

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement "Agreement") is made effective this 27<sup>th</sup> day of ~~DECEMBER~~, 2005, ("Effective Date") between SPANISH PEAKS HOLDINGS, LLC, a Montana limited liability company, of P.O. Box 161470, Big Sky, MT 59716 ("Spanish Peaks") and the BIG SKY COUNTY WATER AND SEWER DISTRICT NO. 363, a political subdivision of the State of Montana, of P.O. Box 160670, Big Sky, MT 59716 ("WSD363").

### RECITALS:

- A. Pursuant to a Conveyance Agreement dated \_\_\_\_\_, 2005 (the "Conveyance Agreement") between Spanish Peaks and WSD363, WSD363 owns and operates the sewer system within the Resort portion of the development known as the Club at Spanish Peaks (the "Subdivision"), as more particularly described on Exhibit A; and
- B. The Subdivision is comprised of various lots and other properties (the "Lots") platted and to be platted under the provisions of applicable subdivision laws.
- C. Pursuant to an Agreement for the Sale of Water, Treatment of Wastewater, and Grant of Right to Use Land for Storage and Disposal of Treated Wastewater dated March 29, 2001 (the "Yellowstone Club Agreement"), Spanish Peaks is entitled to connect Lots within the Subdivision to the WSD363's wastewater treatment facilities.
- D. The WSD363 has agreed to provide sewer service to the Subdivision and Spanish Peaks has agreed that the WSD363 is the sole entity to provide sewer service to Lots within the Subdivision.
- E. The parties desire to enter into this Agreement to memorialize their arrangement for collection and distribution of charges to owners of Lots within the Subdivision.

### TERMS:

NOW, THEREFORE, the parties agree as follows:

1. **Recitals.** The Recitals are incorporated herein.
2. **Billing and Collection.** The WSD363 will charge and collect from owners of Lots within the Subdivision a Plant Investment Charge according to its normal procedures and rate schedule for its customers within the District. The WSD363 also may impose charges on the Lots according to its approved rate schedule, including vacant lot charges and user charges.
3. **Application of Revenue.** Upon collection of the Plant Investment Charge portion of the charges, the WSD363 shall deduct:

- a. the "Special Improvement Charge" provided for under the Yellowstone Club Agreement, and
- b. a 1% handling charge.
- c. After the deductions under (a) and (b) the remaining portion of the Plant Investment Charge collected for shall be placed in an account established for the benefit of Spanish Peaks.

4. **Distribution of Revenue.** Each month the WSD363 shall distribute to Spanish Peaks the balance in the Spanish Peaks account established under Section 3 of this Agreement. The distribution shall occur as specified by Spanish Peaks. As between Spanish Peaks and the WSD363, Spanish Peaks shall have sole discretion for use of the distributed funds.

5. **Other Agreements.** This Agreement supersedes all other agreements between the parties concerning sewer use at Spanish Peaks except for the Conveyance Agreement and the Yellowstone Club Agreement. The parties intend this Agreement to be read together with the Conveyance Agreement and the Yellowstone Club Agreement so as to give effect to the material terms of each agreement.

6. **Amendment.** This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.

7. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

8. **Applicable Law.** This Agreement shall be governed by the laws of the State of Montana.

9. **Attorney's Fees.** In the event it is necessary for either of the parties hereto to make any legal action to enforce the terms of this Agreement, the parties agree that the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney's fees and costs.

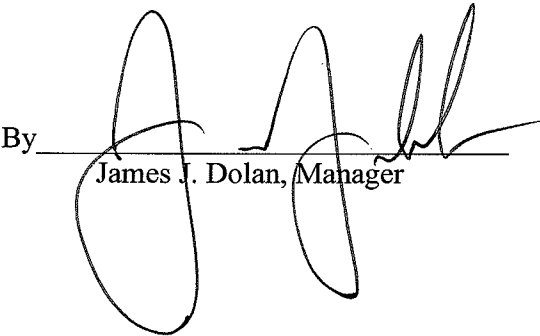
10. **Binding Effect.** All of the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the heirs, assigns and personal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto signed this Agreement as of the date and year first above written.

**BIG SKY COUNTY WATER & SEWER  
DISTRICT NO. 363**

By   
Ron Edwards, General Manager

**SPANISH PEAKS HOLDINGS, LLC,**  
a Montana limited liability company

By   
James J. Dolan, Manager