



City of Ketchum

**CITY COUNCIL MEETING AGENDA MEMO**

Meeting Date:	February 5, 2024	Staff Member/Dept:	Morgan Landers, AICP – Director of Planning and Building
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Agenda Item:	Recommendation to review and approve Right-of-Way Encroachment Agreement #24903 for existing encroachments in the right-of-way.
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Recommended Motion:

I move to approve Agreement #24903 and direct the mayor to sign.
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Reasons for Recommendation:

- |                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>The City of Ketchum issued a building permit for an interior remodel of commercial office space at 100 E 5<sup>th</sup> on May 30, 2023.</li> </ul>                                         |
| <ul style="list-style-type: none"> <li>A request for a final inspection was submitted on November 17, 2024.</li> </ul>                                                                                                             |
| <ul style="list-style-type: none"> <li>A walkway between two entrances to the building exists within the public right-of-way in addition to a sign for the previous business that occupied the building.</li> </ul>                |
| <ul style="list-style-type: none"> <li>The business owner mounted a ski chair in place of the previous business sign using the existing sign posts.</li> </ul>                                                                     |
| <ul style="list-style-type: none"> <li>Prior to issuance of a certificate of occupancy for the building permit, a ROW Encroachment agreement was required for the ski chair and walkway within the public right-of-way.</li> </ul> |

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

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Sustainability Impact:

None OR state impact here: None
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Financial Impact:

None OR Adequate funds exist in account:	None
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Attachments:

- |                                                    |
|----------------------------------------------------|
| 1. ROW Encroachment Agreement #24903 with Exhibits |
|----------------------------------------------------|

**WHEN RECORDED, PLEASE RETURN TO:**

OFFICE OF THE CITY CLERK  
CITY OF KETCHUM  
POST OFFICE BOX 2315  
KETCHUM, IDAHO 83340

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24903**

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 and Scott and Andrea Martin ("Owners") whose mailing address is PO Box 2640, Sun Valley, ID 83353.

*RECITALS*

WHEREAS, Owner is the owner of real property located at 100 E 5<sup>th</sup> St. and legally described as Ketchum Townsite W 40 x 55 feet of Lot 5, Block 36 ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit an existing mounted ski lift chair and a walkway that connects the front door of the building on E 5<sup>th</sup> Street with the door on the 1<sup>st</sup> Ave side of the building within the city's public right-of-way. These 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 Improvements identified in Exhibit "A" within the public right-of-way adjacent to the Subject Property until notified by Ketchum to remove the Improvements at which time Owner shall remove infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed. Any modification to the Improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

3. 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 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 Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said 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 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 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 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. Successors and Assigns - This Agreement shall be binding upon and inures to the benefit of each of the parties hereto and their respective successors and assigns.

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: \_\_\_\_\_  
Neil Bradshaw  
Its: Mayor

Attest: \_\_\_\_\_  
Trent Donat, City Clerk

STATE OF \_\_\_\_\_, )  
                                          ) ss.  
County of \_\_\_\_\_  )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public in and for said State, personally appeared Scott Martin, 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 \_\_\_\_\_

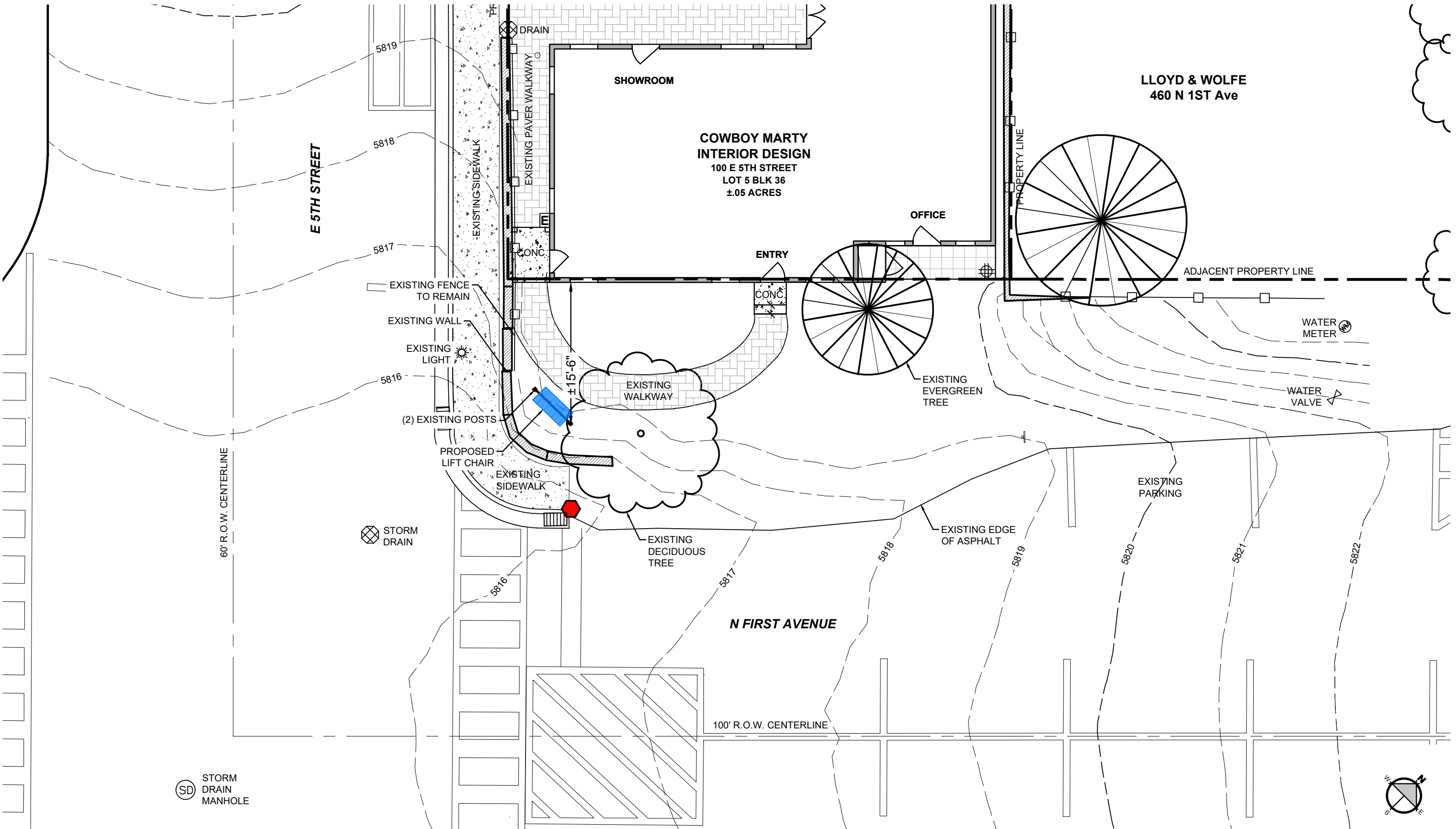
STATE OF \_\_\_\_\_, )  
                                          ) ss.  
County of \_\_\_\_\_  )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public in and for said State, personally appeared Andrea Martin, 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 \_\_\_\_\_

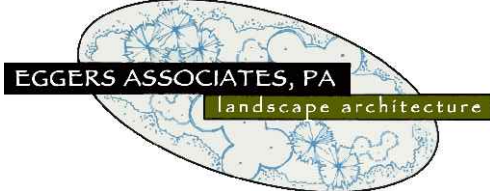
**EXHIBIT "A"**



Scale: 1" = 10'-0" @ 11x17

# Cowboy Marty Interior Design - 100 E 5th Street

# Lift Chair Location



All information contained herein is an instrument of professional service, is the property of Eggers Associates P.A. and shall not be duplicated, discharged or otherwise used without written consent or authorization by Eggers Associates, P.A.