

City of Ketchum

December 16, 2019

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve Easement Agreement 20437 with KETCH PDX, LLC

Recommendation and Summary

Staff is recommending the council authorize the Mayor to sign Easement Agreement 20437 and adopt the following motion:

I move to authorize the Mayor to sign Easement Agreement 20437.

The reasons for the recommendation are as follows:

- The Easement Agreement allows for an 8-foot sidewalk on First Avenue
- The City and project owner are in agreement with the proposed easement

Introduction and History

The KETCH I and II projects are under construction and as part of the project, an 8-foot wide sidewalk is proposed to be constructed on First Avenue. The sidewalk width is the new standard for sidewalks within downtown Ketchum. In order to achieve the sidewalk width, a 2-foot .72 inch portion of private property needs to be dedicated for public sidewalk use.

Analysis

To accomplish the public access on private property, it is necessary to record an easement. The proposed easement will allow the portion of the sidewalk located on private property to be used in the same manner as the sidewalk on public property.

Financial Impact

There is no financial impact associated with this proposed easement.

Attachments:

Easement Agreement 20437

Recording Requested By and When Recorded Return to:

City of Ketchum P.O. Box 2315 480 East Ave. N. Ketchum, ID 83340

> For Recording Purposes Do Not Write Above This Line

SIDEWALK EASEMENT AGREEMENT 20437

This Sidewalk Easement Agreement ("Agreement") is entered into this ___ day of ____, 2019, between the City of Ketchum, Blaine County, Idaho ("City"), whose address is 480 East Ave. N., Ketchum, ID 83340 and Ketchum PDX LLC and Ketchum 2 PDX LLC collectively referred to as the "Grantor") at PO Box 96068, Portland Oregon 97296.

WHEREAS, the City is empowered by Idaho Code § 50-314 to regulate and control all encroachments upon and into all sidewalks, streets, avenues and alleys within its corporate boundaries; and

WHEREAS, the City is empowered by Idaho Code §§67-6501 *et seq.* and Titles 15 and 17 of the Ketchum City Code to regulate the zoning and construction of structures within the City; and

WHEREAS, the City has approved two development applications by Grantor for the construction of two projects located at 560 First Avenue and 100 E 6th Street in Ketchum, Idaho, which approvals include requirements for a 2-foot .72-inch public access on private property along First Avenue; and

WHEREAS, the easement allows for the construction of an 8-foot public sidewalk as required by the City of Ketchum sidewalk design standards; and

WHEREAS, the parties hereby agree to enter into the following easement agreement to grant the City an easement upon the Grantor's property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. <u>Grant</u>. Grantor hereby grants and conveys without warranty unto the City, its heirs, successors and assigns, subject to the terms and conditions herein contained, an easement upon Grantor's property, as depicted in **Exhibit A** and as fully described in **Exhibit B**, the legal

description, attached hereto and incorporated herein by this reference, for the passage of pedestrian and bicycle traffic. All such use of the Easement shall be at the sole risk and expense of the City, its respective heirs, successors, assigns and invitees.

2. Conditions of Use.

- a. Grantor grants said Easement to Grantee and its successors until such time as the development of the properties located at 560 First Avenue and 100 E 6th Street, Ketchum Idaho, is removed.
- b. Grantor covenants and agrees that it will not place or allow to be placed any permanent or temporary structures or obstructions on the easement property which would interfere with the use of this easement for the purposes stated herein; provided however, that Grantor may improve the surface of the easement property with concrete walkways and make such other uses of the easement property which do not interfere with the rights of the City hereunder.
- 3. <u>Termination of Easement.</u> This easement will be terminated, upon approval and acceptance by the City, at such time as the City has determined such easement is no longer necessary for the safe passage of pedestrian and bicycle traffic.
- 4. <u>Binding Effect</u>. The terms of this Agreement shall be a covenant binding and effective upon all parties, and shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.
- 5. <u>Recording</u>. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.
- 6. Remedies. If either party shall fail to perform such party's obligations under the easement described herein for any reason, the other party may pursue any and all remedies at law or equity; provided, however, that the parties affected by any such failures agree to meet and confer to attempt to mediate a settlement in good faith prior to initiating litigation.
- 7. <u>Attorneys' Fees.</u> In the event either party initiates or defends any legal action or proceeding in any way connected with this easement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorney's fees.
- 8. <u>Governing Law.</u> This Agreement shall be governed by the laws and decisions of the State of Idaho.

KETCHUM PDX LLC Mark R. Madden Revocable Living Trust Manager/Member of Ketchum PDX LLC By:_ By: ____ Mark R. Madden Neil Bradshaw Its: Mayor Its: Trustee KETCHUM 2 PDX LLC Mark R. Madden Revocable Living Trust Manager/Member of Ketchum 2 PDX LLC Mark R. Madden Its: Trustee STATE OF _______,

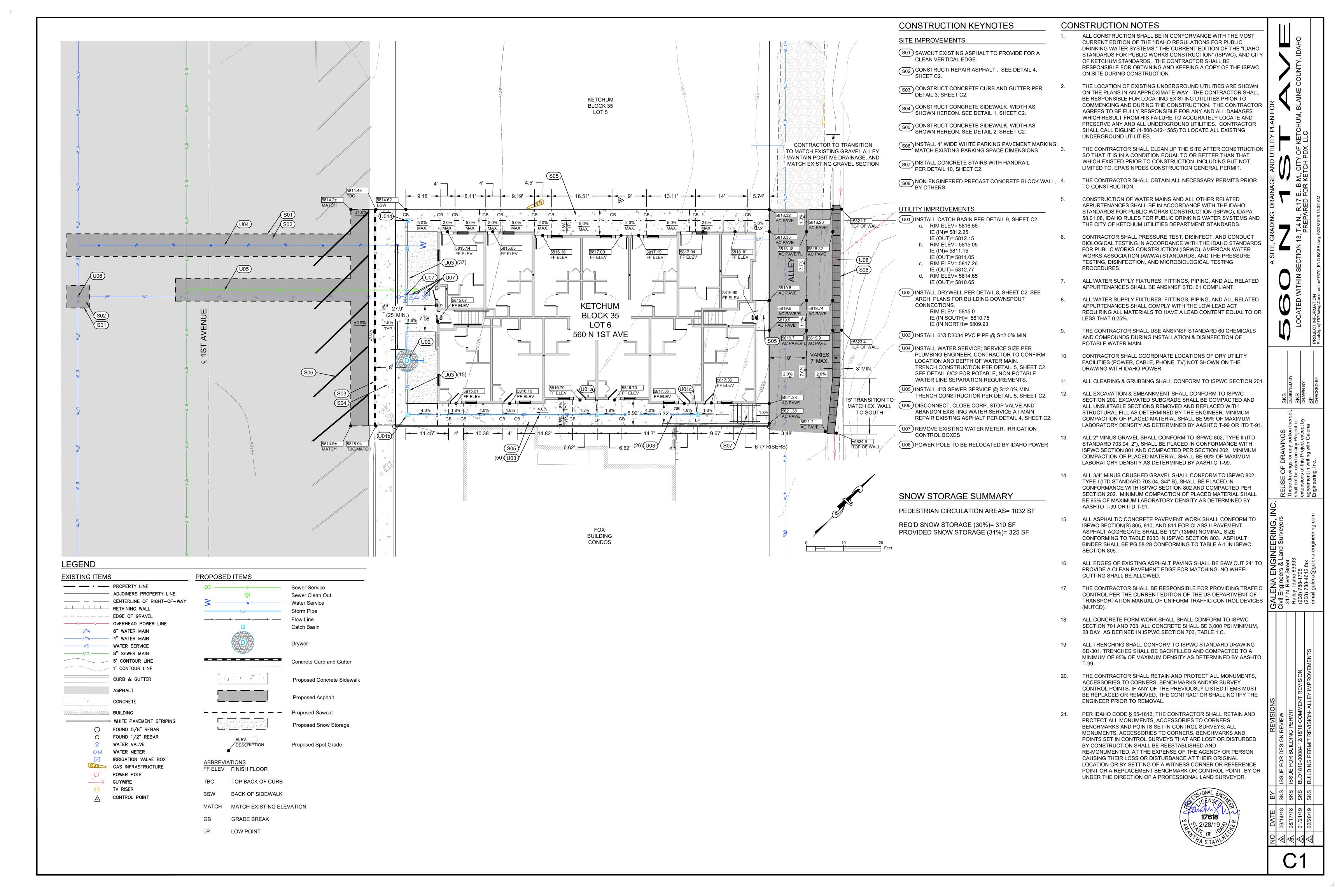
County of ______. On this _____ day of ______, 2019, before me, the undersigned Notary Public in and for said State, personally appeared MARK R. MADDEN, known or identified to me to be the representative of KETCHUM PDX, LLC and KETCHUM 2 PDX LLC, and person who executed the foregoing instrument and acknowledged 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 IDAHO County of Blaine On this ____ day of ______, 2016, 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 _____

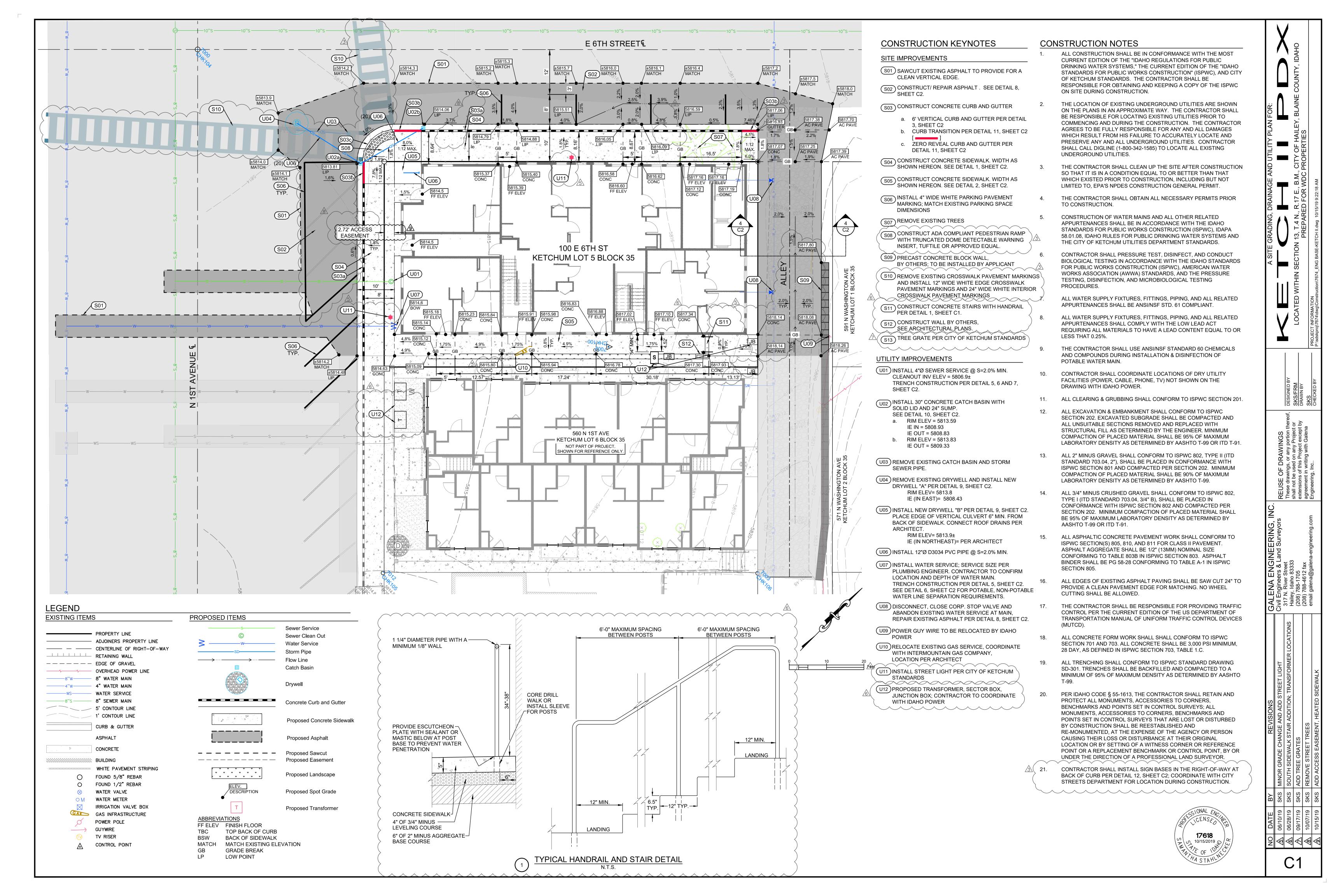
IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date

indicated below.

ATTACHMENT A

ATTACHMENT B LEGAL DESCRIPTION





GALENA ENGINEERING, INC.

CIVIL ENGINEERING & LAND SURVEYING

Legal Description

Section 13, Township 4 North, Range 17 East Boise Meridian, City of Ketchum, Blaine County, Idaho

A legal description for a parcel of land situated in Lot 6, Block 35, Ketchum Townsite, and being more particularly described as follows:

Commencing at a ½" rebar with Illegible Cap, marking the Southwest corner of Lot 6, Block 35, Ketchum Townsite, said point falling S 45°35'00" W 100.06 feet from a ½" rebar with Illegible Cap, marking the Southeast corner of said Lot 6, said Southwest corner being the TRUE POINT OF BEGINNING:

Thence N 45°35'00" E 2.72 feet, along the boundary common to Foxx Building Condos and said Lot 6, to a point;

Thence N 44°24'01" W 55.02 feet, being 2.72 feet distant and parallel to the Easterly right of way of First Avenue;

Thence S 45°35'24" W 2.72 feet, along the boundary common to Lot 5 and said Lot 6, to the Northwest corner of said Lot 6;

Thence S 44°24'01" E 55.02 feet, along the Easterly right of way of First Avenue, to the TRUE POINT OF BEGINNING:

Said parcel containing 150 Sq. Ft., more or less, as determined by computer methods.

End of Description

