



**SETTLEMENT AGREEMENT**

This Settlement Agreement (this “Agreement”) is entered into this 4<sup>th</sup> day of April, 2023 (the “Effective Date”), by and between Mt. Crested Butte Water and Sanitation District, a Colorado special district, which is a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and Meridian Lake Park Corporation, a Colorado nonprofit corporation (the “Association”). The District and the Association are sometimes each referred to herein as a “Party” and collectively as the “Parties.”

**Recitals**

- A. The District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et. seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public water and wastewater facilities and improvements for itself, its taxpayers, residents and users.
- B. Pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District.
- C. The Association is the duly-constituted master homeowners’ association for the Meridian Lake Park subdivision, Filings 1, 2, 3, and 4, Gunnison County, Colorado. The various residential properties that comprise the membership of the Association are collectively referred to herein as “Meridian Lake Park.”
- D. The District and the Association entered into a Memorandum of Agreement on May 9, 1995 (the “1995 MOA”) and a First Amendment to Memorandum of Agreement to the same in 2013 (the “First Amendment”). The Memorandum of Agreement, as amended by the First Amendment, are collectively referred to herein as the “MOA.”
- E. The 1995 MOA contained certain terms and conditions regarding the inclusion of Meridian Lake Park into the District, and the District’s provision of water and sewer services to Meridian Lake Park, including that the Meridian Lake Park water system would not be cross-connected to other District water systems, and that the District could charge higher rates to customers within Meridian Lake Park as specified in the 1995 MOA.
- F. The 1995 MOA also provided, in Section 7.5, that, unless otherwise agreed in writing, the water service and water distribution system for Meridian Lake Park would be and remain a stand-alone system to be constructed, operated and maintained as a self-contained water system without connection to other facilities owned and maintained by the District. In recognition that the maintenance of a stand-alone system might cost more, the 1995 MOA further provided, in Section 9.2, that the District would have a right to fix a different rate, fee or charge to property owners that receive water and sewer service within Meridian Lake Park. The 1995 MOA further provided that the District would meet with the Association to discuss and determine the most feasible method of imposing any rates, fees or charges to Meridian Lake Park so that the same may be



equitable and fair to both the property owners within Meridian Lake Park and all property owners within the District.

- G. Since the 1995 MOA was executed, the District has provided water and sewer service to properties located within Meridian Lake Park and the District has periodically imposed an additional monthly surcharge upon Meridian Lake Park property owners for water and sewer service over and above the rates charged to property owners within other portions of the District, which surcharge is presently \$36.27 per month (the "Surcharge").
- H. The Parties no longer desire to prohibit cross-connection of the Meridian Lake Park water system to other District facilities, nor for Meridian Lake Park homeowners to continue to pay the Surcharge indefinitely. As such, the Parties agree that the MOA no longer fully serves their needs at the present time, and therefore now desire to terminate the MOA pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual promises, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Termination of the MOA. From and after the Effective Date of this Agreement, the MOA shall be terminated and of no further force or effect, provided that the District shall continue to provide water and sewer service to customers within Meridian Lake Park on the terms and conditions set forth in this Agreement and in accordance with applicable Colorado law and the District's Rules and Regulations.
- 2. Sunset of the Surcharge. The Parties agree that the District may continue to impose the Surcharge on District customers within Meridian Lake Park through the date that is six years from the Effective Date of this Agreement, provided that the amount of the Surcharge shall not exceed \$36.27 per month. Otherwise, customers within Meridian Lake Park will pay the same taxes, fees, rates, tolls, assessments, and charges to the District on the same basis and methodology as all other customers within the District. Notwithstanding the foregoing, the Parties agree that the Association has no power to bind its members to taxes, rates or fees, and that the District shall remain subject to and have all authority under applicable statutes and other legal requirements regarding water and sewer utility rate-setting and taxation and assessing of all customers within Meridian Lake Park.
- 3. Facilities. To the extent it has not done so already, the District shall assume, and pursuant to this Agreement does hereby accept, full ownership, and all responsibility for future operation, repair, and replacement, of all public potable water and sewer system collection, treatment and distribution infrastructure facilities located within Meridian Lake Park, excluding only private water distribution and sewer service collection lines that are owned and maintained by individual property owners, as set forth below in Section 5. The District may cross-connect these facilities to other District-owned facilities.



4. Association's Quitclaim of Any Interest In and To Meridian Lake Park Reservoir No. 1. The Association, for \$10.00, and other good and valuable consideration, in hand paid, hereby remises, releases, quitclaims, and conveys to the District, without warranty as to title, quality or condition, any and all interest that the Association has or may have in or to Meridian Lake Park Reservoir No. 1, its dam, the storage space therein, the water rights decreed thereto, and any and all improvements related to the foregoing, provided, however, that such transfer is made subject to all existing water right decrees and related agreements concerning Meridian Lake Park Reservoir No. 1, and the Association and its members (including property owners within Pristine Point or Meridian Lake Meadows) shall retain all existing easements related to Meridian Lake Park Reservoir No. 1. In addition, the Association and its members (including property owners within Pristine Point or Meridian Lake Meadows) shall have the perpetual right to access and utilize Meridian Park Reservoir No. 1 for fishing, floating and other flat-water non-motorized recreational activities upon the surface and banks of Meridian Lake Park Reservoir No. 1, provided however that such rights shall be subject to any rules and regulations promulgated by the District reasonably related to the promotion of health and safety or the operation of the reservoir.
  
5. Association's Disclaimer of Any and All Interest In Meridian Lake Park Water and Wastewater Infrastructure. The Association hereby disclaims forever any and all interest that the Association may have in or to the following real and personal property in the County of Gunnison and State of Colorado, to wit:

All raw water collection and treatment facilities, main water distribution lines, main sewer collection lines, including any pumps, pump stations, fittings, and appurtenances and all infrastructure used therewith or related thereto and located in, on or under Meridian Lake Park or providing water or sanitary service to Meridian Lake Park that will be publicly owned and maintained by the District, excluding individual privately-owned water service lines (located beyond the curb valve) and all individual sewer service lines (located above the tap into a sewer main), which private water and sewer service lines shall remain the property of the landowner served by these service connections.
  
6. Association's Acknowledgement of District's Easements. The Association hereby acknowledges the District's rights under Rule 2.3 of the District's Rules and Regulations, and therefore acknowledges that the District has a perpetual non-exclusive easement totaling 30 feet in width, being 15 feet on each side of any water or wastewater lines located on any real property owned by the Association within Meridian Lake Park (the "Easement Areas"), in order for the District to install, construct, operate, repair, reconstruct, replace, remove, inspect, survey and use, underground water mains and sewer distribution lines within the Easement Areas and all necessary and proper appurtenances connected therewith that will be owned and maintained by the District, hereafter collectively referred to as the "Utilities", together with the right of ingress and egress over and across said Easement Areas and/or Association common areas as may be necessary to install, construct, operate, repair, reconstruct, replace, remove, inspect, survey and use said Utilities. Additionally, upon completion of any excavation, unless



excepted by applicable design or construction guidelines, the District shall be responsible for recompacting soils to their prior condition and restoring the property disturbed or damaged by such activity to a condition and grade as near as reasonably possible to the condition that existed prior to the activity, provided however that notwithstanding the foregoing, in no event shall the District be required to replace or repair asphalt, curb, gutter, concrete work, or other improvements in the Easement Areas. Finally, for the avoidance of doubt, any easements or facilities located on privately-owned lots within the Association or its sub-associations are excluded from this Agreement.

7. Release of Association. The District, for itself, and for its board members, agents, employees, successors, and assigns, completely, unconditionally and forever releases, acquits and discharges the Association, and its current and former, agents, employees, attorneys, directors, members, officers, successors, and assigns of and from any and all actions, causes of action, claims, counterclaims, cross claims, defenses, setoffs, recoupments, obligations, debts, demands, liabilities, losses, and damages, of any nature, in law or in equity, whether known or unknown, fixed or contingent, which arise out of or relate to the MOA that accrued prior to the Effective Date of this Agreement. Notwithstanding the forgoing, nothing contained in this paragraph shall release the Association from complying with the terms and conditions of this Agreement.
8. Release of District. The Association, for itself and for its officers, board members, members, , employees, successors and assigns and agents, completely, unconditionally and forever releases, acquits and discharges the District, and its current and former, agents, employees, attorneys, directors, members, officers, and assigns of and from any and all actions, causes of action, claims, counterclaims, cross claims, defenses, setoffs, recoupments, obligations, debts, demands, liabilities, losses, and damages, of any nature, in law or in equity, whether known or unknown, fixed or contingent, which arise out of or relate to the MOA. Notwithstanding the forgoing, nothing contained in this paragraph shall release the District from complying with the terms and conditions of this Agreement.
9. No Admissions. This Agreement shall not be regarded as an admission of fault or wrongdoing by any Party.
10. Open Records. The Parties understand that all materials provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
11. No Assignment of Claims. Each of the Parties represents and warrants to the other that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claims that it might have against the other and that are being released herein.
12. Complete Agreement; Modification; And Waiver. This Agreement constitutes the entire agreement between the Parties and, supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties regarding the issues addressed herein. No supplement, modification, or amendment of this Agreement



shall be binding unless executed in writing by all Parties. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

13. Review; Investigation; Etc. Each Party acknowledges and represents that: (a) such Party has fully and carefully read and considered this Agreement prior to its execution; (b) such Party has had the opportunity to make whatever investigation or inquiry the Party deems necessary or appropriate in connection with the subject matter of this Agreement; (c) such Party is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind; and (d) such Party is knowingly and voluntarily waiving and releasing all claims against the other Parties, but only as provided in this Agreement.
14. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the Party giving such notice, either hand delivered or mailed by certified mail, return receipt requested to the other Party at the following addresses:

District: Post Office Box 5740  
Mt. Crested Butte, Colorado 81225

Association: Post Office Box 504  
Crested Butte, Colorado 81224

Notice shall be deemed delivered at the time of personal delivery or when mailed to a Party. Either Party may change its address by giving written notice of a change of address to the other party in the manner above provided.

15. Recording; Confirmation Deed. The District shall have this Agreement recorded. If requested by the District, the Association shall execute and deliver to the District a quitclaim deed for any real property to be quitclaimed to the District pursuant to this Settlement Agreement.
16. Miscellaneous Provisions
- a. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective heirs, agents, successors, and assigns.
  - b. In the event of any action to enforce this Agreement or any document provided for herein or related hereto, the prevailing Party shall be awarded all reasonable attorneys' fees and costs, including expert witness fees and costs, from the non-prevailing Party.
  - c. The paragraph headings used in this Agreement are for purposes of identification only and shall not be considered in construing this Settlement Agreement. Furthermore, this Agreement shall be deemed to have been prepared with the full



and equal participation of each Party, and shall not be construed by any Party against any other Party.

- d. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Parties agree that the state district court located in Gunnison County, Colorado shall have exclusive jurisdiction over, and shall be the exclusive venue for, any action arising out of, or related to, this Settlement Agreement. To the extent permitted by law, the Parties waive trial by jury in any legal action relating to this Agreement.
- e. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. The parties will accept facsimile signatures or electronic signatures as original signatures.
- f. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- g. If any covenant, term, condition or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition or provision shall not affect any other provision contained herein, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- h. The persons signing this Agreement on behalf of each Party represent and warrant that they have full and lawful authority to enter into this Agreement on behalf of such Party.
- i. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

IN WITNESS WHEREOF, the District and the Association have executed this Agreement as of the day and year first above written.

MERIDIAN LAKE PARK CORPORATION, a  
Colorado nonprofit corporation



By:   
Scott Winn, its President

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, its Corporate Secretary



STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2023, by Scott Wign, as President of Meridian Lake Park Corporation, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: May 3, 2025.



\_\_\_\_\_  
Notary

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

By: \_\_\_\_\_,  
its President

ATTEST:

\_\_\_\_\_  
its Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as President of Mt. Crested Butte Water and Sanitation District, a Colorado special district.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary





STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2023, by Scott Wign, as President of Meridian Lake Park Corporation, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: May 3, 2025.



[Signature]  
Notary

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

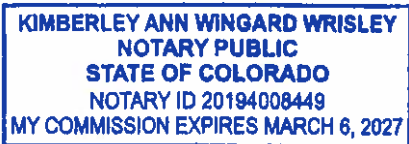
By: [Signature]  
Brian Brown, its President

ATTEST:  
[Signature]  
Kent Fulton, its Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 13 day of April, 2023, by Brian Brown, as President of Mt. Crested Butte Water and Sanitation District, a Colorado special district.

Witness my hand and official seal.  
My commission expires: March 6, 2027



[Signature]  
Notary