

WATER FACILITIES MANAGEMENT AGREEMENT

Revised 9/16/05

AGREEMENT made effective this 21st 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 various State of Montana Department of Environmental Quality ("MDEQ") certificate of subdivision plat approvals, Spanish Peaks has constructed the public water supply system ("Spanish Peaks Water System" or "System") and secured water rights (the "Water Rights") within various phases (the "Subdivision Phases") of the Resort portion of the development known as the Club at Spanish Peaks (Exhibit A); and
- B. WSD363 owns, operates and maintains the public water facilities located within a county water and sewer district (the "District") in the Big Sky area, has authority to enter into a contract to manage, operate and maintain the Spanish Peaks Water System, and has personnel who are certified by the State of Montana and qualified to manage and operate and maintain the System; and
- C. Spanish Peaks desires to retain WSD363 to provide certain management and operating and maintenance services for the System and WSD363 desires to provide such services pursuant to the terms of this Agreement; and
- D. WSD363 has completed an inspection of the System and determined that the System meets its minimum standards for a public water system; and
- E. Spanish Peaks and WSD363 have agreed to enter into this Agreement on an interim basis to allow the parties to evaluate whether it is appropriate for Spanish Peaks to convey the System to WSD363 and whether it is appropriate for WSD363 to accept a conveyance of the System from Spanish Peaks; and
- F. Spanish Peaks and WSD363 have further agreed that a fair and equitable compensation scheme under this contract is for Spanish Peaks to reimburse WSD363 for its costs of operating the System. The parties further have agreed that WSD363 will invoice lot owners within the Subdivision Phases at the rates it charges other users within the WSD363 and provide Spanish Peaks with a credit for amounts collected.

TERMS:

NOW, THEREFORE, the parties agree as follows:

1. **Recitals.** The Recitals are incorporated herein.

2. **Description of Services.** Commencing on the Effective Date of this Agreement, and continuing until this Agreement is terminated or expires, WSD363 will provide services for the management, operation, and maintenance of the Spanish Peaks Water System. It is the intent of the parties that WSD363 shall assume all of the day-to-day management, operational, and maintenance responsibilities of the System and in doing so will provide the following services (the "Services"):

2.1 *Staffing.* WSD363 will provide the necessary legally qualified operating personnel required to manage, operate, and maintain the System.

2.2 *General Operating Duties.* WSD363 will provide the following operational and maintenance services:

- a. Provide and maintain equipment and supplies necessary to monitor and service the System's component equipment;
- b. Develop and implement an operating procedure in order to achieve and insure the requirement treatment levels specified in the System's plans and specifications and operating manuals;
- c. Operate the System in a manner that complies with applicable MDEQ permits, rules, and guidance circulars;
- d. Perform required testing necessary to monitor and guide daily operations of the System, and to demonstrate compliance with the applicable MDEQ permits, rules, and guidance circulars.
- e. Perform any and all additional activities required by MDEQ or other rules applicable to public water system operators.

2.3 *Administrative Duties.* WSD363 agrees to assist Spanish Peaks in the preparation of applications for license, permits, rates, and any reports required to comply with any governmental agency, as long as such activities do not impede WSD's regular business activities and those described in this Agreement. WSD363 makes no guarantees as to the result of any application filed by Spanish Peaks with any governmental agency. WSD363 further agrees to perform the following:

- a. Maintain appropriate records and file on behalf of Spanish Peaks all required reports as required by the regulatory agencies.
- b. Maintain any and all licenses, permits, or other governmental authorizations necessary for the continuing operation of the System.
- c. Report, with copies to Spanish Peaks, information of any kind to any governmental agency related to the continuing health, maintenance or operation; or permit compliance of the water System.
- d. Complete an annual operating budget needed for proper operation of the System.
- e. Assess and collect all current and delinquent fees from users of the System.
- f. Issue connection permits for all new construction connecting to the System within Spanish Peaks.
- g. Provide water service line inspection services for new connections to the System. Costs for the inspection services will be charged to the permit applicant.

2.4 *Expenses.* Except for extraordinary items addressed under Section 3.5, pay for all materials and supplies for the day-to-day operation of the System, including but not limited to electrical power, chemicals used in the treatment process, engineering, design, and equipment replacement and maintenance.

2.5 *Billing.* WSD363 agrees to implement a system for sending periodic invoices and to collect revenue from private lot owners within the boundaries of the Spanish Peaks subdivisions. These billing procedures shall be consistent with the procedures WSD363 uses for its regular customers within the District. The rates charged and allocation of revenue shall be consistent with the terms of Section 6 of this Agreement.

3. **Spanish Peaks Obligations.** Spanish Peaks agrees that it shall perform each of the following for the purpose of implementing this agreement:

3.1 *Project Certification.* Provide to WSD363 certification by a qualified engineer that the System has been constructed in accordance with the plans and specifications, and approved for operation by all necessary governmental agencies.

3.2 *Support Facilities.* Provide an onsite storage, and operator building.

3.3 *Access.* Provide to all WSD employees safe, year-round access to the System, including but not limited to snow removal during the winter months for purposes of fulfilling the WSD363's obligation under this Agreement.

3.4 *Taxes.* Report its income from the operation of the System and paying its associated income taxes, and for payment of all personal property taxes or other governmental assessments associated with the health, maintenance and operation of the System.

3.5 *Extraordinary Repairs or Reconstruction.* If it becomes necessary to make any extraordinary repairs or engage in any extensive reconstruction or rehabilitation of the water system or any part thereof, WSD363 shall notify Spanish Peaks and Spanish Peaks shall be responsible for such repairs or reconstruction at its expense. In the event such repairs or reconstruction require the employment of an independent contractor, then it shall be the sole responsibility of Spanish Peaks to negotiate and finalize an agreement with such independent general contractor. For this Agreement, "extraordinary repairs or engage in any extensive reconstruction" shall mean any repair or reconstruction work that is estimated in the WSD363's opinion to exceed one thousand dollars (\$1,000).

3.6 *Emergencies.* In case of an emergency that requires immediate repair or alterations, if Spanish Peaks is not readily available for consultation, WSD363 shall use its discretion regarding emergency and shall at its sole discretion have the authority to exceed the repair limit without consulting Spanish Peaks if WSD363 deems it necessary. Without otherwise limiting this paragraph, in the case of an emergency situation, WSD363 shall notify Spanish Peaks according to the notice provisions as set out in Section 11.

3.7 *Fire Protection.* Spanish Peaks shall be solely responsible for arranging with the Gallatin Canyon Rural Fire District to provide fire protection to the System, and nothing in this Agreement shall be construed as a delegation of this responsibility to WSD363.

3.8 *Improvements.* Spanish Peaks agrees to install all water service and meter connections in accordance with WSD363 rules and regulations.

3.9 *Training.* Spanish Peaks or its agents shall provide all training necessary to operate the system. Training includes all original equipment manufacturer start-ups and may also include training course work off-site if the WSD363 deems it necessary.

4. **Retained Responsibilities.** The parties agree that any duty, obligation, responsibility or service not delegated to and assumed by WSD363 pursuant to this Agreement shall remain with and continue to be the responsibility of Spanish Peaks.

5. **Performance of Services.** The manner in which the Services are to be performed and the specific hours to be worked by the WSD363 operators shall be determined by WSD363 in its discretion. WSD363 agrees to provide qualified operating staff to work as many hours as may be reasonably necessary to fulfill WSD363's obligations under this Agreement.

6. **Payment for Services.**

6.1 In consideration for the Services, Spanish Peaks shall pay to WSD363 a fee in an amount equal to WSD363's actual cost of providing the Services, plus 10 percent. WSD363 will keep all necessary books, accounts, and records it deems necessary to account for expenditures incurred in connection with the management and operation of the System as provided in this Agreement. The books, accounts, and records shall be maintained at the offices of WSD363 and are available for Spanish Peaks' inspection during regular business hours. WSD363 may adjust the fee up or down, if need be, based on actual expenses it incurs to provide the Services. WSD363 agrees to provide documentation for any fee adjustments for the Services. WSD363 shall bill Spanish Peaks quarterly for the Services. Payment for billed operating services must be paid within 30 days.

6.2 WSD363 shall bill each owner of a lot within the Subdivision Phases according to WSD363's approved rate schedule for lots within the District. Such invoices shall include invoices for vacant lot charges. WSD363 shall apply all revenue collected from such invoicing as a credit against fees charged to Spanish Peaks under Section 6.1 of this Agreement. If these revenues exceed the operating charges, the WSD363 shall place the surplus in a segregated account designated by the WSD363 for Spanish Peaks. At such time as the funds in the account exceed \$10,000, the funds shall be distributed to Spanish Peaks as it directs.

6.3 WSD363 agrees to supply water to the Spanish Peaks golf course without a charge under Section 6.2 of this Agreement. Spanish Peaks agrees to pay any actual cost associated with such water supply under Section 6.1.

7. **Commencement of General Operating Duties.** WSD363 shall assume management and operational responsibility for the Spanish Peaks water system, pursuant to this Agreement, after it has been constructed and Spanish Peaks' construction engineer certifies that it has been constructed according to the plans and specifications, and has received all governmental approvals and permits to commence operation.

8. **Term of Contract.** This Agreement shall commence on the effective date, and shall continue until October 31, 2006, and quarter-to-quarter thereafter until terminated in accordance with the terms set forth in this Agreement.

9. **Termination.** After the end of the term specified in the previous section, either party may terminate this Agreement, for any reason, by providing 45 days written notice to the other party. During the initial term, the WSD363 can terminate on 90 days notice for non-

compliance of this Agreement. This Agreement may also be terminated by mutual agreement of the parties.

10. **Conveyance of System.** At the end of the initial term, the parties intend to negotiate the conveyance of the System and the Water Rights from Spanish Peaks according to the terms of a conveyance agreement to be negotiated between the parties. WSD363 shall have no obligation to acquire the System if:

- a. WSD363 determines that the source of water supply fails to regularly meet applicable primary drinking water standards; and
- b. WSD363 determines that material defects exist in the construction of the system that cannot be remedied at Spanish Peaks' expense to WSD363's satisfaction.

11. **Notice.** All notices required or permitted under this Agreement shall be in writing and may be served upon a party personally, or served by registered or certified mail and shall be deemed delivered when delivered in person, or deposited in the United States mail, postage prepaid, addressed listed in the opening paragraph of this Agreement. Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

12. **Relationship of Parties.** It is understood by the parties that WSD363 is an independent contractor and not an employee of Spanish Peaks. Spanish Peaks will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of WSD363 employees.

13. **Employees.** WSD363's employees who perform services for Spanish Peaks under this Agreement shall also be bound by the provisions of this Agreement. At the request of Spanish Peaks, WSD363 shall provide adequate evidence that such persons are WSD363's employees.

14. **Insurance.** WSD363 shall carry and maintain throughout the period of this Agreement, liability, umbrella liability, and automobile insurance to protect both Spanish Peaks and WSD363 from all liability on account of injury and damage done to persons or property during or in consequences of the performance of the Services being rendered in the same amount carried and maintained for WSD363. WSD363 shall provide Spanish Peaks with proof of insurance showing the various coverages and premiums. Spanish Peaks also agrees to pay and/or reimburse WSD363 the cost of any additional insurance, which is required by Spanish Peaks. Spanish Peaks shall carry and maintain throughout the period of this Agreement liability insurance on the System. Spanish Peaks agrees to provide WSD363 with proof of insurance.

15. **Injuries.** WSD363 waives any rights of recovery from Spanish Peaks for any injuries that WSD363's employees may sustain while performing Services that are a result of the negligence of WSD363's employees.

16. **Indemnification.** Except for the willful misconduct of either party, each party agrees to indemnify the other against all costs, expenses, attorney's fees, suits, liabilities, and damages from or connected with the performance of this Agreement and the exercise of any of the duties, obligations or powers herein or hereafter granted.

17. **Liability of WSD363 to Spanish Peaks.** WSD363 shall not be liable for any damages caused by delay in rendering performance hereunder arising from any cause beyond the reasonable control of WSD363. Furthermore, WSD363 shall not be liable for breach of warranty express or implied, including without limitation any warranties of merchantability or fitness, in any respect to any performance pursuant to this Agreement. WSD363 shall in no event be liable for incidental, special or consequential damages, unless otherwise expressly agreed to in writing. In no event shall WSD363's liability for any services performed hereunder exceed the amount of money paid by Spanish Peaks to WSD363 for the particular services rendered.

18. **Assignment.** WSD363's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of Spanish Peaks.

19. **Return of Records.** Upon termination of this Agreement, WSD363 shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in WSD363's possession or under WSD363's control and that are Spanish Peaks' property or relate to Spanish Peaks' business.

20. **Entire Agreement.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

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

22. **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.

23. **Waiver of Contractual Rights.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

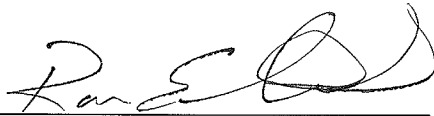
24. **Applicable Law.** This Agreement shall be governed by the laws of the State of Montana.

25. **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.

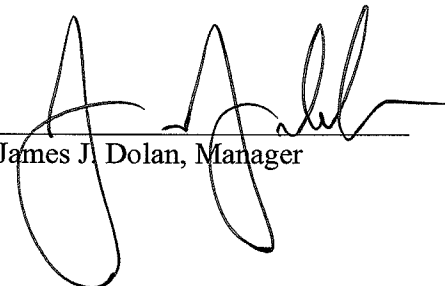
26. **Binding Effect.** All of the terms of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the heirs, assigns and personal representatives of the parties hereto.

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