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MEMORANDUM OF UNDERSTANDING

PROSPECT AT MT. CRESTED BUTTE

This Memorandum of Understanding (MOU) is executed the 15th day of JANUARY, 2002, at Town of Mt. Crested Butte, Colorado as follows:

1. PARTIES. The parties to this MOU are:

TOWN OF MT. CRESTED BUTTE, a Colorado home rule municipality, (Town)

and

RESERVE METROPOLITAN DISTRICT NO. 1, a Colorado special district, (District).

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

2.1. District is a Colorado special district and is the control district as to the PUD development within the Town known as Prospect at Mt. Crested Butte (Prospect).

2.2. By the dedication contained in the plat of Prospect, all open space, roads, streets, public ways and easements will be dedicated to and owned by the District.

2.3. At the time of the preliminary plan PUD approval of Prospect by the Town, certain conditions were required to be met as a condition of final plan approval.

2.4. This MOU addresses conditions 23, 27, 33, 90, 94 and 97.

3. DRAINAGE STRUCTURES AND DRAINAGE EASEMENTS. The District covenants and agrees with the Town as follows:

3.1. The District will be the owner of all drainage structures and drainage easements within Prospect.

3.2. The District shall be responsible to approve the plans and designs of the drainage structures and drainage easements as prepared by a registered professional engineer for each phase of Prospect. The Town shall be provided with written evidence of such approval prior to the Final Plat of each phase of Prospect.

3.3. The District shall be responsible to construct, operate, maintain and keep in good repair the drainage structures and drainage easements.

3.4. Prior to Final Plat approval, The District shall obtain from it's engineer, and provide to the Town, appropriate certification that such drainage structures and drainage easements will not send water onto adjoining property in a manner or quantity to do more harm than formerly was done prior to the development of Prospect.

3.5. The District shall indemnify and hold the Town harmless from any and all claims, demands, causes of action, damages and judgments pertaining to or arising from the discharge of drainage water from Prospect onto any adjoining property resulting from any drainage structure or drainage easement within Prospect.

4. UNDER DRAIN MAINTENANCE. The District shall be responsible to maintain all under drains placed in the same trench with a sewer main within any utility easement or right of way.

5. GEOTECHNICAL REPORTS AND ENGINEERING PLANS. The district agrees and covenants with the Town as follows:

5.1 The District shall be responsible to provide to the Town detailed design and construction notes for the roadway pavement sections, shoulders and roadway embankments, together with ongoing construction reports addressing soil conditions in the field and actual subgrade material tests.

5.2 The District's geotechnical engineer shall provide the Town a final pavement design based on testing of the actual subgrade conditions. The test results and final pavement design shall be submitted to the Town for review prior to commencement of any paving operations including placement of base material.

6. BI-WEEKLY REPORTS. The District shall provide the Town with bi-weekly construction observation reports for water, sanitary sewer, storm sewer, drainage facility, construction BMP functioning status and roadway construction. Upon completion of the road construction, the District shall furnish the Town with as-built drawings of all road and streets within Prospect.

7. NOTICES. All notices and other communications required or permitted under this MOU shall be in writing and shall be, as determined by the person giving such notice, either (1) hand delivered; (2) mailed by registered or certified mail, return receipt requested; (3) delivered by an overnight delivery service such as Federal Express or United Parcel Service; or (4) by telecopier, telegraphic or facsimile transmission. Service of such notice shall be deemed given and received when personally delivered, or 3 business days after mailing properly addressed with postage

prepaid, or the day sent by telecopier or telegraphic or facsimile transmission, or the day following the delivery to an overnight delivery service with delivery charges prepaid. All notices shall be given to the required party at the following addresses:

TOWN: TOWN OF MT. CRESTED BUTTE
P.O. Box 5800
Mt. Crested Butte, CO 81225

DISTRICT: RESERVE METROPOLITAN DISTRICT NO. 1
P.O. Box 5700
600 Gothic Road
Mt. Crested Butte, CO 81225

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

8. AMENDMENT. This MOU cannot be modified, amended or changed in any manner except by an agreement in writing signed by the parties hereto.

9. APPLICABLE LAW. This MOU is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado, except for Colorado choice of law principles.

10. JURISDICTION AND VENUE. Jurisdiction and venue of any action as to this MOU and the interpretation, enforcement or the determination of the rights and duties of the parties hereto shall be in a District Court of the State of Colorado having jurisdiction. Each party submits to such jurisdiction and waives any and all rights under the laws of any other State.

11. ATTORNEYS' FEES. If any legal action is commenced or maintained in court, whether in law or in equity, by either party to this MOU as to the interpretation, enforcement, construction, determination of the right and duties of the parties to this MOU or any document provided herein, to obtain damages, the prevailing party in any such action shall be entitled to all of its reasonable costs, damages and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith. In addition to any remedy at law, either party shall have the right to specifically enforce all of the terms and conditions of this agreement.

12. TIME IS OF THE ESSENCE. It is expressly agreed that time is of the essence of this MOU.

13. TERMINATION. This MOU and the terms and conditions thereof 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 MOU shall survive the date



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of closing and shall not be merged nor extinguished by any instrument of conveyance or assignment.

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

Executed the day and date first above written.

ATTEST:

TOWN OF MT. CRESTED BUTTE, a Colorado Home rule municipality

By: Donna Arwood
Donna Arwood
Town Clerk

By: Gwen Pettit
Gwen Pettit
Major

RESERVE METROPOLITAN DISTRICT NO. 1
a Colorado special district

By: Ralph O. Walton III
Ralph O. Walton III
President