



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: August 21, 2023 Staff Member/Dept: Paige Nied, Associate Planner
Planning and Building Department

Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement #22849 for the placement of driveway snowmelt system and pavers in the public right-of-way at 220 Bird Drive.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #22849 with Bird Drive Partners LLC.

Reasons for Recommendation:

- The improvements will not impact the use or operation of Bird Drive.
- 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 new detached townhouse development located at 220 Bird Drive within the General Residential – Low Density (GR-L) Zoning District requires a Right-of-Way Encroachment Permit for a driveway snowmelt system and pavers within the City’s right-of-way along Bird Drive. The proposed encroachment complies with all standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060. Permanent encroachments within the right-of-way must be in the public interest pursuant to Ketchum Municipal Code §12.12.060.A. Snowmelt systems reduce icy conditions on driveways and circulation areas creating a safe pathway for property owners accessing their individual homes.

During the April 3, 2023, City Council meeting, the Council determined that due to the carbon dioxide emissions produced by snowmelt systems that they are not in the public interest and informed staff that they will no longer permit residential snowmelt systems within the public right-of-way, unless required by the Streets or Fire Department for nonconforming driveways. However, the Council did acknowledge certain residential projects which include snowmelt systems within the right-of-way that already had building permits issued for and decided to move forward and approve those applications. The subject Encroachment Agreement for a residential snowmelt system within the right-of-way is included as one of the projects with a previously issued building permit that the Council has agreed to approve.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment within the public right-of-way where a permanent fixture in the ground or attached to a building will occur. The standards for issuance of a Right-of-Way Encroachment Permit are

specified in Ketchum Municipal Code §12.12.060. The City Council has the authority to review and approve all permanent encroachments within the public right-of-way associated with a development project pursuant to Ketchum Municipal Code §17.96.030.C. 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 agreement also obligates the property owner to install, maintain, and repair the permanent encroachments.

Sustainability Impact:

The City Council has determined that residential snowmelt systems within the public right-of-way hinder the City's ability to meet the Sustainability Action Plan – 2020 and asserted that they will no longer approve these encroachments moving forward. The subject Right-of-Way Encroachment Agreement for a residential snowmelt system had a building permit issued prior to this determination, therefore, the Council has agreed to approve of it.

Financial Impact:

None OR Adequate funds exist in account.	There is no financial requirement from the city for this action at this time.
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Attachments:

1. ROW Encroachment Agreement #22849 with 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 22849

THIS AGREEMENT, made and entered into this ____ day of ____, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Bird Drive Partners LLC ("Owner"), whose mailing address is Post Office Box 1219, Gig Harbor, Washington and who owns real property located at 220 Bird Drive ("Subject Property").

RECITALS

WHEREAS, Owner is the owner of real property described as 220 Bird Drive ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of a driveway snowmelt system and pavers within the right-of-way on Bird Drive. 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 sidewalk, street, curb and gutter 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 snowmelt system and pavers identified in Exhibit "A" within the public right-of-way on Bird Drive, 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. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.

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 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 sidewalk, curb and gutter and 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

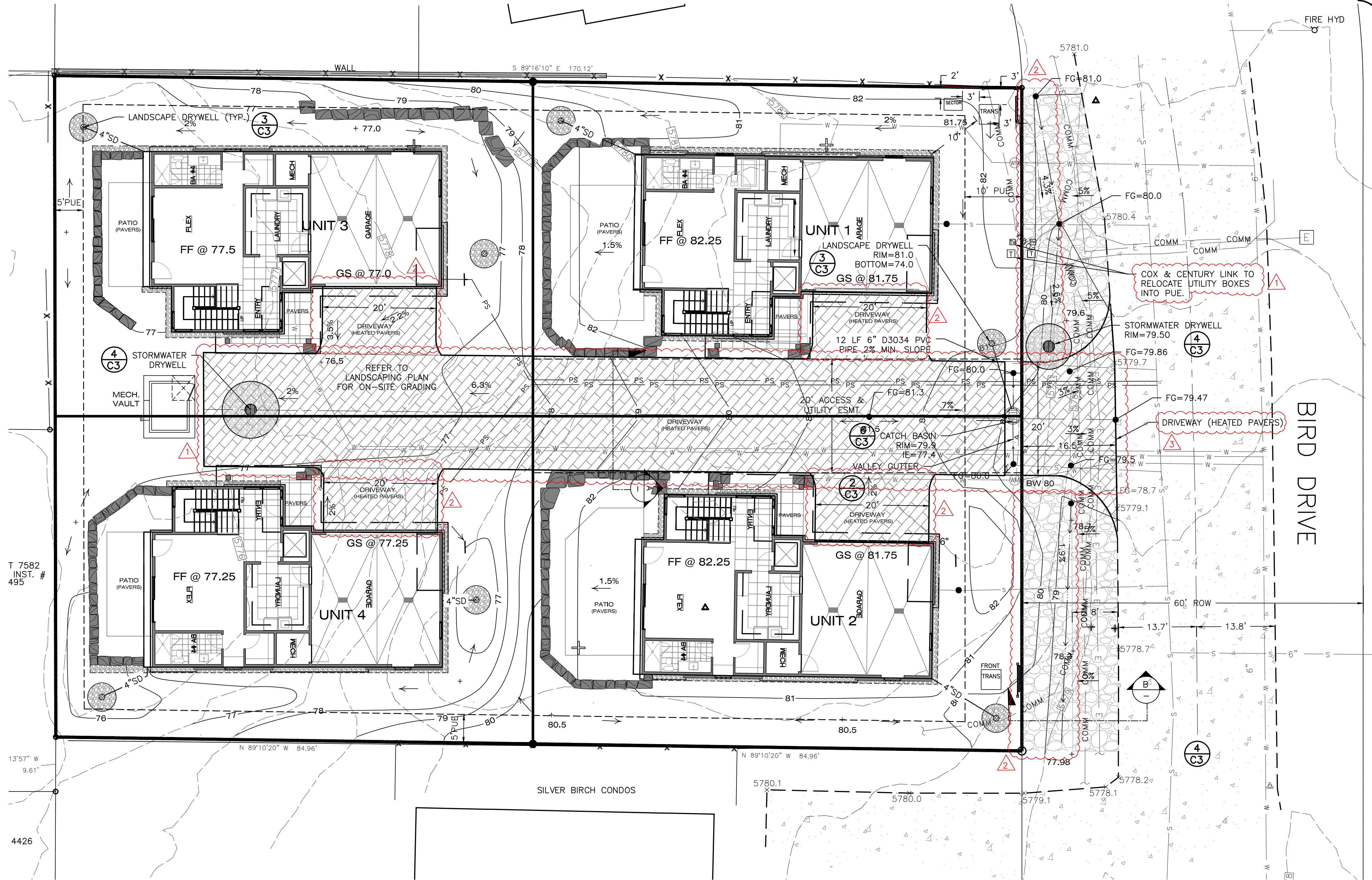
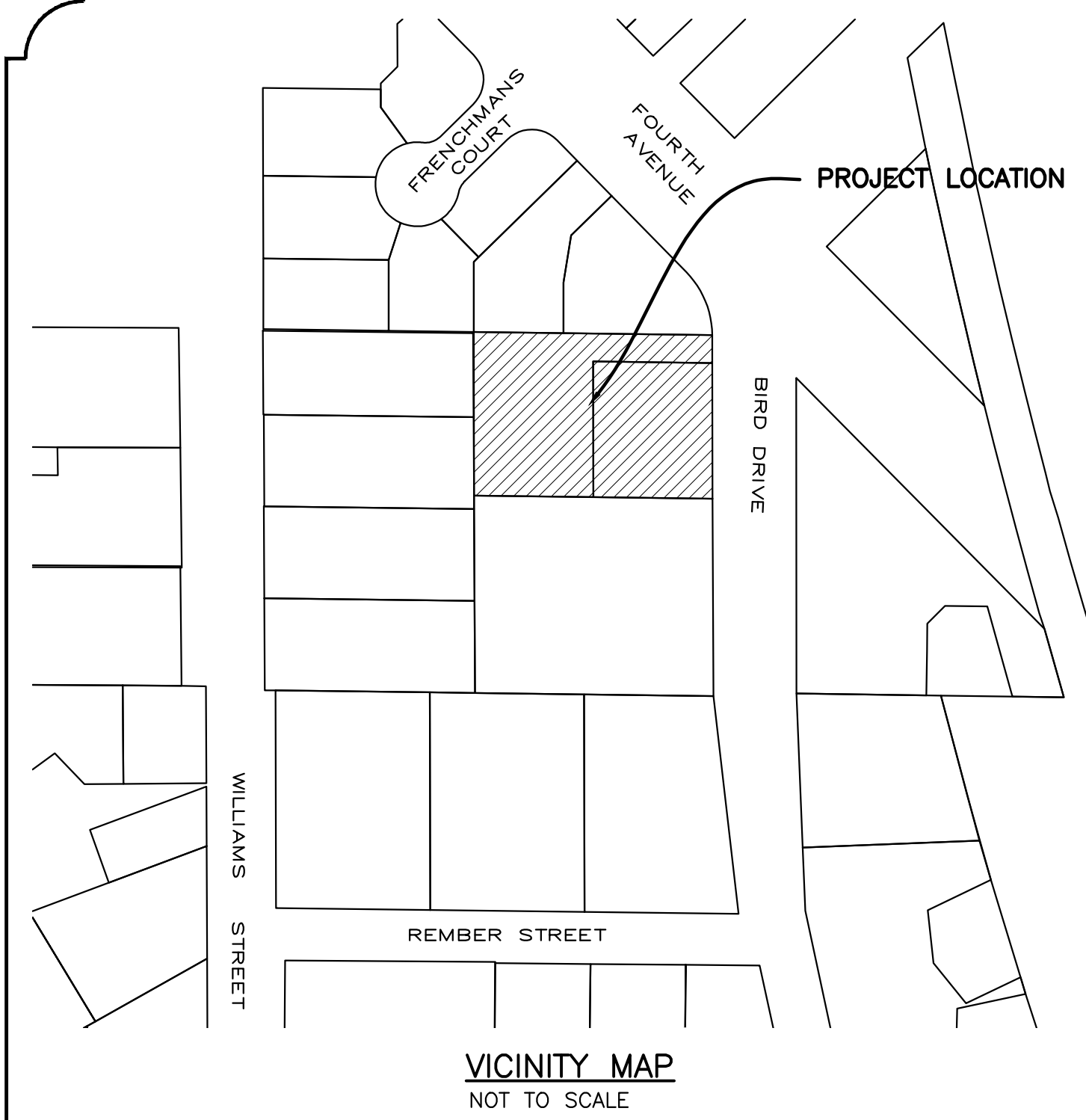
representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

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"



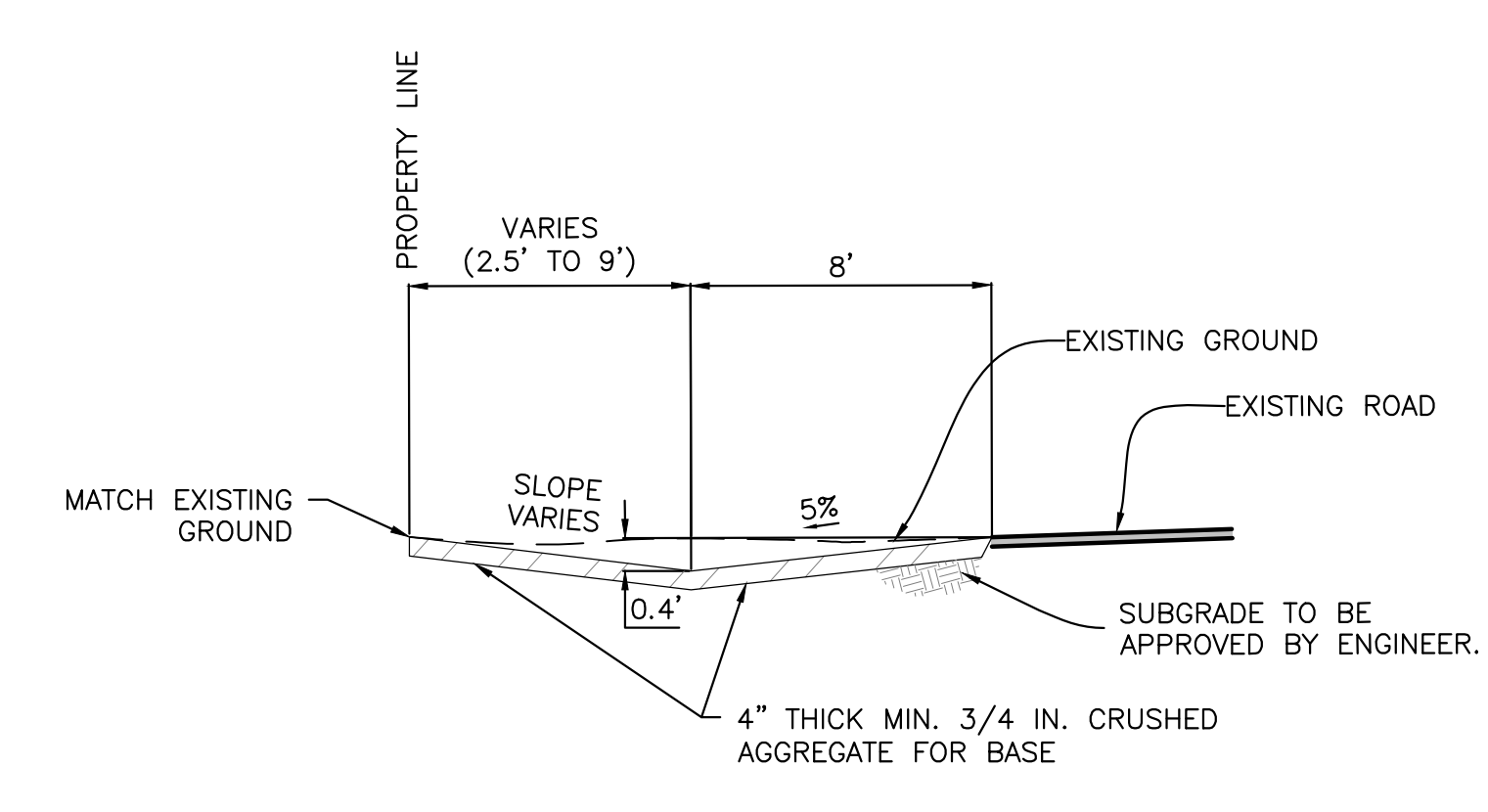
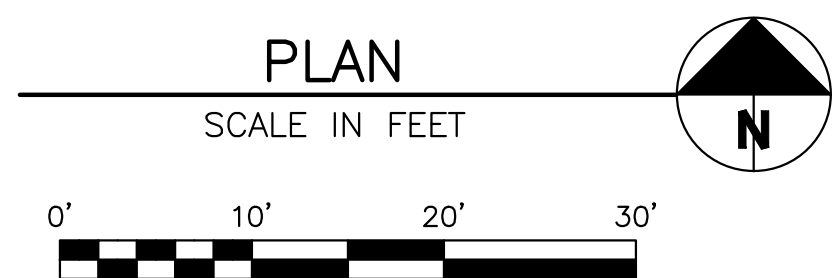
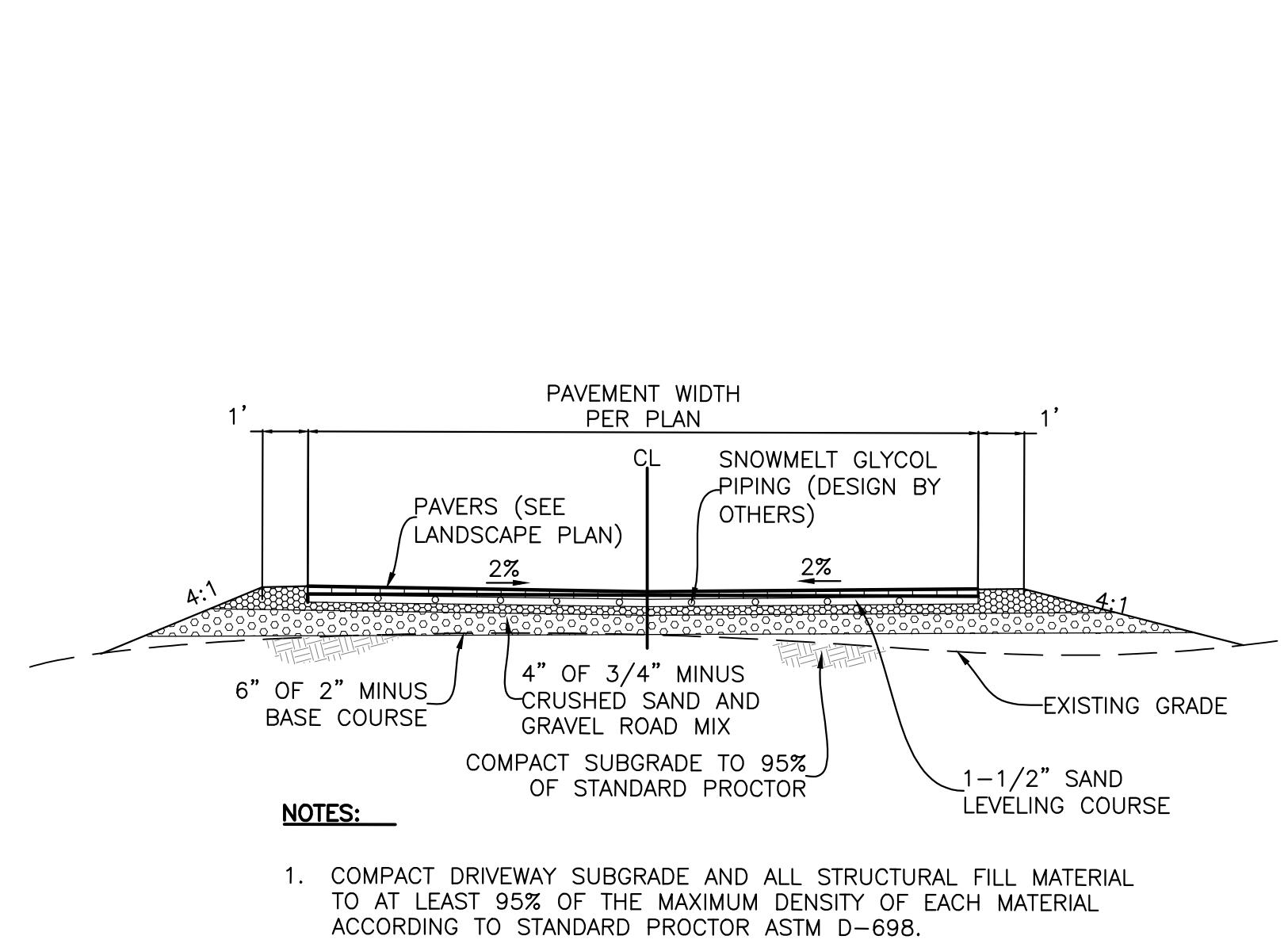
CITY SNOWMELT REQUIREMENTS
 SNOWMELT SYSTEMS INSTALLED IN THE PUBLIC RIGHT-OF-WAY SHALL BE INSTALLED AND OPERATE AT ALL TIMES DURING THE WINTER ACCORDING TO THE FOLLOWING:

- 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 SIDEWALK OR DRIVEWAY TEMPERATURE, AND AUTOMATICALLY ACTIVATES THE SYSTEM TO BE TURNED ON OR OFF BASED ON THE SNOW CONDITION AND AIR TEMPERATURE.

- GENERAL NOTES**
- CONTRACTOR SHALL FIELD VERIFY LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING CONSTRUCTION. ANY CONFLICT SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER.
 - CONTRACTOR SHALL NOTIFY DIGLINE (1-800-342-1585) AT LEAST 48 HOURS PRIOR TO BEGINNING CONSTRUCTION ACTIVITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES ENCOUNTERED DURING CONSTRUCTION.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR DUST CONTROL DURING THE CONSTRUCTION OF ALL ITEMS HEREON. DUST CONTROL SHALL BE CONTINUOUS DURING CONSTRUCTION, 24 HOURS PER DAY 7 DAYS PER WEEK.
 - CONTRACTOR SHALL ASSURE POSITIVE DRAINAGE AWAY FROM THE HOUSE.
 - ALL WORK WITHIN THE CITY RIGHT OF WAY SHALL CONFORM TO CITY OF KETCHUM STANDARDS.

LEGEND

	EXISTING	PROPOSED
PROPERTY LINE	---	---
ADJOINING PROPERTY LINE	---	---
CENTERLINE	---	---
FENCE	-x-	-x-
SEWER	-s-	-s-
PRESSURE SEWER	-ps-	-ps-
SEWER MANHOLE	⊙	⊙
SEWER CLEANOUT	⊙	⊙
WATER	-w-	-w-
WATER METER	⊙	⊙
GAS	-g-	-g-
POWER	-e-	-e-
OVERHEAD POWER	-ohp-	-ohp-
TELEPHONE	-t-	-t-
CABLE TV LINE	-tv-	-tv-
CONTOUR	---5775---	---75---
SAWCUT LINE	---5775---	---
FLOW LINE	---	---
LANDSCAPE DRYWELL	⊙	⊙
DRIVEWAY DRYWELL	⊙	⊙
STORM DRAIN PIPE	4"SD	4"SD
DOWN SPOUT	DS	DS
ASPHALT PAVEMENT	---	---
PAVERS	---	---
GRAVEL	---	---
FG	---	---
EG	---	---
GB	---	---



A DRIVEWAY SECTION
 SCALE: NONE

B ROAD SHOULDER SECTION
 SCALE: NONE

REVISIONS

No.	DESCRIPTION	DATE	BY
1	COMPLETENESS REVIEW & DEPARTMENT COMMENTS	3/14/22	PLJ
2	DEPARTMENT COMMENTS	6/7/22	PLJ
3	ENCROACHMENT EXHIBIT CHANGES	9/6/22	PLJ

BENCHMARK ASSOCIATES
 PREPARED BY:
 BENCHMARK ASSOCIATES, P.A.
 P.O. BOX 733 100 BELL DRIVE
 KETCHUM, IDAHO 83340
 (208) 726-9512
 FAX 726-9514
 WEB: WWW.BMA5B.COM
 MAIL: WWW.BMA5B.COM

GRADING & DRAINAGE PLAN
 SNOWBIRD TOWNHOMES
 T4N, R17E, SEC 13, B.M., CITY OF KETCHUM, IDAHO
 PREPARED FOR: SCOTT J. EDWARDS

DRAWN BY: PLJ
 DESIGNED BY: PLJ
 CHECKED BY: GLM
 DATE: 6/25/2021
 PROJECT NO.: 21070

DRAWING NO. **C1**

EXHIBIT "B"



City of Ketchum
Planning & Building

EXHIBIT "B"
RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: Scott J Edwards
PROPERTY ADDRESS: 222 Bird Drive
LEGAL DESCRIPTION: Lot 1A Snowbird Sub Lot 2 Blk 1
PARCEL NUMBER: RPK05240000010

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: Thomton Heating & Sheetmetal, Inc
CONTRACTOR ADDRESS: PO Box 242 Ketchum, ID 83340
CONTRACTOR PHONE: 208-726-5520
CONTRACTOR EMAIL: matt@thomton-heating.com

Pursuant to the requirements of Right-of-Way Encroachment Agreement # _____, 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 the boiler/heatpump/other (circle one) operates at a 97 percent efficiency.

Boiler/Heatpump Model Number: FTx 725 Lochinvar

Other: _____

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.

Landscape

By, Installation Contractor:

Print Name: Matt Thornton

Signature: [Handwritten Signature]

Date: 7-13-23

By, Owner:

Print Name: _____

Signature: _____

Date: _____

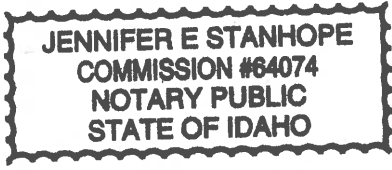
STATE OF Idaho)

) ss.

County of Blaine .)

On this 13th day of July, 2023, 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.



[Handwritten Signature]

Notary Public for Idaho

Residing at Blaine County

Commission expires 8-11-26

By, Installation Contractor:

Print Name: _____

Signature: _____

Date: _____

By, Owner:

Print Name: Scott J Edwards

Signature: [Handwritten Signature]

Date: 7/25/23

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 2022, before me, the undersigned Notary Public in and for said State, personally appeared _____ (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.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF Washington)

) ss.

County of Pierce)

On this 25th day of July, 202~~2~~³, before me, the undersigned Notary Public in and for said State, personally appeared Scott J Edwards (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.



J C Miller
Notary Public for Washington
Residing at Pierce
Commission expires 1/29/2024