

ENCROACHMENT AGREEMENT

This Encroachment Agreement (“Agreement”) is entered into this ____ day of _____, 20____, by and between the Beaver Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”) and _____ (applicant), owners of real property at _____ (legal description), the address of which is _____, Beaver Creek in the State of Colorado .

WHEREAS, District is the owner of an easement recorded in the public records of Eagle County, Colorado (the “Easement”); and

WHEREAS, Applicant is fee owner of real property adjacent to the Easement (the “Property”) as more fully described on **Exhibit A** attached hereto; and

WHEREAS, Applicant proposes to encroach upon the District’s Easement for the benefit of Applicant’s Property, as more fully described on **Exhibit B** attached hereto; and

WHEREAS, District has adopted an Encroachment Policy which, while discouraging encroachments into District Easements, recognizes extenuating circumstances occasionally make such an encroachment appropriate; and

WHEREAS, District has, in this case, determined to Consent to the encroachment upon the terms and conditions contained herein, and as further contained in the Encroachment Policy which may change from time to time.

NOW, THEREFORE, in consideration of the terms and conditions, hereinafter set forth, the Parties agree as follows:

1. **Consent to Encroachment.** District hereby Consents to the Encroachment as fully described on Exhibit B (“Encroachment Area”), as attached hereto. Any and all rights granted to Applicant under this Agreement shall be exercised at Applicant’s sole cost, risk and expense, and shall be subject to the dominant and continuing right of District to use any and all of the Encroachment Area for District’s public purposes; and shall further be subject to all prior deeds, easements, dedications, conditions, franchises, covenants, restrictions, encroachments and claims of title of record that may affect the Encroachment Area. Nothing contained in this Agreement shall be deemed to grant, convey, create or vest in Applicant any real property interest in the land; including, but not limited to, any fee, leasehold interest, easement, or irrevocable license.

2. **Use of Encroachment Area.** Applicant agrees that it will utilize the Encroachment Area solely for the purposes described on Exhibit B, and for no other purpose.

3. **No Interference.** Applicant, in the performance and exercise of its rights under this Agreement, shall not damage or interfere in any way with the use, operation, maintenance, repair, or replacement of any public facility that is owned, operated and maintained by District or its assignees within the Easement. Should the operation, maintenance, or repair of the authorized improvements in the Encroachment Area ever cause District's use of the Easement and related facilities to be interfered with or damaged, Applicant, at its sole cost and expense, shall properly repair any and all damage to District's facilities, and remove the interference as soon as practicable. Under any and all circumstances, all work that is necessary to repair the damage or remove the interference at any time shall be at Applicant's sole cost and expense. District, in emergency situations, may, at Applicant's sole cost and expense, repair any and all damage and remove any and all interference without prior notice to Applicant.

4. **Compliance with Laws.** Applicant shall comply with all federal, state and local laws in the exercise and performance of its rights and obligations under this Encroachment Agreement.

5. **Encroachment Policy.** Applicant acknowledges that it is aware of the District's Encroachment Policy, and that this Encroachment Agreement is subject to the terms and conditions of such Policy as it may now exist, or may subsequently be amended by the District at its sole discretion and without notice.

6. **Indemnification and Waiver.** Applicant hereby agrees to indemnify, defend, protect and hold harmless District, its officers and employees, from and against any and all claims, damages, losses, liabilities, fines, penalties, of whatsoever kind or nature, including, but not limited to reasonable attorneys' fees that are incurred by District and that arise in connection with Applicant's activities that are undertaken, authorized or obligated pursuant to this Agreement. Such liability shall specifically, without limitation, extend to claims of third parties arising from the presence of the Applicant's improvements within the Easement Area.

7. **Limitation on District's Liability.** District shall have no liability to Applicant or third persons related to Applicant's use of the Encroachment Area, including, but not limited to, damages to the Applicant's improvements resulting from District's dominant use of the Encroachment Area or from the repair of District facilities or the installation of any additional facilities in the future within the Easement.

8. **Termination.** District may terminate this Agreement at any time, without notice, if District determines that the Applicant's improvements interfere with District's current or prospective use of the Easement. District shall endeavor, but not be obligated,

to provide Applicant with thirty (30) days' notice of its intent to terminate the Agreement.

9. **Successors and Assigns.** The rights and obligations of this Agreement shall be appurtenant to and deemed to run with the Property, until such time as the District terminates this Agreement or abandons the Easement.

10. **Integrated Agreement.** This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter hereof. There are no representations, agreements or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, duly authorized representatives of the Parties have executed this Agreement as of the date first set forth above.

APPLICANT: _____

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT of APPLICANT'S SIGNATURE

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and _____, who represent themselves to be 100% owners of the Property described herein.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

BEAVER CREEK METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision
of the State of Colorado

By: _____

ACKNOWLEDGEMENT OF BEAVER CREEK METRO DISTRICT'S SIGNATURE

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing Instrument was acknowledged before me this ____ day of _____, 20____, by _____, as the _____ of Beaver Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: _____.

Notary Public