

553171 10/04/1999 02:02P B1153 P666 M ALSDORF
1 of 8 R 40.00 D 0.00 GARFIELD COUNTY CO

SEWER CONNECTING MAIN AGREEMENT
(St. Finnbar, Preshana Farms, Ranch At Roaring Fork)
(Partially Amending Agreements for Sewer Service)

THIS AGREEMENT ("this Agreement") is executed this 21 day of Sept., 1999, by and between, the RANCH AT ROARING FORK HOME OWNERS ASSOCIATION, INC., a Colorado non-profit corporation (the "Ranch"), ASPEN EQUESTRIAN ESTATES, LLC, a Colorado limited liability company ("AEE"), and ST. FINNBAR LAND COMPANY, a Colorado corporation ("St. Finnbar")(AEE and St. Finnbar collectively referred to as "Developers" or individually as "Developer")(AEE, St. Finnbar and the Ranch collectively referred to as the "Parties")

RECITALS

- A. The Ranch is the homeowners' association for a residential community known as "The Ranch at Roaring Fork," located in the County of Garfield, State of Colorado (the "Ranch Property").
- B. The Ranch owns and operates a wastewater treatment plant and related facilities appurtenances and collection systems (the "Existing Facilities") on and about the Ranch Property for the benefit of the owners thereof.
- C. The Developers are the owners of certain real property located in the County of Garfield, State of Colorado, (the "Developer Properties"), which Developer Properties lie adjacent to the Ranch Property.
- D. St. Finnbar and the Ranch have entered into an Agreement for Sewer Service dated August 4, 1999 ("St. Finnbar Agreement") for the provision of sewer services to the St. Finnbar property as referenced and described in the St. Finnbar Agreement.
- E. AEE and the Ranch have entered into an Agreement for Sewer Service dated SEPTEMBER 22, 1999 ("AEE Agreement") for the provision of sewer services to the AEE property as referenced and described in the AEE Agreement.
- F. The St. Finnbar Agreement and the AEE Agreement ("collectively, the "Developer Agreements") provide for a connecting sewer main line ("Connecting Main") to be constructed on the Ranch Property in order to provide sewer service to the Developer Properties. However, the Developer Agreements currently contemplate that the Connecting Main will be constructed by St. Finnbar with cost reimbursement to come from AEE.
- G. The Developer Agreements provide for each Developer to design and construct sewage collection systems (the "Developer Collection Systems") on their respective Developer Properties.

- H. The Parties wish to amend the Developer Agreements with respect to the design, construction and utilization of the Connecting Main, the cost recovery associated with the Connecting Main, and which party will construct the Main.
- I. The Parties desire to address these issues within in this Agreement and set forth their agreement regarding the terms, covenants and conditions under which such Connecting Main will be constructed and utilized.
- J. The Parties desire this Agreement to supercede, modify and/or amend the Developer Agreements to the extent such Developer Agreements are inconsistent or conflict in word or interpretation with this Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter set forth, the Parties agree as follows:

1. Section 1.b. in the Developer Agreements shall be amended in its entirety to read as follows:

Connecting Main. A connecting sewer line will need to be designed and constructed within the Ranch Property ("Connecting Main"), in order to connect the Developer Collection Systems to the nearest existing main on the Ranch Property in the cul-de-sac at the end of Stagecoach Lane. The Connecting Main is expected to traverse through (1) the easement described in the Agreement, Easement Grant and Mutual Release dated June 28, 1986, recorded in Book 697 at Page 616 of the Garfield County real estate records ("Usage Easement"), being an easement under which AEE has the right to use a portion of the Ranch Property adjacent to the AEE Property's west boundary ("Preshana Usage Portion"); (2) through the easement owned by St. Finnbar along the south line of Lot 13, Ranch at Roaring Fork, Phase 5, or, through the easement along the southerly boundary of Lot 12, Ranch at Roaring Fork, Phase V, as described in the Agreement for Water and Sewer Easement dated October 20, 1995, recorded in Book 957 at Page 131 of the Garfield County real estate records; and (3) through the cul-de-sac to the point where the existing Ranch main is located (the "Connecting Main Easement Route"). The Parties hereby grant to each other a reciprocal non-exclusive easement right and privilege to use and enjoy the easements along the Connecting Main Easement Route.

The Connecting Main shall be owned and operated, maintained, repaired and replaced by the Ranch. Notwithstanding that fact, the Connecting Main shall be designed, engineered and installed by and at the cost and expense of the Developers, subject to the direction and approval of the Ranch, or if it has been activated, the Committee, as defined in the Developer Agreements, in the exercise of its reasonable discretion. The Developers shall indemnify and hold harmless the Ranch from all loss, cost, damage and expense, including, without limitation, attorneys fees, arising out of the design, engineering and installation of the Connecting Main by the Developers. Such loss resulting from the design, engineering and installation of the Connecting Main shall be borne by the Developers in accordance with their respective Developer Share.

The Connecting Main shall, at some accessible point, have manhole access and a means to shut off effluent entering the existing Ranch system.

The Developer first prepared, in terms of land use approvals, planning and construction schedule, to tie into and begin utilizing the Connecting Main shall have the right and obligation to design and construct the Connecting Main (the "Constructing Developer").

2. Section 4.b. in the Developer Agreements shall be amended in its entirety to read as follows:

Developers Rights to Connect. Whichever Developer is not the Constructing Developer pursuant to Section 1(b), as amended (the "Connecting Developer"), shall have the right to connect into and use the Connecting Main . It is expected that each Developer will tie-in and connect their respective Developer Collection Systems and collection main lines to the Connecting Main at the point labeled "MH A3" on the attached Master Utility Plan Map, incorporated herein by reference, which point lies in the Usage Easement . Any such physical connection to the Connecting Main shall be at the sole cost and expense of the Developer making the connection. The Constructing Developer shall timely submit to the Connecting Developer and the Ranch the design and engineering plans and specifications for the Connecting Main and the Connecting Developer and the Ranch (or the Committee, if activated), at their sole expense, shall have the right to (i) review and, based on reasonable grounds, approve and/or disapprove of the design and engineering plans produced by the Constructing Developer's engineers, and (ii) inspect construction of the Connecting Main to insure compliance and adequate provision for the Connecting Developer's future tie-in.

At the time of connection, and as a condition precedent to commencement of service to the Connecting Developer, the Connecting Developer shall pay to the Constructing Developer its Developer Share, as defined below, of the costs to the Constructing Developer of designing and installing the Connecting Main ("Construction Costs"). The "Construction Costs" of the Connecting Main shall mean and include all labor, materials, equipment, engineering, survey work, permit fees, inspection fees, and other actual out-of-pocket costs and expenses reasonably required in connection with and incurred to complete the design, construction, and installation of such Connecting Main and manholes.

Upon completion of the work, an affidavit of costs itemizing and certifying all costs and expenses incurred in connection with the Connecting Main construction, will be submitted by the Constructing Developer for approval by the Ranch and Connecting Developer, thereby establishing the "Construction Costs" for purposes of reimbursement under this Agreement. Any disputes regarding incurment or payment of Construction Costs shall be submitted to binding arbitration before one arbitrator under the Commercial Rules ("Rules") of the American Arbitration Association in Aspen, Colorado. In order to expedite said arbitration, all time periods set forth in the rules shall be reduced by one-half (1/2) except that no time period shall be less than three (3) days and no time period affecting performance by the arbitrator shall be reduced except with the consent of the arbitrator. As part of its award or judgement in the arbitration , the arbitrator shall have authority to award the prevailing party its reasonable attorney fees and costs. Pending any arbitration, the Connecting Developer may,

at its option, escrow with the Ranch the amount set forth in the affidavit of Construction Costs and obtain immediate service. The escrow amount shall be deposited with a local commercial bank in a money market type account with all interest accruing thereon paid to the Connecting Developer. Absent negligence or willful acts or omissions, the Developers agree to indemnify and hold harmless the Ranch in connection with its undertaking any duties as the escrow hereunder.

Following construction of the Connecting Main, each Developer shall reimburse the Ranch its Developer Share of the costs of thereafter maintaining, repairing and replacing the Connecting Main ("Maintenance Costs"). The "Developer Share" shall initially be based on the Developers' development plans and shall be 77% to AEE and 23% to St. Finnbar. After build-out on the Developer Properties, the "Developer Share" shall be adjusted and from that point forward, mean the proportion which the EQRs on the particular Developer Property and actually connected to the Connecting Main, bears to the total EQRs actually connected to the Connecting Main.

The Ranch may shut off sewer service to a Developer if that Developer at any time fails, after reasonable notice and right to cure, to pay its Developer Share of any Maintenance Costs required to be paid to the Ranch.

3. Sewer Line Easement Over Preshana Usage Portion. AEE agrees to grant to St. Finnbar and the Ranch a perpetual, non-exclusive easement, right and privilege to use the Preshana Usage Portion, for purposes of St. Finnbar installing and utilizing a sewer line to connect to the Connecting Main.
4. Future Cost Recovery and Capacity. The Developers have a first right to the capacity in the Connecting Main. Should any other party hereafter connect to or otherwise utilize the improvements funded by Developers for purposes of collecting and/or conveying effluent to the Ranch wastewater treatment system ("Subsequent User"), they shall be required to pay to Developers, in an amount equal to the costs incurred by the Developers multiplied by a fraction where their proportionate demand, computed and calculated on an EQR basis is the numerator and the denominator is the total EQR's to be served by the facilities between the Developers and the Subsequent User(s), escalated at the rate of 3% per year from the date of Connecting Main completion to the date of the Subsequent User connection ("Developer Rebate"). For purposes of this provision, the term "EQR" shall have the definition set forth in the Developer Agreements. The Ranch shall condition sewer service to such Subsequent User(s) upon payment of the Developer Rebate.
5. Representations Regarding Easements. St. Finnbar represents to the other Parties that it is the owner of and has good title to the easement recorded in Book 892 at Page 513 of the Garfield County Real Estate Records ("Lot 13 Easement") situated along the south line of Lot 13, Ranch at Roaring Fork, Phase 5 ("Lot 13"). AEE represents to the other Parties that it is the owner of and has good title to that part of the Usage Easement under which AEE has the right to use a portion of the Ranch Property adjacent to AEE Property's west boundary (Preshana Usage Portion), and to the easement along the southerly boundary of Lot 12, Ranch at Roaring Fork,



Phase V ("Lot 12"), as described in the Agreement for Water and Sewer Easement dated October 20, 1995, recorded in Book 957 at Page 131 of the Garfield County real estate records ("Lot 12 Easement"). The Ranch represents to the other Parties that it is the owner of and has good title to (or, in the alternative, has the right to make available for the purposes of this Agreement) that portion of the Connecting Main Easement Route from the westerly end of the Lot 13 Easement or Lot 12 Easement through the cul-de-sac at the end of Stagecoach Lane to the point where the existing Ranch main is located. With respect to the Lot 13 Easement, St. Finnbar agrees, within sixty (60) days following execution of this Agreement by all parties to provide the other parties with either: (i) evidence from a reputable title company that no mortgage or deed of trust (a "Lien" and the holder thereof being a "Lienholder") on Lot 13 is senior or prior to the Lot 13 Easement or (ii) good and sufficient subordination(s) in recordable form by any senior or prior Lienholder(s) on Lot 13, subordinating said Lien(s) to the Lot 13 Easement. AEE agrees, within sixty (60) days following execution of this Agreement by all parties that it shall, with respect to the Preshana Portion of the Usage Easement, provide the other Parties with either (i) evidence from a reputable title company that there exists no Lienholder on the AEE Property with a Lien senior or prior to this Agreement and, in particular, the easement granted to St. Finnbar under Paragraph 3 above or (ii) a good and sufficient subordination(s) in recordable form from any Lienholder(s) on the AEE Property subordinating said Lien (s) to this Agreement and, in particular, the easement granted to St. Finnbar under Paragraph 3 above. AEE further agrees, with respect to the Lot 12 Easement, within sixty (60) days following execution of this Agreement by all parties, to provide the other parties with either: (i) evidence from a reputable title company that no mortgage or deed of trust (a "Lien" and the holder thereof being a "Lienholder") on Lot 12 is senior or prior to the Lot 12 Easement or (ii) good and sufficient subordination(s) in recordable form by any senior or prior Lienholder(s) on Lot 12, subordinating said Lien(s) to the Lot 12 Easement.

- 6. Recordation of Agreement. Upon full execution hereof, this Agreement shall be recorded in the real estate records of the county(s) where the property(s) affected hereby is located.
- 7. Limited Modification. The Developer Agreements shall remain in full force and effect and all provisions contained therein shall apply equally to this Agreement and be unchanged, except as expressly amended or modified or rendered inconsistent with the terms of this Agreement, in which case the terms of this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

RANCH AT ROARING FOR HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation.

By: Charles R. Holloway
Its: President

STATE OF Colorado)
COUNTY OF Pitkin) ss.

The foregoing instrument was acknowledged before me on this 21 day of Sept., 1999, by Morton A. Heller, vice President/Secretary of St. Finnbar Land Company, a Colorado corporation.

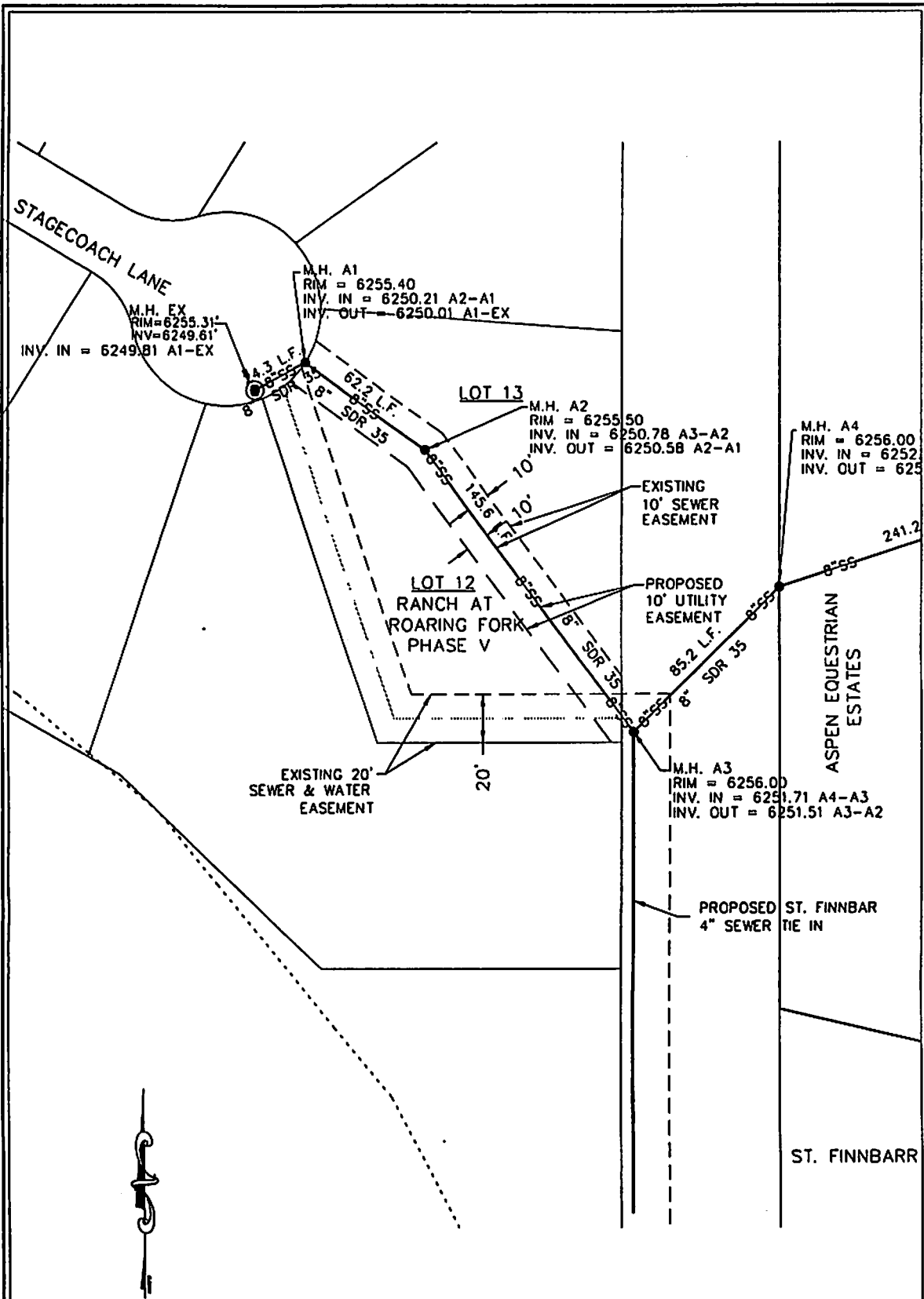
Mary Ann Leonard
Notary Public MY COMMISSION EXPIRES
My Commission Expires: 4/7/01

W:\Weinberg\487\Docs\StFinnPreshanaRRFConnectMainAgrmtCL4.wpd

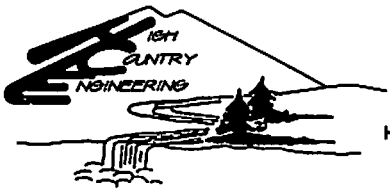
553171 10/04/1999 02:02P B1153 P672 M ALSDORF
7 of 8 R 40.00 D 0.00 GARFIELD COUNTY CO



553171 10/04/1999 02:02P B1153 P673 M ALSDORF
 8 of 8 R 40.00 D 0.00 GARFIELD COUNTY CO



1" = 50'



DATE: 9-16-99
 JOB NO.: 99030.01
 HIGH COUNTRY ENGINEERING, INC.
 823 COOPER AVENUE
 GLENWOOD SPRINGS, CO 81601
 (970) 945-8676