



City of Ketchum

September 19, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Right-of-Way Encroachment Agreement 22789 for the placement of driveway pavers with snowmelt in the public right-of-way adjacent to 491 N 4th Ave.

Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22789 and adopt the following motion:

“I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22789 between the City and Peter C. Weaver Trust.”

The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of N 4th Ave.
- 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.
- The project meets all requirements for energy code and installation as outlined in the agreement.

Introduction and History

On July 22, 2022, the City of Ketchum issued a Stop Work Order for work within the right-of-way adjacent to 491 N 4th Ave which included the removal of an asphalt driveway and what appeared to be preparation for the installation of a snowmelt system. Construction was immediately halted, and the property owner met with staff to understand the issue and the required action. The property owner had received approval from the Home Owner’s Association (HOA) for the driveway pavers and snowmelt, as he believed the property to be owned by the HOA not the City. Following preparation of all required documents, the property owner submitted a Right-of-Way Encroachment Permit application on August 10, 2022, for the replacement of the existing asphalt driveway with driveway pavers and snowmelt within the City’s right-of-way adjacent to the subject property located at 491 N 4th Ave. The driveway will access an existing home located at 491 N 4th Ave within the City’s General Residential Low Density (GR-L) Zone District.

A public right-of-way is defined as improved or unimproved public property dedicated or deeded to the City for the purpose of providing vehicular, pedestrian, and public use. In Ketchum, the public rights-of-way consist of roadways, curbs, gutters, sidewalks, signage, and drainage facilities. The public

rights-of-way are also used for public parking, wintertime snow storage, and conveyance of utilities, such as water, sewer, electricity, telephone, and cable.

Analysis

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 491 N 4th Ave residence project comply with all standards.

Sustainability

The ROW Encroachment Permit does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

Financial Impact

There is no financial requirement from the city for this action.

Attachments

ROW Encroachment Agreement 22789 and Exhibits

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 22789

THIS AGREEMENT, made and entered into this ____ day of ____, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Peter C. Weaver Trust, representing Peter Weaver, (collectively referred to as "Owner"), whose mailing address is 16 Bassy Lane, Enfield, NH 03748 and who owns real property located at 491 N 4th Ave, Ketchum, ID 83340 legally described as Frenchmans Townhomes PUD Sublot 1 Blk 1 (collectively referred to as "subject property").

RECITALS

WHEREAS, Owner wishes to permit placement of driveway pavers and associated snowmelt system. 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 street, and any landscaping 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 a driveway consisting of driveway pavers and associated snowmelt system identified in Exhibit "A" within the public right-of-way on a portion of N 4th Ave adjacent to the subject property until notified by Ketchum to remove the infrastructure 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.

3. Snowmelt systems installed in the public right-of-way shall be installed as certified in Exhibit "B – Residential Snowmelt Installation Certificate" and operate at all times during the winter according to the following:
- The system shall meet the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)
 - The system shall have an electronic main control board to operate the system that is programmable and optimizes the way the system functions.

- Installation of in-ground control sensors linked to the main control board that detect snow and ice on the surface, monitor the the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

4. Owner shall be responsible for restoring the street and any landscaping that is altered due to the construction and installation of the Improvements, to the satisfaction of the Director of Streets and Facilities.

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 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.

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 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. 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.

9. 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.

10. 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.

11. 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.

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

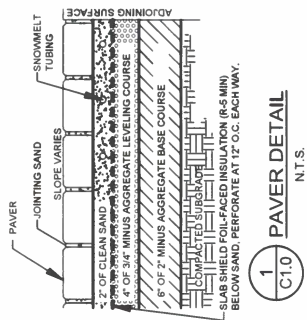
13. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

EXHIBIT "A"



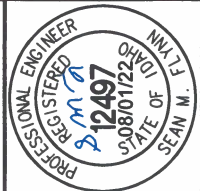
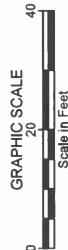
LEGEND

Property Line
Proposed Heated Pavers per Detail 1 / C1.0



NOTES

- 1) Property lines shown hereon are approximate and based on Blaine County GIS information.
- 2) Aerial image is per Google Earth from 7/2016.
- 3) Pavers to be placed in exact location of asphalt driveway. Existing drainage patterns to be maintained.



**ENCROACHMENT PERMIT
SITE PLAN EXHIBIT**

WITHIN SEC 13, T4N, R17E, BLM, CITY OF KETCHUM, BLAINE COUNTY, IDAHO
PREPARED FOR PETER WEAYER

DESIGNED:	MS
CHECKED:	SNP
DETAILED:	MS
SCALES SHOWN ARE PRINTS ONLY	

GALENA ENGINEERING, INC.
Civil Engineers & Land Surveyors
317 N. River Street
Hailey, Idaho 83333
(208) 788-1705
email: galena@galena-engineering.com

REVISIONS	
NO.	DESCRIPTION

C1.0

PROJECT INFORMATION
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City of Ketchum
Planning & Building

EXHIBIT "B"
RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: Peter C. Weaver Living Trust

PROPERTY ADDRESS: 491 4th Ave. N., Ketchum, ID 83340

LEGAL DESCRIPTION: Frenchman's Townhomes PUD Sublot 1 Blk 1

PARCEL NUMBER: RPK03220000010

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: Thornton Heating

CONTRACTOR ADDRESS: Ketchum, ID 83340

CONTRACTOR PHONE: 208-726-5520

CONTRACTOR EMAIL: Matt@thornton-heating.com

Pursuant to the requirements of Right-of-Way Encroachment Agreement # 22789, the installation contractor certifies the following:

I certify that the system proposed meets all requirements of the International Energy Conservation Code (2018 IECC, 403.12.2).

I certify that insulation will be installed below and along the perimeter of the system and that the insulation is rated R-10.

I certify that the boiler/heatpump/other (circle one) operates at a 95% percent efficiency.

Boiler/Heatpump Model Number: Lochnivar, KHBWHB-Sub-02

Other: _____

pc I certify that geofabric will be installed under the pavers to ensure positive drainage off the driveway or sidewalk.

I certify that the system will be operated by an electronic main control board that optimizes the way the system functions and minimizes inefficiencies to the greatest degree possible.

I certify that the system will be installed with in-ground control sensors, linked to the main control board, that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

By, Installation Contractor:

By, Owner:

Print Name: Matt Thornton.

Print Name: Peter C. Weaver

Matt Thornton

Matt Thornton

Peter C. Weaver, TRUSTEE

Signature: Matt Thornton
Date: 9-14-22

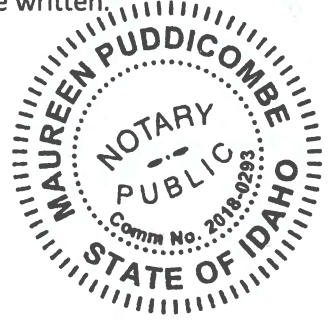
Signature: J.P.S.
Date: 9-14-22

STATE OF Id)
) ss.
County of Blaine)



On this 14th day of September, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Matt Thornton (Installation Contractor), 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.



Maureen Puddicombe
Notary Public for Idaho
Residing at Ketchum, ID
Commission expires 2-14-24

STATE OF Idaho)
) ss.
County of Blaine)

On this 15th day of September, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Peter Weaver (Owner), 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.

Maureen Puddicombe

Notary Public for Idaho

Residing at Ketchum, ID

Commission expires 2-14-24