. Owner shall provide traffic safety measures in the form of signage, flaggers, cones, and other tools to ensure the safe passage of vehicles, pedestrians, and bicyclists on 5th Street during each delivery for the full duration of the delivery period.

2. Owner shall be responsible for the maintenance of said Existing Improvements and shall repair said Existing Improvements within 14 calendar days upon notice from Ketchum that repairs are needed. Any modification to the Existing Improvements identified in Exhibit "B" shall be approved by the City prior to any modifications taking place.

3. In consideration of Ketchum allowing Owner to use the Existing Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Existing Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Existing Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Existing Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

4. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Existing Improvements constructed, installed, removed or maintained in the public right-of-way.

5. Owner understands and agrees that by maintaining the Existing Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

6. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

7. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

8. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Existing Improvements maintained in the public right-of-way other than as set forth in this Agreement.

9. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

10. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

11. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:

By: _____

Chip Atkinson, Managing Member for
Giacobbi Square LLC

CITY OF KETCHUM:

By: _____

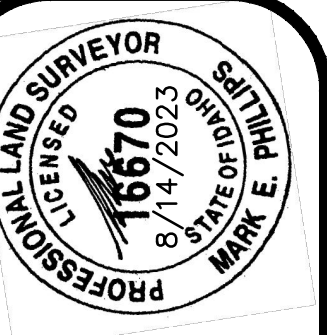
Neil Bradshaw, Mayor

Attest:

By: _____

Trent Donat, City Clerk

EXHIBIT "A"



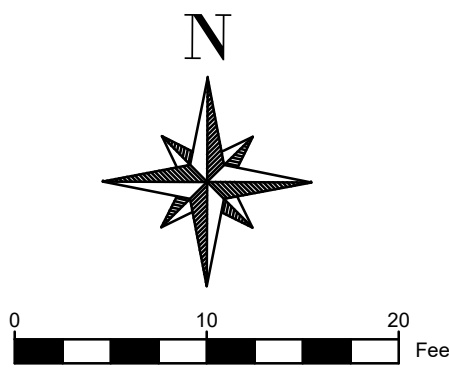
REUSE OF DRAWINGS
I hereby certify that the reuse of any portion of this drawing for any project or extension of this project without my agreement in writing with Phillips Land Surveying, PLLC

DRN: MEP
CHK: MEP
PM: MEP
DATE: 8/14/23
JOB #: 2023-58

NO	DATE	BY	REVISIONS

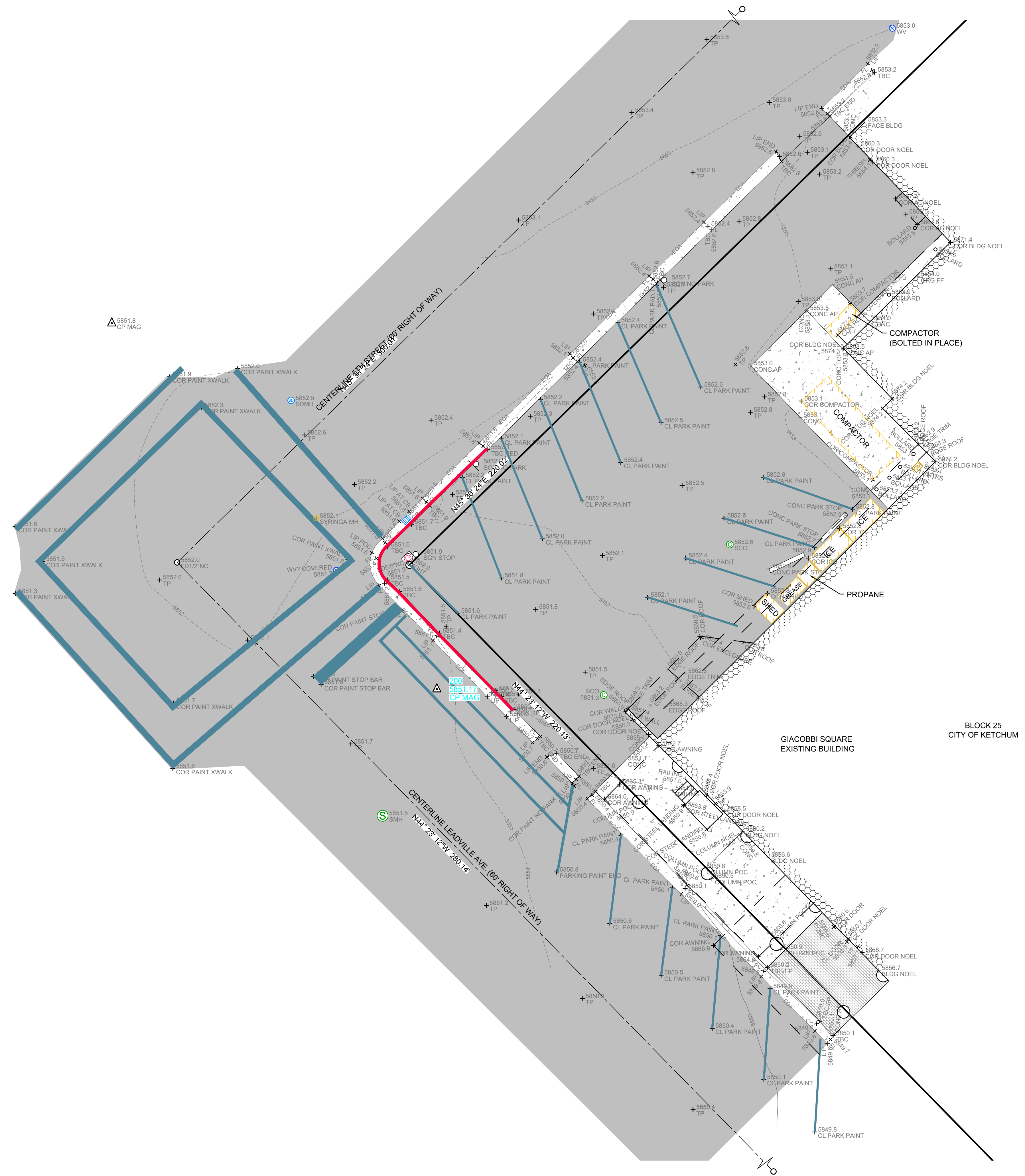
PHILLIPS LAND SURVEYING, PLLC
HAILEY, IDAHO
Phone: (208) 720 - 3760
Email: pls16670.id@gmail.com

A TOPOGRAPHIC MAP SHOWING
**A PORTION OF BLOCK 25,
KETCHUM TOWNSITE**
LOCATED WITHIN SECTION 18, T.4N., R.18 E., B.M.,
CITY OF KETCHUM, BLAINE COUNTY, IDAHO
PREPARED FOR BLISS ARCHITECTURE



LEGEND

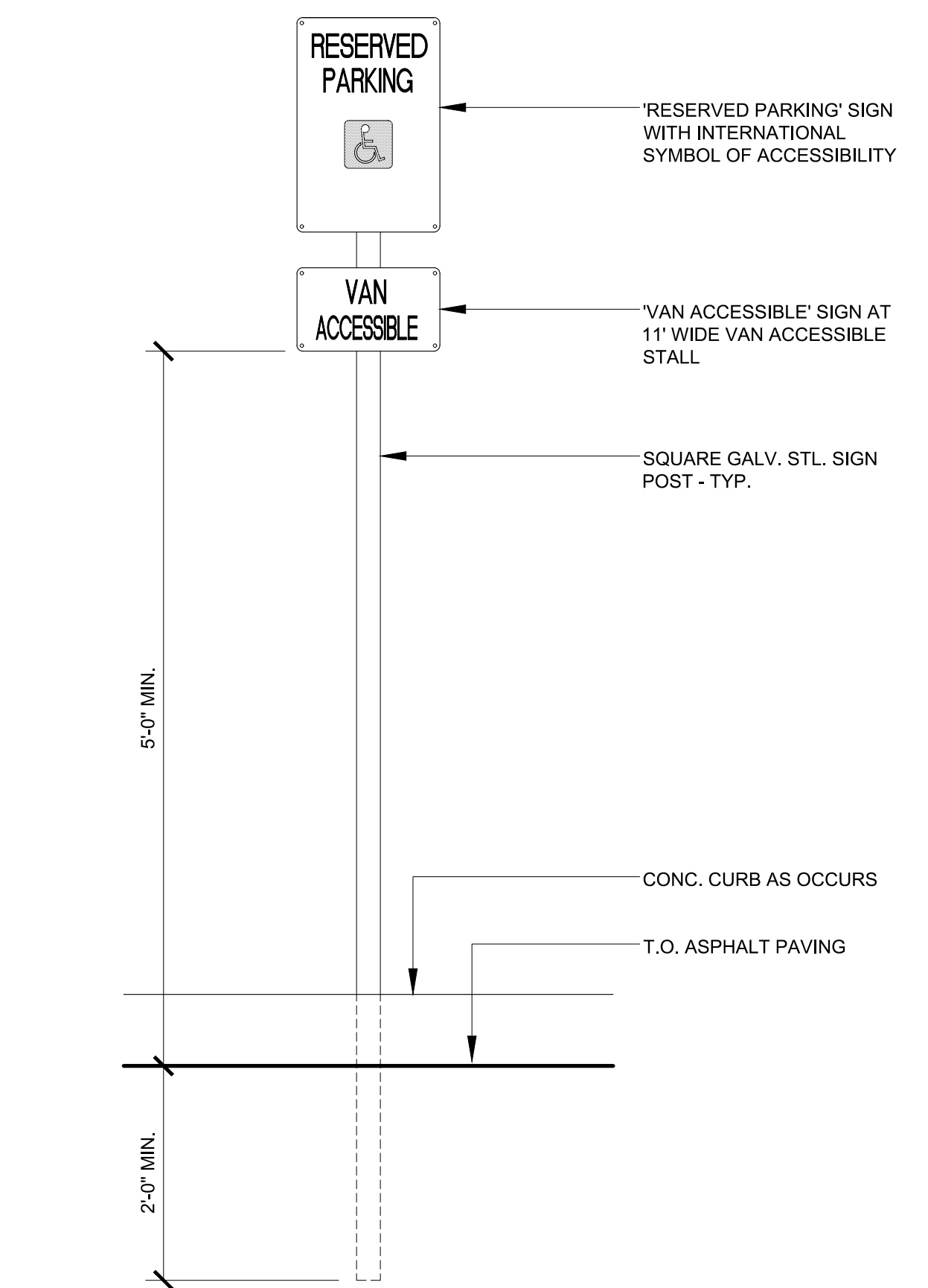
- Property Line
- Centerline of Right of Way
- Roof Line
- Existing Structure
- EOA = Edge of Asphalt
- Asphalt
- Pavers
- Concrete
- 1' Contour Interval
- 5' Contour Interval
- Paint Striping
- Moveable features
- CP = Survey Control
- FD1/2" = Found 1/2" Rebar
- FD5/8" = Found 5/8" Rebar
- SGN = Sign
- Light
- GMTRS = Gas Meters
- WV = Water Valve
- CB = Catch Basin
- SDMH = Stormdrain Manhole
- Syringa Manhole
- SCO = Sewer Cleanout
- SMH = Sewer Manhole
- AC = Air conditioner
- AP = Angle Point
- BLDG = Building
- CL = Centerline
- CONC = Concrete
- COR = Corner
- EP = Edge of Pavers
- FD = Found
- FF = Finish Floor
- FL = Flowline of Gutter
- GRG = Garage
- LIP = Lip of Gutter
- MAG = Magnetic Nail
- NC = No Cap
- NOEL = No Elevation
- POC = Point on Curve
- TBC = Top Back of Curb
- THRESH = Threshold
- TP = Top of Pavement
- XWALK = Crosswalk



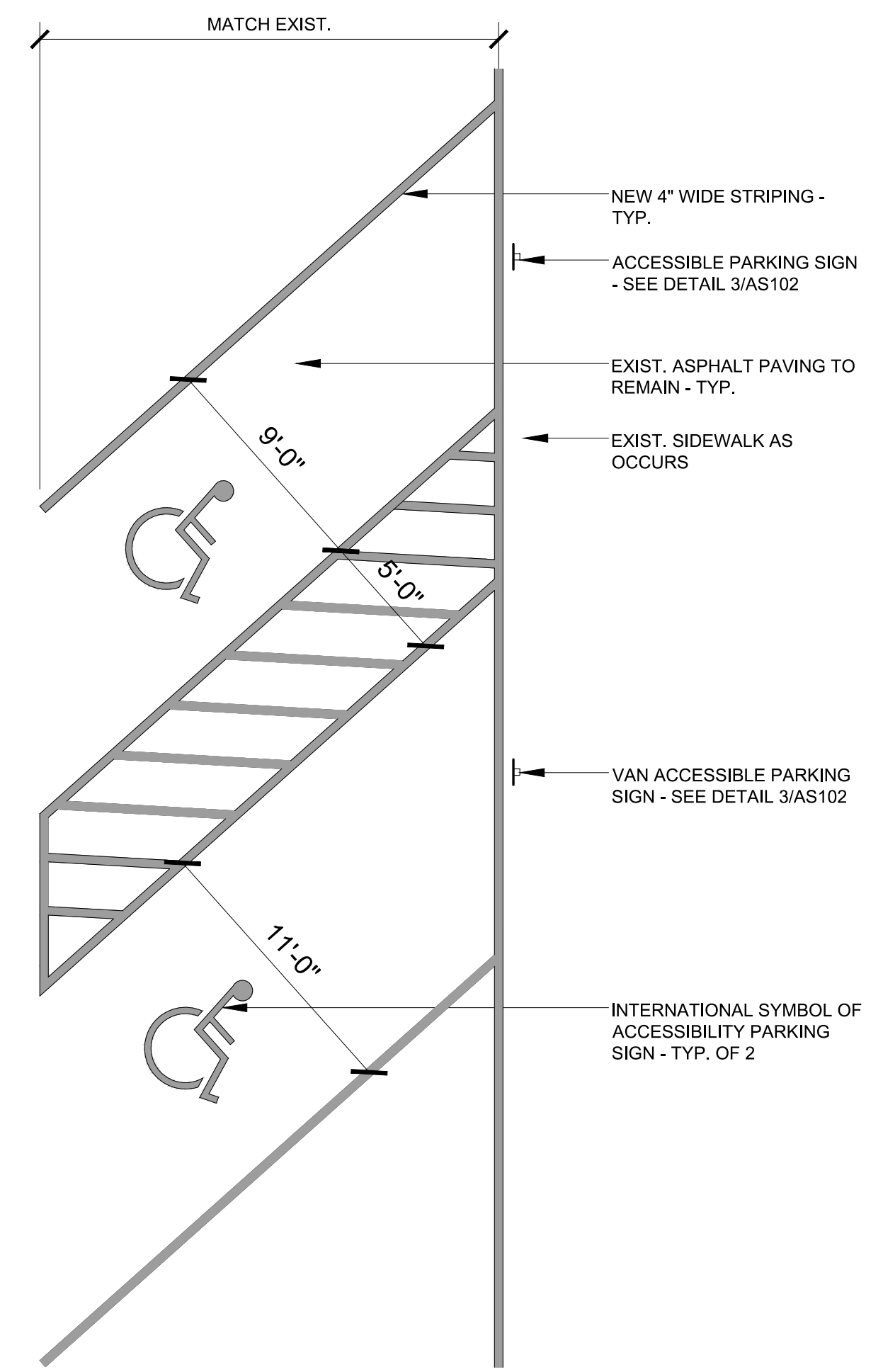
SURVEY NARRATIVE & NOTES:

- 1) THE PURPOSE OF THIS MAP IS TO SHOW TOPOGRAPHIC FEATURES BASED ON FIELD WORK GATHERED ON 8/02/2023 FOR SITE DESIGN AND THE CONTENT IS RELATIVE TO THE INTENDED USE. UNAUTHORIZED CHANGES OR ADDITIONS TO THE EXISTING DATA SHOWN ON THIS MAP IS STRICTLY PROHIBITED. ANY USES OF THIS MAP BEYOND THE STATED PURPOSE REQUIRES THE AUTHORIZATION OF PHILLIPS LAND SURVEYING, PLLC.
- 2) THE BOUNDARY SHOWN IS BASED ON FOUND CENTERLINE MONUMENTS, FOUND LOT CORNER MONUMENT, AND THE PLAT OF THE VILLAGE OF KETCHUM, INSTRUMENT NUMBER 302967, RECORDS OF BLAINE COUNTY, IDAHO.
- 3) VERTICAL CONTROL: NAVD 1988. PROJECT BENCHMARK IS SURVEY CONTROL POINT 200, ELEVATION = 5851.17'
- 4) UNDERGROUND UTILITIES ARE NOT SHOWN. VISIBLE UTILITY FEATURES WERE LOCATED DURING THE COURSE OF THE SURVEY. DIGLINE OR PRIVATE UNDERGROUND UTILITY LOCATING SERVICE SHOULD BE CONTACTED PRIOR TO ANY EXCAVATION.
- 5) THE CURRENT ZONING IS CC, COMMUNITY CORE DISTRICT. REFER TO THE CITY OF KETCHUM ZONING ORDINANCE FOR SPECIFIC INFORMATION ABOUT THIS ZONING DISTRICT.

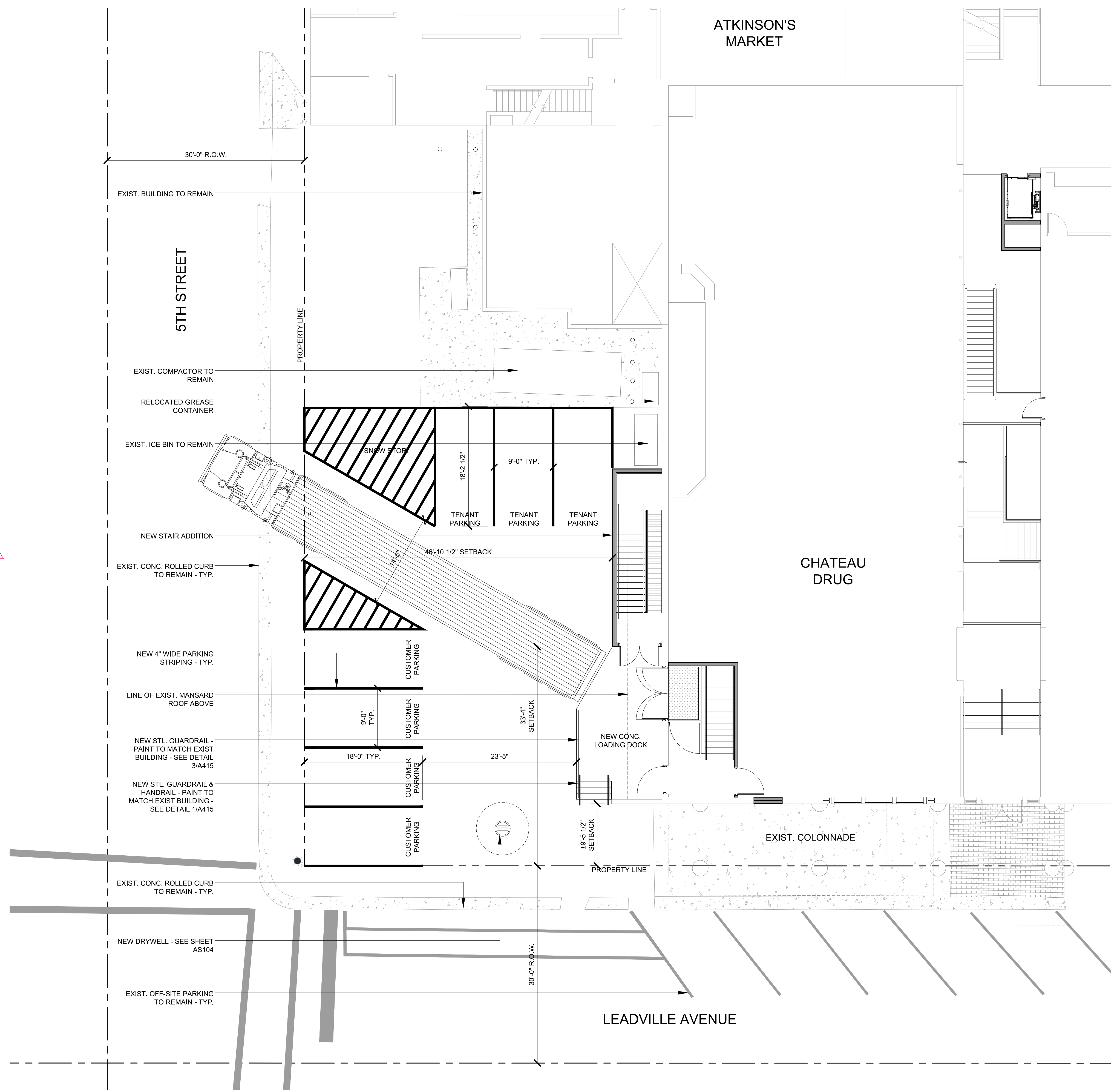
EXHIBIT "B"



TYP. ADA PARKING SIGN
 SCALE: 1" = 1'-0"



ENLARGED PLAN AT ADA PARKING
 SCALE: 3/16" = 1'-0"



PROPOSED ENLARGED SITE PLAN
 SCALE: 1/8" = 1'-0"

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