

## RESOLUTION

### BEAVER CREEK METROPOLITAN DISTRICT

#### ENCROACHMENT POLICY

**WHEREAS**, the Beaver Creek Metropolitan District (“District”) is a quasi-municipal corporation and political subdivision of the State of Colorado, responsible for the preservation and stewardship of, and which has been granted and conveyed, certain easements and rights-of-way for roadways, water facilities, cable, and other purposes (“Easements”) throughout Beaver Creek; and

**WHEREAS**, these Easements are public property and generally cannot be used for private Property Owner (“Property Owner”) purposes or uses, although most lots platted within Beaver Creek have Easements around some or all of the property lines, and invariably on occasion adjacent Property Owners request of the District an opportunity to encroach into and upon said Easements for various purposes; and

**WHEREAS**, all Property Owners which anticipate any Easement encroachments must submit a duly executed Encroachment Agreement (“Agreement”) for review and consideration of approval by the District prior to effecting the encroachment; and

**WHEREAS**, while the District would be within its rights to deny any and all such encroachments, the District is willing, on an individual and non-precedent setting basis, to consider the facts attendant to each request, and to provide authority to encroach, subject to conditions and restrictions, generally as outlined herein; and

**WHEREAS**, while willing to consider such applications, the District discourages any such encroachments, and expresses its preference that such encroachments be granted only in unique circumstances; and

**WHEREAS**, if the Agreement is approved, the same becomes a legal document to be recorded with the Eagle County Clerk and Recorder’s office, and encumbers title to the property.

**NOW, THEREFORE**, the District is willing to consider applications for encroachment into its Easements, subject to the following conditions and restrictions:

1. Agreement must be signed by Property Owner before a notary public. If the Agreement is signed by anyone other than Property Owner, the signatory must present a duly authorized Power of Attorney, which must accompany the Agreement.

2. Property Owner shall attach as Exhibit A to the Agreement the complete legal description of the property, including the Tract, Block and Lot number.
3. Property Owner shall attach as Exhibit B to the Agreement a description of the proposed encroachment in detail with sufficient specificity to avoid any misinterpretation in the future. This description shall include a complete, specific detailed description of what will be encroaching and where. The burden of any ambiguity shall rest upon the Property Owner and the Property Owner's benefited property (the "Benefited Property"), and in favor of the District's subsequent interpretation of any such ambiguity.
4. Property Owner shall also submit with Agreement a site plan or improvement location survey which clearly outlines all property lines, all easements and rights-of-way lines, and all proposed encroachments. The proposed encroachment(s) must be colored or shaded on the drawing(s) and must match the description found in Exhibit B.
5. Property Owner shall identify underground utilities; fully explain any interruption of view corridors; and, as appropriate, provide traffic engineering review and opinion regarding the proposed encroachment – all at Property Owner's expense.
6. Any such encroachment authorizations shall include a complete and absolute indemnification against the District against any costs incurred by the District as a result of the encroachments. Such costs include the cost of removing any landscaping, mature trees, boulders, or other materials from the Easement, which the District discourages as they may be easily damaged or may unreasonably impede the use of Easements by the District.
7. The District will consider driveway access encroachments based on impacts to utilities, road maintenance, curbs and gutters, drainage, snow plowing, traffic safety, impact of other rights-of-way, and consistency with other such easements. If a snowmelt system is to be designed under a driveway, the District will require appropriate snowmelt designs and requirements.
8. Any encroachment shall be revocable by the District at-will, without qualification or any notice to the Benefited Property.
9. The encroachment authorization shall be recorded with the Eagle County Clerk and Recorder and run with the land, regardless of ownership of the Benefited Property.

10. No action of the District granting an encroachment shall be considered a precedent for future applications, but are completely independent and based upon the Board's perception of the fact situation at the time of the application.
11. Any structures, monuments, or permanent structural improvements are emphatically discouraged by the District, and would require an extremely compelling basis.
12. Only the adjacent property owner, which can effectively permanently burden the Benefited Property in perpetuity, may submit an encroachment application.
13. The District may promulgate further rules and regulations, which shall attend to, and be a part of, any granted encroachments, without notice to the Benefited Properties

0 APPROVED this 22 day of Feb, 2006 by a vote of 4 in favor and  
opposed.

BEAVER CREEK METROPOLITAN  
DISTRICT

By   
\_\_\_\_\_

Attest:

  
\_\_\_\_\_, Secretary