

MEMORANDUM OF AGREEMENT

BETWEEN

**MT. CRESTED BUTTE WATER AND SANITATION DISTRICT
AND
MERIDIAN LAKE PARK CORPORATION**

**RE:
INCLUSION OF TERRITORY**

THIS AGREEMENT, in duplicate, is entered into at the Town of Mt. Crested Butte, Gunnison County, Colorado with an effective date of May 9, 1995, as follows:

1. PARTIES. The parties to this Agreement are:

MT. CRESTED BUTTE WATER AND SANITATION DISTRICT, a Colorado special district, hereafter termed "District",

and

MERIDIAN LAKE PARK CORPORATION, a Colorado nonprofit corporation, hereafter termed "Association".

2. RECITALS. The following recitals apply to this Agreement:

2.1 District is a duly organized special district existing under and by virtue of the statutes of the State of Colorado.

2.2 District provides water and sanitation services and facilities and maintains and operates a water plant and sanitary sewer plant to provide such services.

2.3 District provides water and sanitation services to property located within its boundaries and provides water and sewer taps or connections to its water lines and sewer lines in accordance with the statutes of the State of Colorado and its policies, rules and regulations and is required by law to collect its scheduled tap or connection fee for any water and/or sewer tap or connection.

2.4 Association is the duly constituted homeowners association to provide water and sewer services within the Meridian Lake Park subdivision, Filings 1, 2, 3 and 4, Gunnison County, Colorado. Such property for convenience will be referred to as "Meridian Lake Park".

2.5 Association currently owns, operates and maintains a water plant and sanitary sewer plant and water and sewer facilities and lines which currently provide water and sanitation services only to Filings 1 and 2 of Meridian Lake Park.

2.6 Association has determined that it is in the best interest of the Association and property owners within Meridian Lake Park to enter into an agreement with the District to set forth the procedures to have Meridian Lake Park included within the boundaries of the District and to have the District provide water and sanitation service to Meridian Lake Park.

2.7 District and Association desire to enter into this Agreement to set forth the terms and conditions for the inclusion of Meridian Lake Park within the District.

3. AGREEMENT. District and Association enter into this Agreement to set forth their respective duties and obligations, rights and privileges.

4. COLORADO DEPARTMENT OF HEALTH. District and Association understand that this Agreement and the terms and conditions hereof are specifically subject to the Upper East River Valley Areawide 201 Facilities Plan and the adoption of "Alternative 1A" as proposed by the District as the preferred alternative and which would allow the District's discharge permit to be increased to one million gallons per day as demand may require.

5. INCLUSION OF MERIDIAN LAKE PARK.

5.1 District and Association have determined that it is in the best interest of both the District and the Association for the inclusion of Meridian Lake Park within the District.

5.2 The Association shall utilize its best efforts to have the owners of the real property within Meridian Lake Park submit a petition in accordance with Section 32-1-401, et seq., Colorado Revised Statutes, for the inclusion of the entirety of Meridian Lake Park within the District.

5.3 Upon submission of such petition, the District shall set a public meeting for the purpose of granting such petition in accordance with the statutes and utilize its best efforts to complete all proceedings required for the inclusion of Meridian Lake Park within the District.

5.4 It is understood and agreed between the parties that this Agreement is specifically subject to the completion of the inclusion of Meridian Lake Park within the District within one year from the effective date of this Agreement. If not so completed, either party may give written notice to the other party that this

Agreement is terminated and upon such notice of termination this Agreement shall become automatically null and void and of no further force nor effect.

6. SANITARY SEWER SERVICE. Immediately upon completion of inclusion of Meridian Lake Park within the District, the District and Association shall undertake the following:

6.1 District shall perform or obtain all engineering studies, designs and construction drawings as may be required (1) to connect the existing sanitary sewer collection lines within Meridian Lake Park to the sanitary sewer treatment facilities of the District, and (2) to make any repairs or additions to the sewage collection facilities with Meridian Lake Park which may be required under the District's policies, construction standards, rules and regulations.

6.2 District and Association shall jointly obtain the required easements and rights of way for the installation, construction and maintenance of the required sanitary sewer line from Meridian Lake Park to the existing sanitary sewer treatment facilities within the current boundaries of the District.

6.3 All costs, fees and expenses pertaining to the engineering and installation of the sanitary sewer line and any required pump stations, valves, or other structures or facilities and easements therefor shall be paid by the District with the funding therefor to be provided in the manner hereafter set forth.

6.4 Upon performance or compliance, as applicable, with each of the foregoing provisions, and satisfaction of each of the conditions set forth in paragraph 4 of this Agreement, the District shall commence to provide sanitary sewer treatment for Meridian Lake Park, subject, however, to the provisions of paragraph 8 of this Agreement.

7. WATER SERVICE. Immediately upon completion of inclusion of Meridian Lake Park within the District, the District and Association shall undertake the following:

7.1 The Association shall convey to the District by Special Warranty Deed the water and water rights determined to be reasonable and necessary to enable the District to provide water service to Meridian Lake Park as determined by the District's water engineer and hydrologist, Resource Engineering, Inc. As of this date, such rights have been determined to be:

7.1.1 The Jaklich Ditch (sometimes referred to as the Yaklich Ditch), Ditch No. 210, together with Priority 229 for 2.5 c.f.s. of water, together with the decretal rights granted by decree in Case No. W-240 and Case No. W-2009 in the Water Court for Water Division 4.

7.1.2 36.5 a.f. of storage water in Meridian Lake Park Reservoir No. 1, as decreed in Case No. W-2009, and as further decreed in Case No. 87-CW-146.

7.2 It is acknowledged and understood that the above described water and water rights and storage rights may be subject to further legal proceedings, both to verify and confirm the legal ownership of such water and water rights and to obtain further decrees in the Water Court of Water Division 4 pertaining to such water rights. Specifically, the District must obtain an absolute decree as to the water storage rights in Meridian Lake Park Reservoir No. 1, together with an approved plan of augmentation and a refill right. Upon the conveyance to the District of the above described water and water rights and storage rights, the District shall substitute itself as Applicant in Case No. 94-CW-032 (filed by Meridian Lake Park) and Case No. 94-CW-36 (filed by Pristine Point, Inc.) to the extent of the rights conveyed to it and the District will proceed with such legal actions as it deems necessary or appropriate. This Agreement, and the duties of the District as to inclusion within the District, are specifically conditioned upon the District obtaining all final decrees as it determines to be necessary and appropriate. Upon inclusion, such condition shall be deemed waived. The Association shall assist and cooperate with the District as to such legal proceedings and, to the extent required, shall obtain the necessary approvals, consents, and agreements of any other owner or purported owner in such water and water rights and storage rights as may be necessary to obtain a complete, full and absolute adjudication of the ownership and usage of such water and water rights and storage rights.

7.3 The District shall perform or obtain all engineering studies, hydrology studies, designs and constructions drawings as may be required to construct, operate and maintain all necessary facilities to construct, operate, maintain and provide for a full and complete municipal water system for Meridian Lake Park, including all required fire protection services.

7.4 All easements and rights of way necessary for the construction, operation, maintenance and utilization of the municipal water distribution system for Meridian Lake Park have been obtained by the Association and conveyed to the District, as determined to be necessary and essential for the operation thereof.

7.5 The District and the Association acknowledge and agree that the water service and water distribution system for Meridian Lake Park, unless otherwise agreed in writing, shall be a stand-alone system constructed, operated and maintained as a self contained water system within Meridian Lake Park without connection to the water distribution systems, water storage and water treatment facilities otherwise owned and maintained by the District.

7.6 All costs, fees and expenses pertaining to the engineering and installation of the water distribution systems and any required pump stations, valves, or other structures or facilities and easements therefor shall be paid by the District with the funding therefor to be provided in the manner hereafter set forth.

7.7 Upon performance or compliance, as applicable, with each of the foregoing provisions, and satisfaction of each of the conditions set forth in paragraph 4 of this Agreement, the District shall commence to provide potable domestic water service to Meridian Lake Park, subject, however, to the provisions of paragraph 8 of this Agreement.

8. FUNDING OF COSTS AND EXPENSES. District and Association acknowledge and agree that the fees, costs and expenses of the District to provide the sewer service and the water service for Meridian Lake Park as follows:

8.1 Upon the inclusion of Meridian Lake Park by the District, the District will utilize its best efforts to obtain the issuance of revenue bonds, or any other mutually agreed to method for raising the necessary revenue to defray such fees, costs and expenses, with the same to be approved by the required electors at the November 1995 election.

8.2 The required revenue to repay such revenue bonds or other financing shall be by special service charges against the property within Meridian Lake Park including availability of service charges, water tap fees, sewer tap fees or special assessments as may be necessary to provide adequate funding for the repayment of the revenue bonds or other financing. The District shall pledge such revenue to secure the timely payment of such revenue bonds or other financing.

8.3 The obligation of the District as set forth in paragraph 6 and paragraph 7 of this Agreement is expressly conditioned upon the successful compliance by the District of the funding as set forth in this paragraph 8.

9. MILL LEVY, RATES AND FEES. District and Association acknowledge and agree that:

9.1 From and after the date of inclusion of Meridian Lake Park within the District, Meridian Lake Park shall be liable for its proportionate share of the existing bonded indebtedness of the District but Meridian Lake Park shall not be liable for any taxes or charges levied or assessed prior to the inclusion of the same within the District nor is the inclusion of Meridian Lake Park contingent upon the assumption of any taxes, rates, fees, tolls or charges other than those which are uniformly made, assessed or levied for the entire District, except as otherwise provided in paragraph 8 of this Agreement.

9.2 The District shall have the right to fix a different rate, fee or charge to Meridian Lake Park based upon the services and facilities furnished or to be furnished to Meridian Lake Park. The District shall meet with the Association to discuss and determine the best and most feasible method of imposing any rates, fees or charges to Meridian Lake Park so that the same may be equitable and fair both to the property owners within Meridian Lake Park and all property owners within the District.

10. ENGINEERING STUDIES AND REPORTS. The Association shall make available to the District all studies, reports, investigations, maps, plats and documents in the possession of the Association as may be requested by the District to assist the District in determining the ownership of the above described water and water rights and storage rights, the status, location and condition of all sewer service facilities and water service facilities, the ownership, location, and ownership rights of all easements and tracts of land utilized in the providing of such water service and sewer service and such additional information as may be helpful to implement this Agreement.

11. ASSISTANCE OF ASSOCIATION. The Association shall use its best efforts to obtain any and all required approvals of electors and real property owners within Meridian Lake Park as are necessary and essential to effectuate the purposes of this Agreement.

12. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by telecopier or telegraphic communication to the required party at the following addresses:

DISTRICT: Post Office Box E
Mt. Crested Butte, Colorado 81225

ASSOCIATION: Post Office Box 504
Crested Butte, Colorado 81224-0187

Notice shall be deemed delivered at the time of personal delivery, telecopier or telegraphic communication or when mailed to the required party. Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

13. ENTIRE AGREEMENT. This Agreement constitutes the entire and only agreement between the parties. All prior negotiations, agreements, representations and understandings, whether written or oral, are merged into and superseded by this Agreement and shall be of no further force nor effect.

14. APPLICABLE LAW. This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.

15. JURISDICTION AND VENUE. Jurisdiction and venue of any action as to this Agreement and the interpretation, enforcement or the determination of the rights and duties of the parties hereto shall be the District Court of Gunnison County, Colorado. Each party submits to the personal jurisdiction of the District Court of Gunnison County, Colorado and waives any and all rights under the laws of any other State or County to object to the jurisdiction of the District Court of Gunnison County, Colorado as to any action pertaining to this Agreement.

16. ATTORNEYS' FEES. If any legal action is commenced or maintained in court, whether in law or in equity, by any party to this Agreement as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Agreement or any document provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

17. TERMINATION. This Agreement and the terms and conditions hereof shall remain in full force and effect until fully performed by the parties, and it is understood and agreed that the terms and conditions of this Agreement shall survive the date of closing and shall not be merged nor extinguished by any instrument of conveyance or assignment.

18. AMENDMENT. The parties recognize and agree that this Memorandum of Agreement may require future amendments, modifications or changes as the processes called for hereby are undertaken by the parties, and the parties agree to mutually negotiate in good faith any amendments, modifications or changes that might be required to give effect to the spirit and purpose of this Memorandum of Agreement.


19. BINDING AGREEMENT. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

The parties have executed this Memorandum of Agreement the date first above written.

MT. CRESTED BUTTE WATER AND
SANITATION DISTRICT, a Colorado special
district

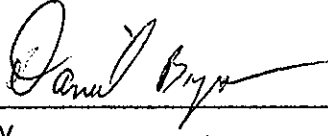
ATTEST:


Secretary

By 
Vice Chairman of the Board

MERIDIAN LAKE PARK CORPORATION,
a Colorado nonprofit corporation

ATTEST:



Secretary

By: _____
President

