



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 24916 between the City and Peter Davis and Kristiann Schoening.

Reasons for Recommendation:

- The improvements will not impact the use or operation of Edelweiss Avenue.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- 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):

The project proposes to install non-heated pavers within the public right-of-way.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is intended to help protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The encroachments proposed for the Edelweiss Avenue project complies with all standards.

Sustainability Impact:

None OR state impact here: None

Financial Impact:

None OR Adequate funds exist in account:

Attachments:

1. Right-of-Way Encroachment Agreement 24916
2. Exhibit "A"

WHEN RECORDED, PLEASE RETURN TO:

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

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24916

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 Peter Davis and Kristiann Schoening, (collectively referred to as "Owner"), whose address 2669 60th Ave SE, Mercer Island, WA 98040.

RECITALS

WHEREAS, Owner wishes to permit placement of a 12-ft wide non-heated paver driveway and approach apron and 4-ft wide gravel path at 140 Edelweiss Avenue. 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;

WHEREAS, the Owner will restore the public right-of-way back to the original condition acceptable to the Streets and Facilities Director;

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 the Improvements identified in Exhibit "A" within the public right-of-way on Edelweiss Avenue, until notified by Ketchum to remove the Improvements, at which time Owner shall remove Improvements 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. Owner shall be responsible for restoring the right-of-way that is altered due to the removal of the Improvements, to the satisfaction of the Director of Streets and Facilities.

4. 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.

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.

6. 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.

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.

OWNERS:

CITY OF KETCHUM:

By: _____
Peter Davis

By: _____
Neil Bradshaw

Its: Mayor

By: _____
Kristiann Schoening

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

On this ____ day of _____, 2024, 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 _____

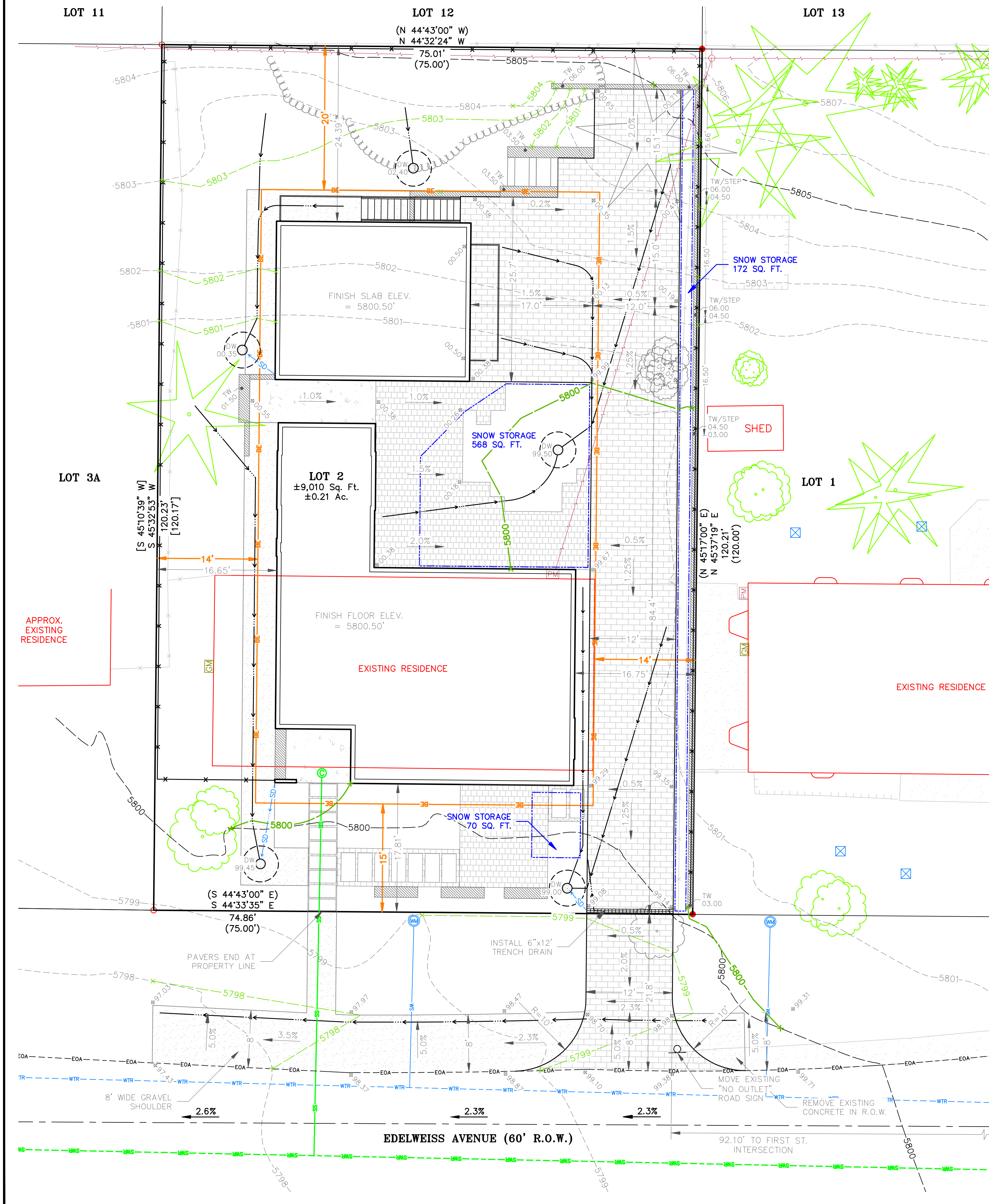
STATE OF IDAHO)
County of Blaine) ss.

On this ____ day of _____, 2024, 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
- Subject Boundary
 - Adjoiners Boundary
 - Right-of-Way Centerline
 - Property Setback
 - Edge of Asphalt
 - Existing Building/Structure
 - Proposed Building
 - Proposed Paver Driveway
 - Proposed Paver Walkway
 - Existing Concrete Patio
 - Proposed Concrete
 - Proposed Gravel
 - Proposed Retaining Wall
 - Existing Rock Retaining Wall
 - Existing Fence
 - Proposed Fence
 - Existing 1' Contour
 - Existing 5' Contour
 - Proposed 1' Contour
 - Proposed 5' Contour
 - Proposed Drainage Flowline
 - Proposed Storm Drain Pipe
 - Proposed Snow Storage Area
 - Overhead Power
 - Water Main
 - Water Service
 - Sewer Main
 - Sewer Service
 - Existing Dripline/Edge of Vegetation
 - Found 1/2" Rebar
 - Found 5/8" Rebar
 - Set 1/2" rebar PLS 7048
 - Set Mag Nail PLS 7048
 - Water Valve
 - Water Meter
 - Irrigation Valve
 - Power Pole
 - Power Meter
 - Gas Meter
 - Sewer Cleanout
 - Deciduous Tree
 - Coniferous Tree To Be Removed
 - Coniferous Tree
 - DW = Proposed Landscape Drywell
 - Proposed Driveway Trench Drain
 - Existing Grade
 - Proposed Grade
 - Proposed Spot Elevation
 - Proposed Retaining Wall Top Elevation & Wall Step Location
 - () Record Bearing and Distance per Inst. No. 111300
 - [] Record Bearing and Distance per Inst. No. 543880

- ### NOTES
- 1) Basis of Bearings is Idaho State Plane Coordinate System, NAD83, Central Zone, at Grid in US Survey Feet. Vertical Datum is NAVD1988.
 - 2) Boundary Information is from the Replat of Blocks 76, 77 & 78, The Village of Ketchum, Inst. No. 111300; the Record of Survey of Ketchum Townsite : Block 104 : Lot 3A, Inst. No. 543880; Records of Blaine County, Idaho.
 - 3) Refer to the Plat Notes, Conditions, Covenants, and Restrictions on Original Plat.
 - 4) Utility Locations shown are based on visual surface evidence, and City Maps. Utility locations should be verified before any excavation.
 - 5) Current Zoning appears to be Limited Residential, (LR). Please refer to City of Ketchum Zoning Ordinances for more information about this Zone.
 - 6) Not all trees and vegetation are shown, some locations are approximate.

- ### NOTES
- 1) Utility Locations shown are based on Digline locates and visual surface evidence. Contractor shall be responsible for locating existing utilities prior to and during construction.
 - 2) See the Landscape Plan from Karen Kiest Landscape Architects for the remainder of the site.
 - 3) Contractor shall assure positive drainage away from the house and driveway.
 - 4) Contractor shall be responsible for dust control during construction of all items hereon. Dust control shall be continuous during construction, 24 hours per day 7 days per week. The contractor shall follow the requirements of the Storm Water Pollution Prevention Program at all times until permanent erosion control is established.
 - 5) The Trench Drain shall be a 6" wide HDPE channel with a 0.75 built in channel slope (Zurn Flo-Thru Model Z886 or equivalent). Grate shall be ductile iron with a slotted pattern. All components shall be rated for H-20 loading.
 - 6) All construction shall be in accordance with the most current edition of the Idaho Standards for Public Works Construction, ISPWC, and the City of Ketchum, Idaho, Codes and Standards. The contractor shall be responsible for obtaining and keeping a copy of the ISPWC and the City of Ketchum Codes and Standards on site during construction.
 - 7) Per Idaho Code, 55-1613, the contractor shall retain and protect all monuments, accessories to corners, benchmarks, and points set in control surveys. All monuments, accessories to corners, benchmarks, and points set in control surveys that are lost or disturbed by construction shall be reestablished and re-monumented, at the expense of the agency or person causing their loss or disturbance under the direction of a professional land surveyor.
 - 8) The contractor shall clean up the site after construction so that it is in a condition equal to or better than that which existed prior to construction.
 - 9) The contractor shall be required to obtain all the necessary permits prior to construction and shall check with the City of Ketchum for permits the owner may have already obtained.
 - 10) Trenches shall be backfilled and compacted to a minimum of 95% of maximum density as determined by AASHTO T-99.
 - 11) All clearing and grubbing shall conform to ISPWC Section 201 and City of Ketchum standards of excavation and backfill.
 - 12) All excavation and embankment shall conform to ISPWC Section 202 and City of Ketchum standards for excavation and backfill. Excavated subgrade shall be compacted and all unsuitable Sections removed and replaced with structural fill as determined by the engineer per ISPWC Section 204. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
 - 13) All 2" minus aggregate shall be placed in conformance with ISPWC Section 802. It shall be compacted per ISPWC Section 202 and the City of Ketchum standards. 2" minus crushed aggregate material shall conform to ISPWC Section 802 Type II and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
 - 14) All 3/4" minus aggregate shall be placed in conformance with ISPWC Section 802. It shall be compacted per ISPWC Section 202 and the City of Ketchum standards. 3/4" minus crushed aggregate for leveling course shall conform to ISPWC Table 802 Type I and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
 - 15) All asphaltic concrete pavement work shall conform to ISPWC Section(s) 805, 810, and 811 for Class II pavement and to the City of Ketchum standards. Asphalt aggregate shall be 1/2" nominal size conforming to Table 803b in ISPWC Section 803. Asphalt binder shall be pg 58-28 conforming to Table A-1 in ISPWC Section 805.
 - 16) All edges of existing asphalt paving shall be saw cut a minimum of 24" to provide a clean pavement edge for matching. No wheel cutting shall be allowed. Pavement shall be cut prior to paving to prevent damage to the cut edge.
 - 17) The contractor shall be responsible for providing traffic control per the current edition of the US Department of Transportation Manual of Uniform Traffic Control Devices (MUTCD).
 - 18) Alpine Enterprises Inc. is not responsible for any deviation from these plans, unless such changes have been authorized in writing.

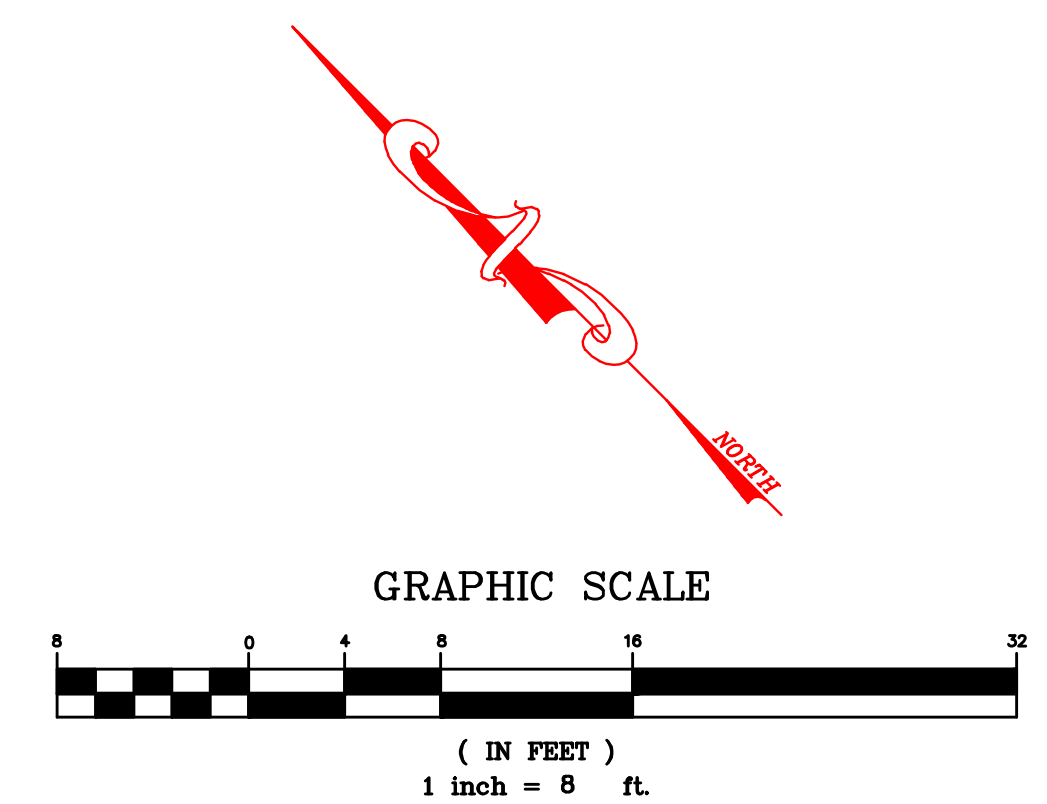
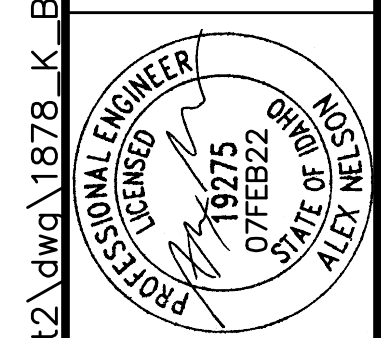


EXHIBIT "A"
Right-Of-Way
Encroachment Agreement
24916

A R.O.W. ENCROACHMENT & GRADING PLAN SHOWING
 LOT 2, BLK 104, KETCHUM TOWNSITE
 WITHIN S13, T.4N., R.17E., B.M., CITY OF KETCHUM, BLAINE CO
 PREPARED FOR KRISTIANN SCHOENING AND PETER D.

Alpine Enterprises Inc.
 Surveying, Mapping, Civil Engineering,
 and Natural Hazards Consulting
 660 Bell Dr., Unit 1
 P.O. Box 2037, Ketchum, ID 83340 USA
 (208) 727-1988 727-1987 fax
 email: bsmith@alpineenterprisesinc.com



REVISIONS	NO	DATE	BY
PRELIMINARY ONLY: NOT FOR CONSTRUCTION			
BUILDING REVIEW SUBMITTAL			

SHEET 1 OF 2

PROJECT PATH AND PRINT DATE U:\LandProjects\2004\1878 K. Blk104 Lt2.dwg 1878 K. Blk104 Lt2 Civil2021.dwg 2/7/2022 2:42:06 PM MST