



City of Ketchum

November 21, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 22809 for the placement of driveway pavers with snowmelt in the public right-of-way at 123 River Run Drive.

Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22809 for the placement of heated driveway pavers in the public right-of-way at 123 River Run Drive and adopt the following motion:

“I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22809 with property owners Richard and Mary Miller.”

The reasons for the recommendation are as follows:

- Building Permit B21-045 for the Miller Residence located at 123 River Run Drive was approved with the condition that the ROW Encroachment Agreement for the driveway pavers and snowmelt system be approved prior to issuance of a Certificate of Occupancy for the project. The heated paver driveway has been installed according to the project plans approved with the building permit.
- The Miller Residence is one of five total active residential construction projects with a heated driveway that was issued a building permit with the condition that the ROW Encroachment Agreement be approved prior to issuance of a Certificate of Occupancy. Staff currently requires that ROW Encroachment Agreements be approved prior to issuance of a building permit for the project.
- The improvements will not impact drainage or snow removal within the public ROW or the operation of River Run Drive. The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

Introduction and History

The property owner submitted a Right-of-Way Encroachment Permit application for driveway pavers and snowmelt pavers within the public right-of-way along River Run Drive. The driveway will access a new home located at 123 River Run Drive within the City's Limited Residential (LR) Zoning District.

Last year the Ketchum City Council directed staff to ensure that Right-of-Way Encroachment Agreements were reviewed and approved prior to issuing building permits for projects. Prior to this direction, many building permits were issued with the condition that the Right-of-Way Encroachment Agreement be approved prior to issuance of a Certificate of Occupancy for the project. Building Permit

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The Miller Residence is one of five total active residential construction projects with a heated driveway that was issued a building permit with the condition that the ROW Encroachment Agreement be approved prior to issuance of a Certificate of Occupancy. Staff currently requires that ROW Encroachment Agreements be approved prior to issuance of a building permit for the project.

Staff has advised the applicant that the City Council may or may not approve the Right-of-Way Encroachment request for the snowmelt system. If the City Council denies the Right-of-Way Encroachment Permit, then the heated paver driveway will need to be reconstructed so that the snowmelt system does not encroach within the public right-of-way and stops at the front property line along River Run Drive.

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 paver driveway and snowmelt encroachments installed within the public right-of-way on River Run Drive project comply with all standards.

Sustainability

At the September 19th, 2022, City Council Meeting staff was directed to advise property owners within residential neighborhoods that the City Council was conducting policy discussions as to whether snowmelt would be permitted in the right-of-way based on the goals and objectives of the 2020 Ketchum Sustainability Action Plan. Following that direction, staff has advised applicants that all proposals for snowmelt within the right-of-way are discouraged, are at the discretion of the council, and not guaranteed approval. Staff has recommended the City Council approve ROW Encroachment Agreement 22809 because the building permit was issued and the driveway improvements were installed prior to City Council's direction to staff.

Financial Impact

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

Attachments

ROW Encroachment Agreement 22809

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 22809

THIS AGREEMENT, made and entered into this ____ day of November, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and RICHARD MILLER and MARY MILLER (collectively referred to as "Owner"), whose address is Post Office Box 2428, Ketchum, Idaho 83340.

RECITALS

WHEREAS, Owner is the owner of real property described as 123 River Run Drive ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit the placement of a paver driveway and snowmelt system within the public right-of-way on River Run 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 paver driveway and snowmelt system identified in Exhibit "A" within the public right-of-way on River Run 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.

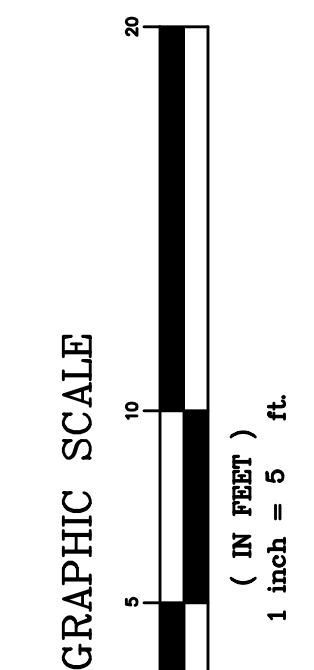
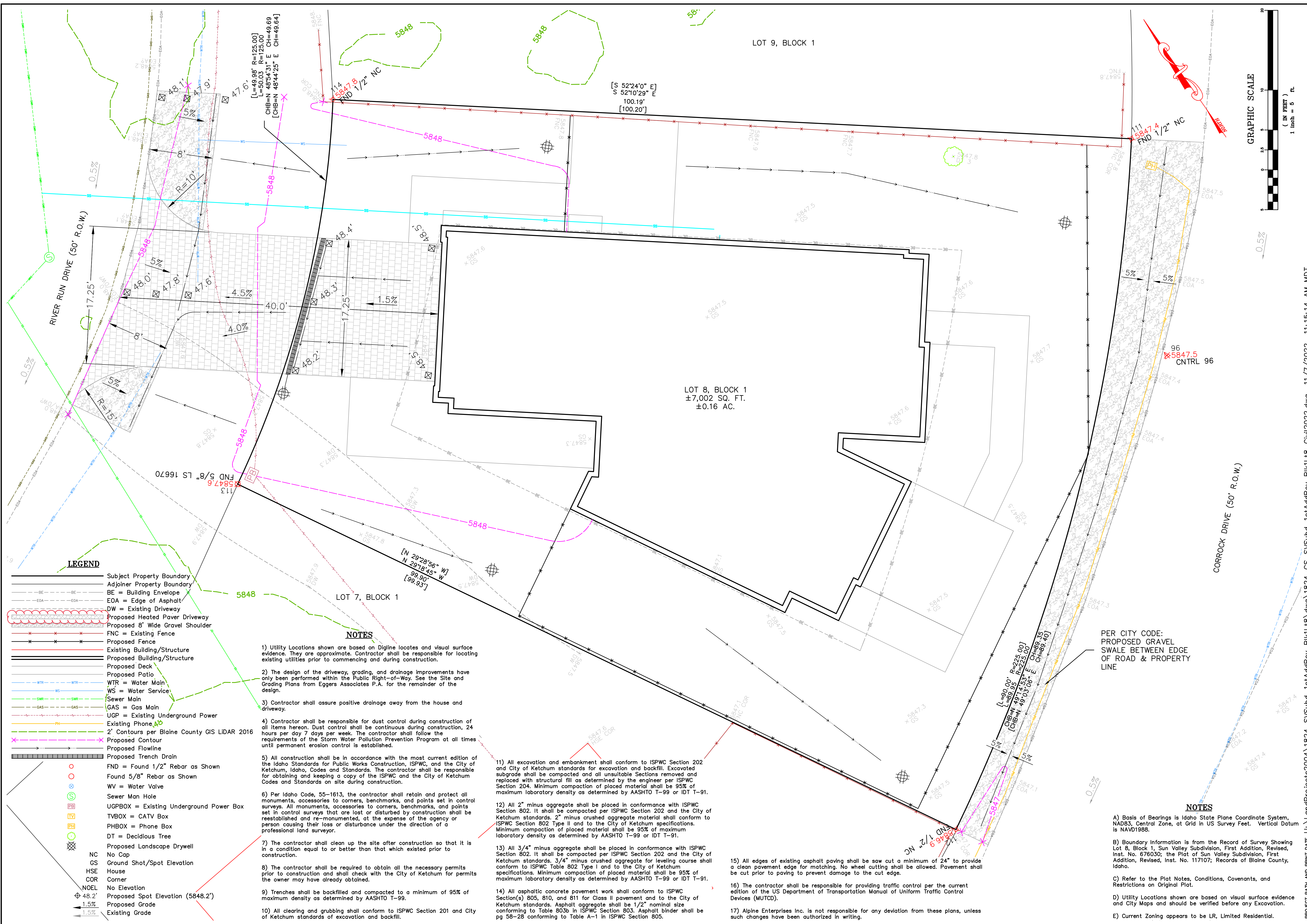
STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 2022, 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 Property Boundary
- Adjoiner Property Boundary
- BE = Building Envelope
- EOA = Edge of Asphalt
- DW = Existing Driveway
- Proposed Heated Paver Driveway
- Proposed 8' Wide Gravel Shoulder
- FNC = Existing Fence
- Proposed Fence
- Existing Building/Structure
- Proposed Building/Structure
- Proposed Deck
- Proposed Patio
- WTR = Water Main
- WS = Water Service
- Sewer Main
- GAS = Gas Main
- UGP = Existing Underground Power
- Existing Phone
- 2' Contours per Blaine County GIS LIDAR 2016
- Proposed Contour
- Proposed Flowline
- Proposed Trench Drain
- FND = Found 1/2" Rebar as Shown
- Found 5/8" Rebar as Shown
- WV = Water Valve
- Sewer Man Hole
- UGPBOX = Existing Underground Power Box
- TVBOX = CATV Box
- PHBOX = Phone Box
- DT = Deciduous Tree
- Proposed Landscape Drywell
- NC = No Cap
- GS = Ground Shot/Spot Elevation
- HSE = House
- COR = Corner
- NOEL = No Elevation
- 48.2' Proposed Spot Elevation (5848.2')
- 1.5% Proposed Grade
- 1.5% Existing Grade

NOTES

- 1) Utility Locations shown are based on Digline locates and visual surface evidence. They are approximate. Contractor shall be responsible for locating existing utilities prior to commencing and during construction.
- 2) The design of the driveway, grading, and drainage improvements have only been performed within the Public Right-of-Way. See the Site and Grading Plans from Eggers Associates P.A. for the remainder of the design.
- 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 herein. 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) 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.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) Trenches shall be backfilled and compacted to a minimum of 95% of maximum density as determined by AASHTO T-99.
- 10) All clearing and grubbing shall conform to ISPWC Section 201 and City of Ketchum standards of excavation and backfill.
- 11) 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.
- 12) 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 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.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) 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).
- 17) Alpine Enterprises Inc. is not responsible for any deviation from these plans, unless such changes have been authorized in writing.

PER CITY CODE:
PROPOSED GRAVEL
SWALE BETWEEN EDGE
OF ROAD & PROPERTY
LINE

NOTES

- A) Basis of Bearings is Idaho State Plane Coordinate System, NAD83, Central Zone, at Grid in US Survey Feet. Vertical Datum is NAVD1988.
- B) Boundary Information is from the Record of Survey Showing Lot 8, Block 1, Sun Valley Subdivision, First Addition, Revised, Inst. No. 676030; the Plat of Sun Valley Subdivision, First Addition, Revised, Inst. No. 117107; Records of Blaine County, Idaho.
- C) Refer to the Plat Notes, Conditions, Covenants, and Restrictions on Original Plat.
- D) Utility Locations shown are based on visual surface evidence and City Maps and should be verified before any Excavation.
- E) Current Zoning appears to be LR, Limited Residential.

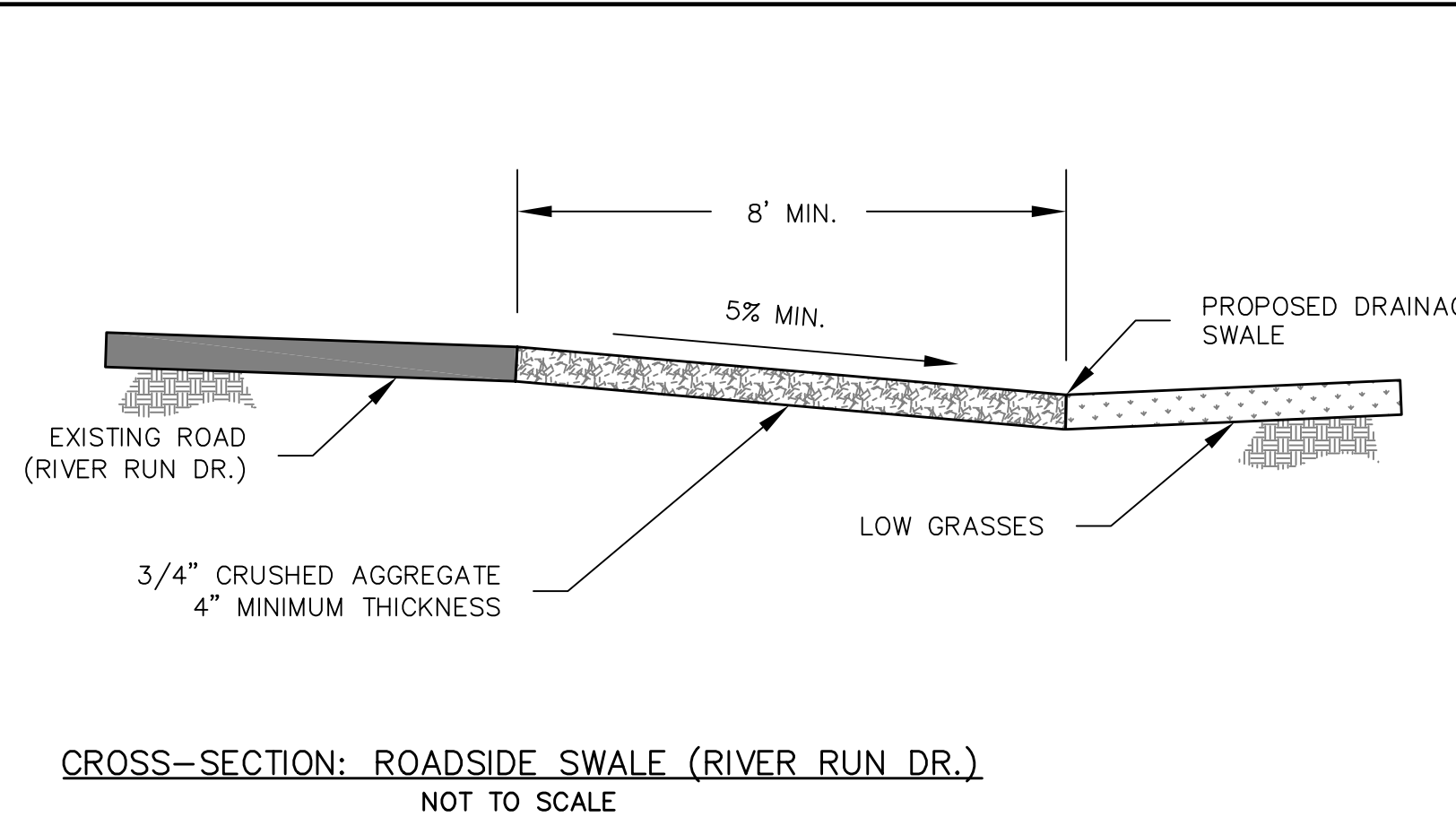
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ALPINE ENTERPRISES INC.
SURVEYING, MAPPING, CIVIL ENGINEERING,
AND NATURAL HAZARDS CONSULTING
660 Bell Dr., Unit 1
P.O. Box 2037, Ketchum, ID 83340 USA
(208) 727-1886
email: bamt@alpineenterprisesinc.com

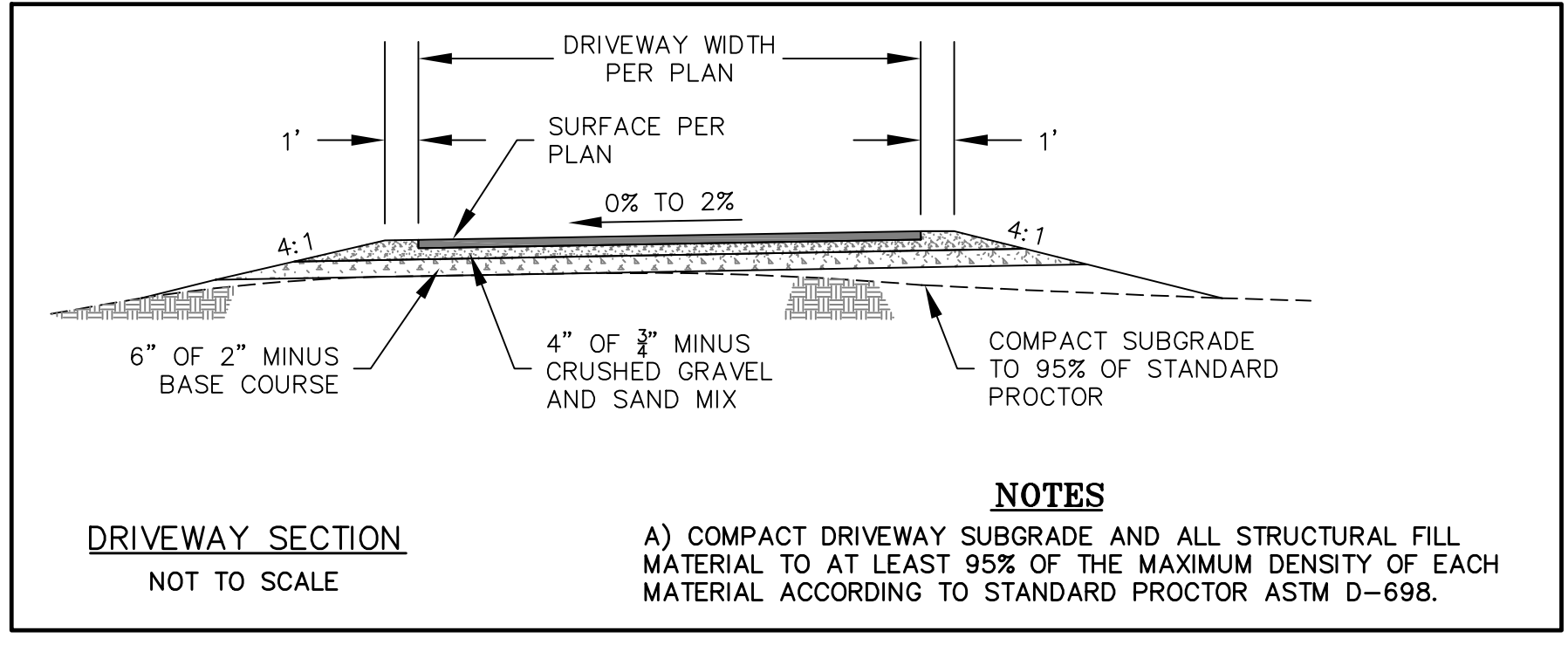
A R.O.W. ENCROACHMENT PLAN SHOWING
LOT 8, BLK 1, SUN VALLEY SUBD., 1ST ADDITION REVISED
WITHIN S13, T.4N., R.17E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO
PREPARED FOR THE MILLER FAMILY

| REVISIONS | NO | DATE | BY |
|---|----|---------|-----|
| PRELIMINARY ONLY, NOT FOR CONSTRUCTION | | | |
| BUILDING REVIEW SUBMITTAL-CLARIFICATION UPDATES | | | |
| HEATED PAVER DRIVEWAY REVISIONS ADDED | 1 | 07NOV22 | AHN |

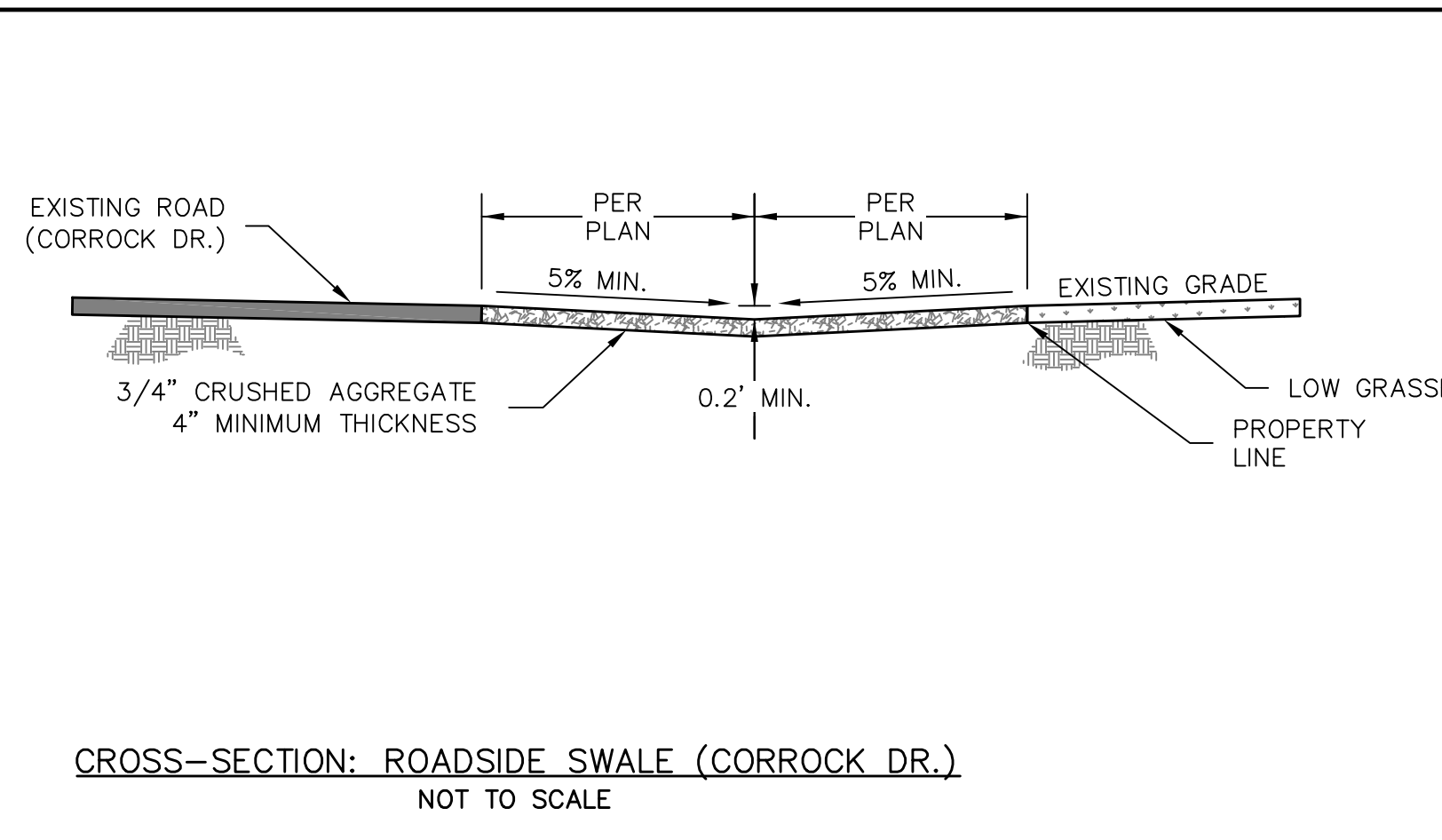
SHEET 1 OF 2



- NOTES**
- A) Material shall be pervious/permeable to allow drainage.
 - B) Surface must allow for vehicle parking and be consistent along the entire property frontage.
 - C) Material within the first eight (8) feet from edge of asphalt (Street) shall be distinct from driveway and rest of property in order to visually appear available for parking.
 - D) Grading and drainage improvements as required by City Engineer - Minimum 5% slope.
 - E) No obstructions, such as boulders or berms.
 - F) No buried irrigation systems within the first eight (8) feet the edge of asphalt (Street). Surface irrigation lines are permitted beyond the first eight (8) feet, however pop-up heads are not permitted anywhere in the ROW.
 - G) No live plant material within the first eight (8) feet from edge of asphalt (Street). Low ground cover plant material, such as turf grass, is permitted beyond the first eight (8) feet. Drought-tolerant species is preferred.
 - H) No snow-melt system (other than driveway).



- NOTES**
- A) COMPACT DRIVEWAY SUBGRADE AND ALL STRUCTURAL FILL MATERIAL TO AT LEAST 95% OF THE MAXIMUM DENSITY OF EACH MATERIAL ACCORDING TO STANDARD PROCTOR ASTM D-698.



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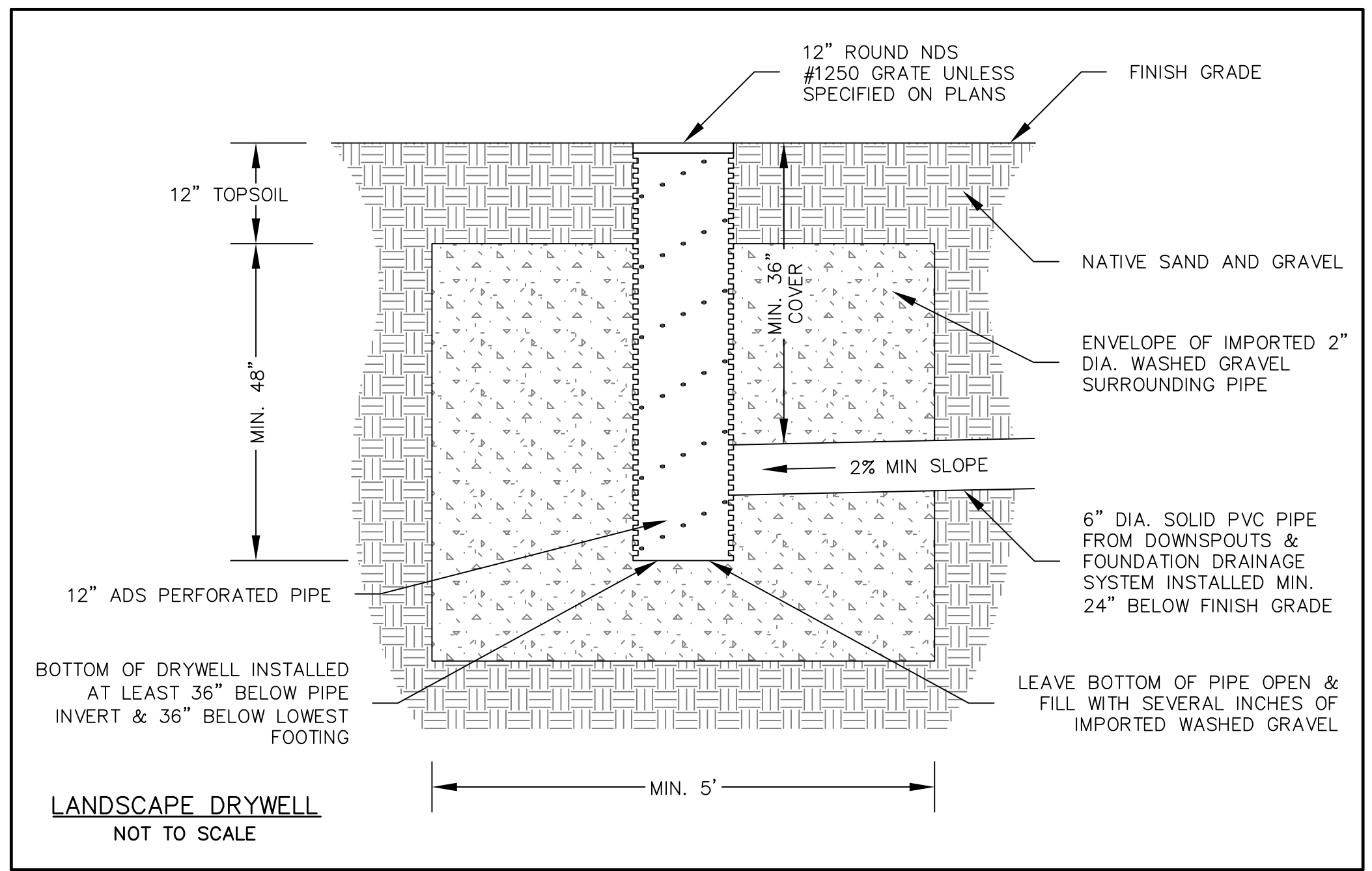
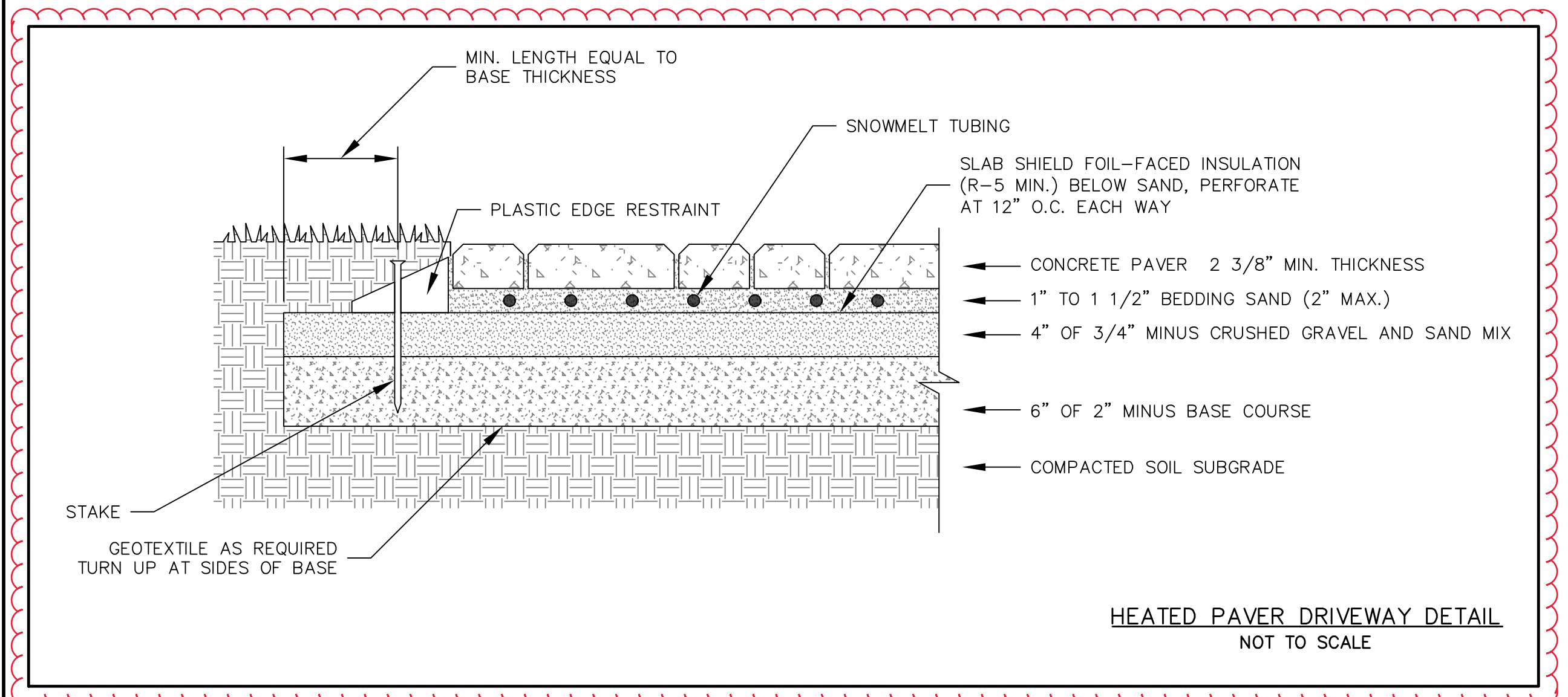
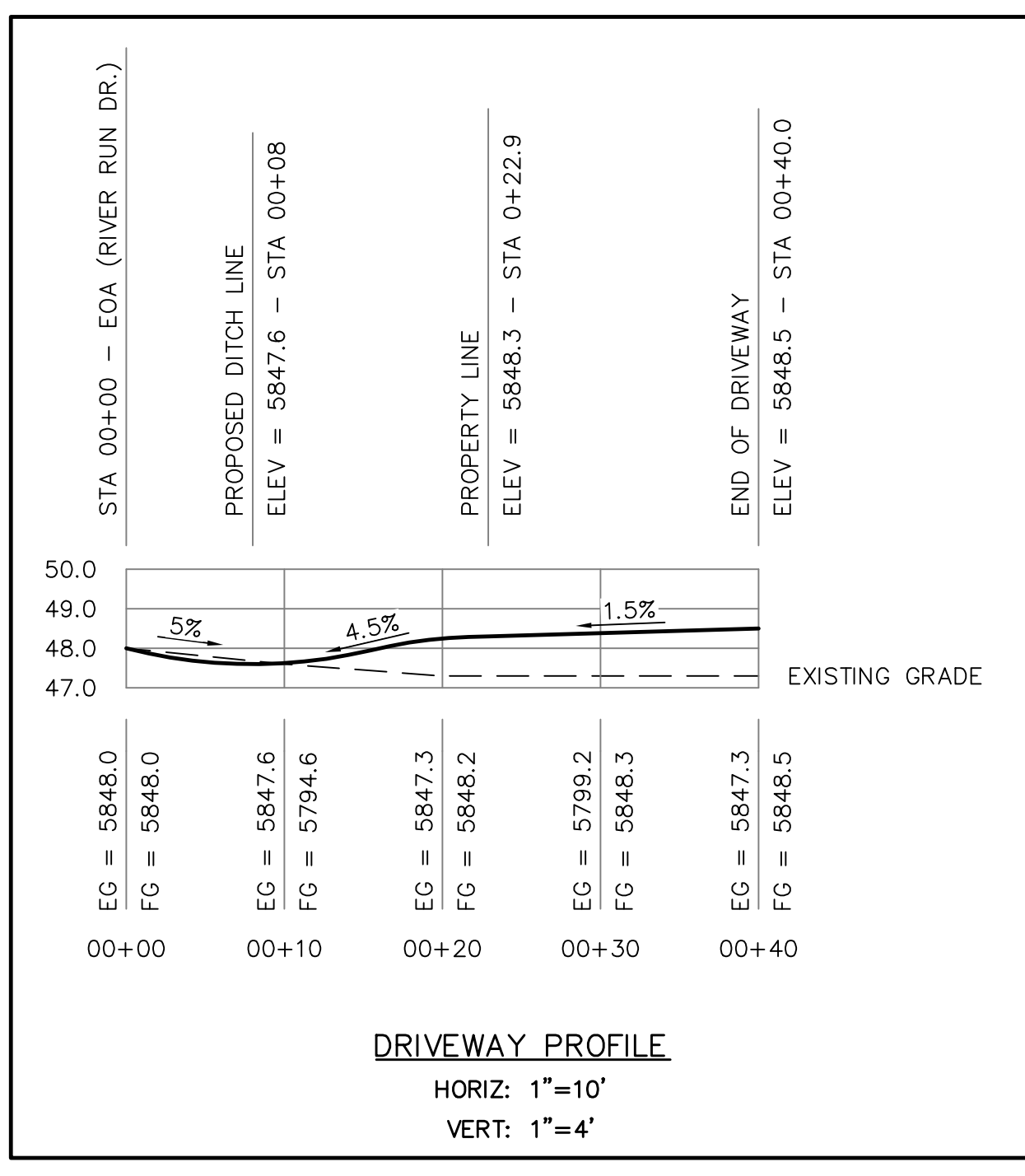


Exhibit B



City of Ketchum
Planning & Building

EXHIBIT "B"

RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: Richard & Mary Miller
PROPERTY ADDRESS: 123 River Run DR
LEGAL DESCRIPTION: Sun Valley Sub 1st Add Rev Lot 8 Block 1
PARCEL NUMBER: TRPK 055 0 0 1 0 0 8 0 73615F

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: G & Sons
CONTRACTOR ADDRESS: 122 Second Ave
CONTRACTOR PHONE: 208-720-3776
CONTRACTOR EMAIL: ARNIEGZLA@G2LANDSONS.COM

Pursuant to the requirements of Right-of-Way Encroachment Agreement # 22809, 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 95% percent efficiency.

Boiler/Heatpump Model Number: NAVIEN Model NFB 200H NG

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.

By, Installation Contractor:

Print Name: Annie Gonzalez

Signature: [Signature]

Date: 11-07-22

By, Owner: Richard B. Miller / Mary P. Miller

Print Name: Rich Miller / Mary Miller

Signature: [Signatures]

Date: 11-7-22

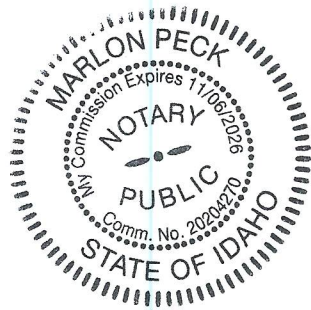
STATE OF Idaho)

) ss.

County of Blaine)

On this 7 day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Annie Gonzalez (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.



[Signature]

Notary Public for Idaho

Residing at Ketchum

Commission expires 11-06-2026

STATE OF Idaho)

) ss.

County of Blaine)

On this 7 day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Mary and Richard Miller (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.



Mr Peck
Notary Public for Idaho
Residing at Ketchum
Commission expires 11-06-2026