



City of Ketchum

November 16, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20557 and 20558 for improvements in the unimproved portion of Bird Drive right of way

Recommendation and Summary

Staff is recommending Council approve the attached Encroachment Agreements and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20557 and 20558 with Patricia Hanwright."

The reasons for the recommendation are as follows:

- Agreement 20557 approves and establishes maintenance responsibilities for existing driveway improvements in the right of way that were installed when the Stone's Throw Townhomes were constructed. No agreement was approved when the improvements were installed.
- The owner of Lot 6496, an unimproved lot, must have access to Bird Drive in order to develop the lot. The only way to provide access is via the Stones Throw private driveway. This agreement authorizes the owner of Lot 6496 to use and maintain the driveway access.
- Agreement 20558 allows installation of utilities for lot 6496 to be installed in the right of way.

Introduction and History

The portion of Bird Drive south of Wood River Drive is unimproved city right of way (Exhibit A). In the middle of the right of way is a public trail accessing River Run. On the east side there is a private driveway for Pennay's Condominiums. The Pennay's driveway and other improvements were approved with an encroachment agreement. On the west side there is a private driveway accessing the Stone's Throw Townhomes. There is no encroachment permit for those improvements.

The owner of Lot 6496, located at the south end of Bird Drive, would like to develop the property. In order to proceed, the municipal code requires street access to the parcel. The only way to provide street access is by using the Stone's Throw private driveway. Ideally, all parties (City, Stone's Throw and the owner of lot 6496) would enter into an encroachment agreement to use the city right of way as a private driveway to access the properties. The Stone's Throw Townhome owners do not want to enter into an encroachment agreement and in order to proceed, the owner of 6496 agreed to enter into the agreement and accept responsibility for maintenance of the existing driveway improvements. All parties have agreed to this approach.

Agreement 20558 authorizes installation of private water and waste water connections to be installed in the right of way so lot 6496 can be developed.

Analysis

The proposed encroachment agreements memorializes the private improvements currently in the right of way and permits installation of water and waste water connection lines to service lot 6496.

Financial Impact

There is no financial impact resulting from approval of this encroachment agreement.

Attachments:

Aerial photo of the site

Encroachment Agreement 20557

Encroachment Agreement 20558



Unimproved Portion of Bird Drive

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY ATTORNEY
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20557
ACCESS**

THIS AGREEMENT, made and entered into this ____ day of _____, by and between CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Patricia Hanwright, Trustee of the _____ Trust (referred to as "Owner").

RECITALS

WHEREAS, Owner is the owner of real property described as Tax Lot 6496 ("Lot 6496") located in the City of Ketchum, State of Idaho as shown on the Record of Survey recorded as Instrument No. 659019 in the official records of Blaine County, Idaho ("2019 Survey"); and

WHEREAS, the property identified as "Bird Drive" in the 2019 Survey ("Bird Drive") is a public right-of-way within Ketchum, but is not classified as an open public street or improved to Ketchum city street standards; and

WHEREAS, the owners of Townhome Units in the Stones Throw Townhomes, as shown on the 2019 Survey, (collectively, the "Stonethrow Units"); also access their residences via Bird Drive, but, as of the time of this Agreement, are not parties to a Right-of-Way Encroachment Agreement with Ketchum; and

WHEREAS, Lot 6496 is presently unimproved, however, Owner desires to improve Lot 6496 and to utilize Bird Drive to access Lot 6496; including improvements to the existing drive, parking, landscaping, and walkways within the public right-of-way, and such improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time 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 Owners to install and maintain the Improvements identified in Exhibit "A" within the public right-of-way of Bird Drive located adjacent to the real property described as Lot 6496 (the "Subject Property") for so long as Owner maintains said Improvements in a good repair and in a safe manner, and unless and until

Ketchum requires the removal or relocation of all or some part of the Improvements to complete modifications to the public right of way.

2. Owner shall be responsible for the maintenance of said Improvements including snow removal and paving, for so long as this Agreement remains in place. It is understood that the Stonestrow Units also access their residences using Bird Drive, and that Owner may enter into a separate maintenance agreement with Stones Throw to share and allocate maintenance costs on Bird Drive.

3. In the event (1) Owner fails to cure any breach in its obligation to maintain the Improvements as required herein after being provided written notice by Ketchum specifically identifying the breach, within thirty days of such notice, or (2) Ketchum needs to make modifications to the public right of way which, in Ketchum's reasonable discretion, necessitate the removal or relocation of all or some part of the Improvements, Ketchum may cancel or reduce the scope of this Agreement by providing written notice to Owner, in which event Owner shall commence removal or relocation of the Improvements, or such portion of the Improvements as requested by Ketchum, at Owner's sole expense. Notwithstanding the foregoing, no cancellation of this Agreement shall preclude Owner's right to access the Subject Property via Bird Drive either by continuation of the existing private drive or by future conversion to a private or public street..

4. In consideration of Ketchum allowing Owners to maintain the Improvements in the public right-of-way, Owners 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 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 Owners' part to be performed under this Agreement, or arising from any negligence of Owners or Owners' agents, guests, contractors or employees. 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. As a material part of the consideration to Ketchum, Owner hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waive all claims in respect thereof against Ketchum.

5. 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 Improvements constructed, installed, removed or maintained in the public right-of-way.

5. Owner understands and agrees that by maintaining the 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, except with respect to the Improvements and subject to existing uses, 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. Notwithstanding the foregoing, during the term of this Agreement, Owner may treat the Improvements as a private driveway.

6. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

7. 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.

8. 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.

9. 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 Improvements maintained in the public right-of-way other than as set forth in this Agreement.

10. 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.

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

12. 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:

CITY OF KETCHUM:

By: _____

By: _____

Patricia Hanwright, Trustee

Neil Bradshaw, Mayor

ATTEST:

Grant Gager
City Clerk

STATE OF _____,)
) ss.
County of _____.)

On this ____ day of _____, 2020, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF _____,)
) ss.
County of _____.)

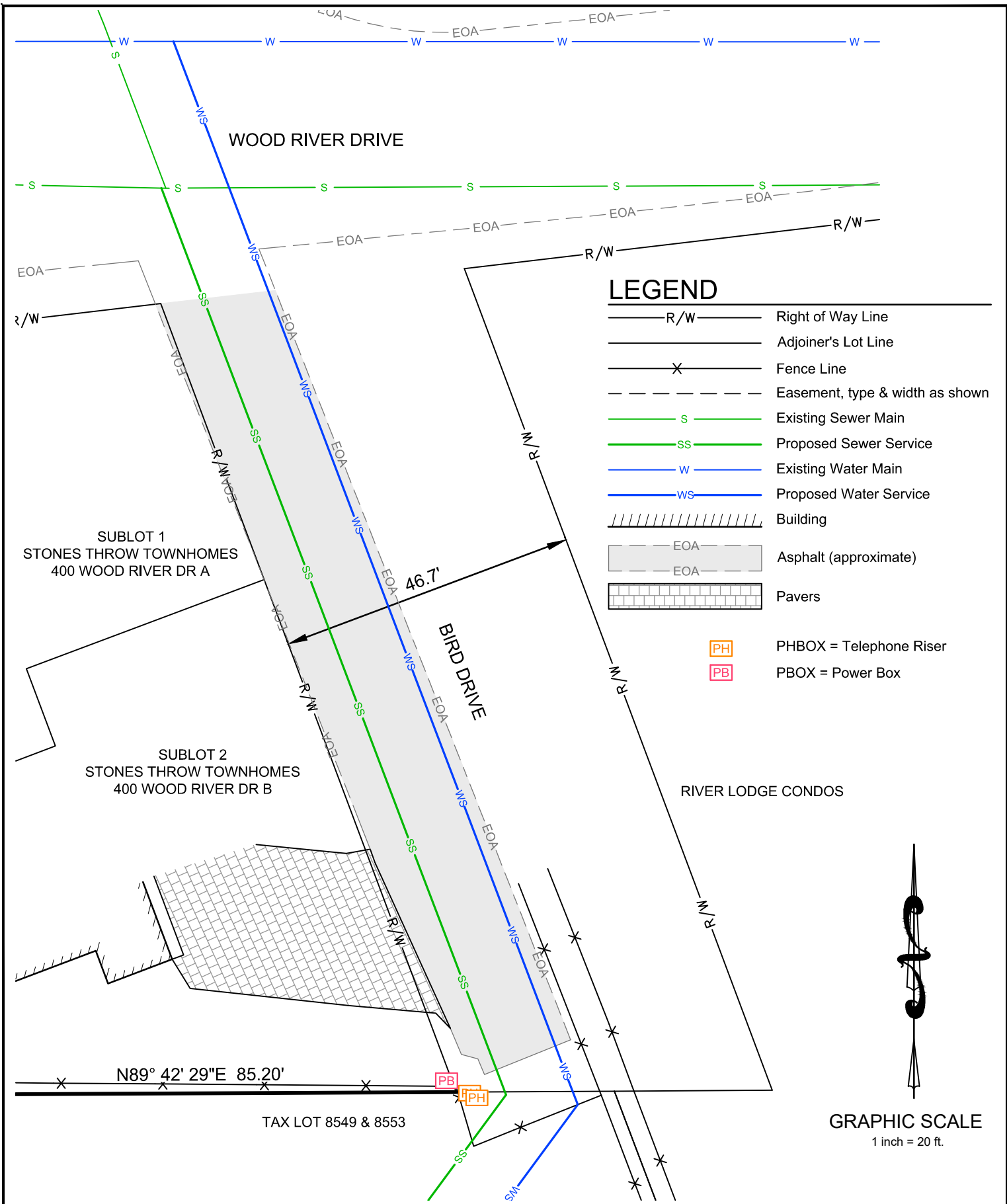
STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of _____, 2020, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"



LEGEND

- Right of Way Line
- Adjoiner's Lot Line
- Fence Line
- Easement, type & width as shown
- Existing Sewer Main
- Proposed Sewer Service
- Existing Water Main
- Proposed Water Service
- Building
- Asphalt (approximate)
- Pavers
- PHBOX = Telephone Riser
- PBOX = Power Box



GRAPHIC SCALE
1 inch = 20 ft.

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY ATTORNEY
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20558
UNDERGROUND UTILITIES**

THIS AGREEMENT, made and entered into this ____ day of _____, by and between CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Patricia Hanwright, Trustee of the _____ Trust ("referred to as "Owner").

RECITALS

WHEREAS, Owner is the owner of real property described as Tax Lot 6496 ("Lot 6496") located in the City of Ketchum, State of Idaho as shown on the Record of Survey recorded as Instrument No. 659019 in the official records of Blaine County, Idaho ("2019 Survey"); and

WHEREAS, the property identified as "Bird Drive" in the 2019 Survey ("Bird Drive") is a public right-of-way within Ketchum, but is not classified as an open public street or improved to Ketchum city street standards; and

WHEREAS, Lot 6496 is presently unimproved, however, Owner desires to improve Lot 6496 and to install underground utilities, including, but not limited to, below surface water and sewer lines, electric and cable, within the public right-of-way as shown in Exhibit "A" attached hereto and incorporated herein to serve the improvements to Lot 6496 (collectively referred to as the "Sub-surface Improvements"); and,

WHEREAS, Ketchum finds that said Sub-surface Improvements will not impede the use of said public right-of-way at this time 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 install, maintain, improve and repair the Sub-surface Improvements identified in Exhibit "A" within the public right-of-way of Bird Drive located adjacent to the real property described as Lot 6496 (collectively, the "Subject Property") to serve the residential improvements to be constructed on the Subject Property, for so long as Owner maintains the Sub-surface Improvements in good repair and in a safe manner.

2. Owner shall be responsible for the installation, maintenance and repair of all Sub-surface Improvements, including, but not limited to restoration of damage to all surface areas disturbed by the installation, maintenance, improvement and/or repair of said Sub-surface Improvements to a condition as good or better than the condition prior to any disturbance.

3. Notwithstanding the foregoing, in the event Ketchum requires the relocation of all or some portion of said Sub-surface Improvements to complete modifications or upgrades to the public right of way, Ketchum may require Owner to relocate the Sub-Surface Improvements below Bird Drive within the public right-of-way at Owner's sole expense.

4. In the event Owner fails to cure any breach of its obligations under this Agreement within thirty (30) days of receipt of written notice from Ketchum, or to the extent breach requires longer than thirty (30) days to cure, commence action to cure within thirty (30) days and diligently pursue such cure to completion, Ketchum may cancel or reduce the scope of this Agreement by providing written notice to Owner, in which event, Owner shall commence removal of the Sub-Surface Improvements, or such portion of the Sub-Surface Improvements as requested by Ketchum, at its sole expense.

5. In consideration of Ketchum allowing Owner to maintain the 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 Sub-surface 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 Owners' 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 Sub-surface Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Sub-surface Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

6. 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 Improvements constructed, installed, removed or maintained in the public right-of-way.

7. Owner understands and agrees that by maintaining the Sub-surface 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.

8. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties

and the respective heirs, personal representatives, successors and assigns of the parties hereof.

9. 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.

10. 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.

11. 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 Improvements maintained in the public right-of-way other than as set forth in this Agreement.

12. 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.

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

14. 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:

CITY OF KETCHUM:

By: _____

By: _____

Neil Bradshaw, Mayor

ATTEST:

Robin Crotty
City Clerk

STATE OF _____,)
) ss.
 County of _____.

On this ____ day of _____, 2020, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

 Notary Public for _____
 Residing at _____
 Commission expires _____

STATE OF _____,)
) ss.
 County of _____.

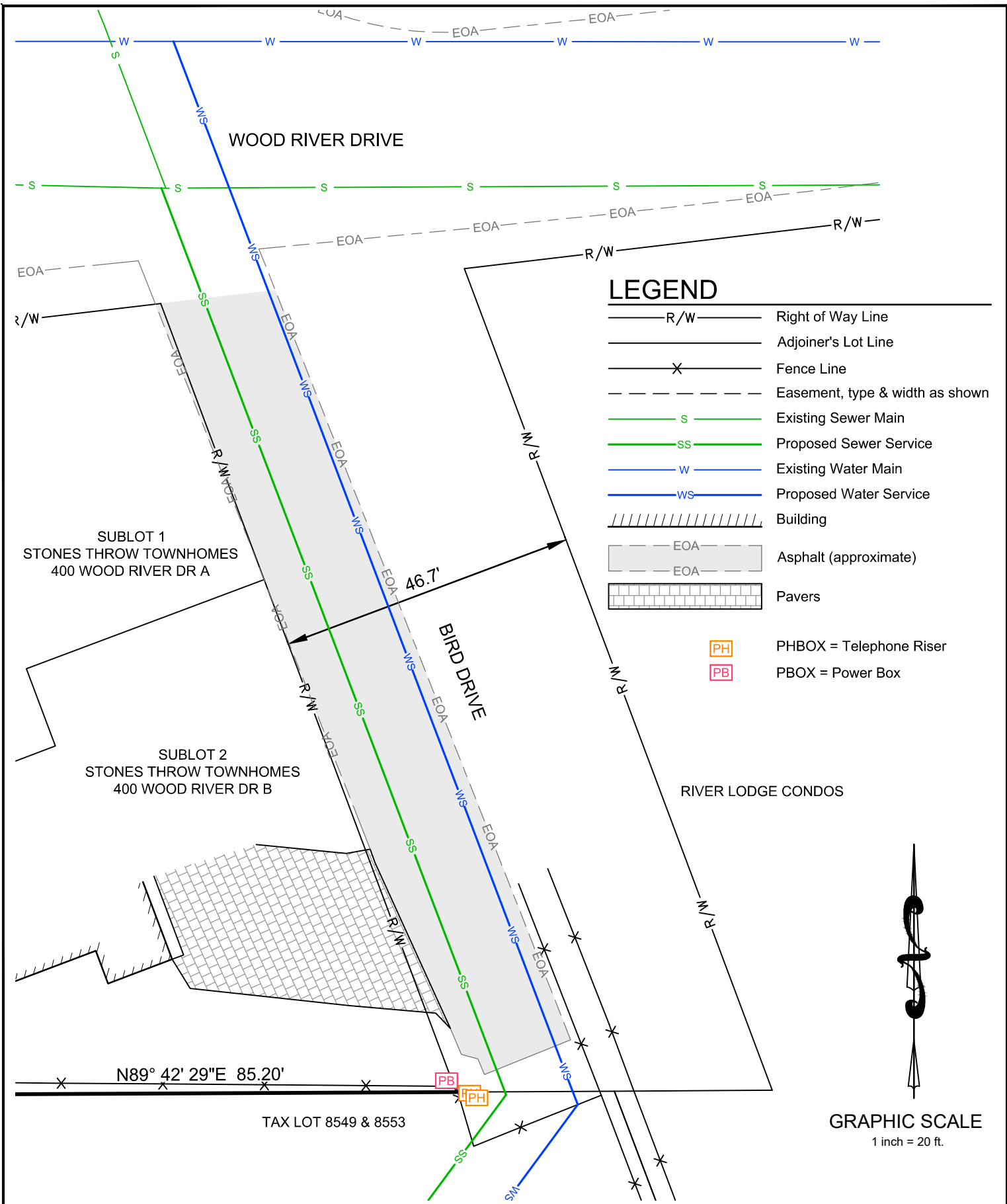
STATE OF IDAHO)
) ss.
 County of Blaine)

On this ____ day of _____, 2020, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

 Notary Public for _____
 Residing at _____
 Commission expires _____

EXHIBIT "A"



LEGEND

- Right of Way Line
- Adjoiner's Lot Line
- Fence Line
- Easement, type & width as shown
- Existing Sewer Main
- Proposed Sewer Service
- Existing Water Main
- Proposed Water Service
- Building
- Asphalt (approximate)
- Pavers
- PHBOX = Telephone Riser
- PBOX = Power Box



GRAPHIC SCALE
1 inch = 20 ft.