

SUBDIVISION IMPROVEMENTS AGREEMENT

LITTLE RIVER RANCH 1

THIS SUBDIVISION IMPROVEMENTS AGREEMENT ("Agreement") is made and entered into this 28 day of March, 2011 *nunc pro tunc* July 19, 2005, between LITTLE RIVER RANCH, LLC, a Colorado limited liability company (hereinafter "LRR") and the TOWN OF PONCHA SPRINGS, COLORADO, a municipal corporation (hereinafter "Town"). LRR and the Town may hereinafter be individually referred to as "Party" or collectively as "Parties."

RECITALS:

WITNESSETH:

WHEREAS, LRR is the owner of certain real property more particularly described upon the Final Plat dated March 15th, 2005, drawing #02022 ("Final Plat") for Little River Ranch (hereinafter the "Subdivision"), which Final Plat has been filed with the Town of Poncha Springs, recorded in the records of the Clerk and Recorder of Chaffee County, Colorado, and is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-1 (Little River Ranch Step 1 Approval) dated January 12, 2004, which is incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-2 (A Resolution Making Findings Concerning the Hiser Real Estate Investments LLC Petition to Annex to the Town of Poncha Springs) dated January 12, 2004, which is incorporated herein by this reference; and

WHEREAS, Hiser and the Town previously entered into a Pre-Annexation Agreement dated February 23, 2004 recorded (should be struck if already recorded) in the records of the Clerk and Recorder of Chaffee County, Colorado, which shall be amended by that First Amendment to the Hiser Annexation Pre-Annexation Agreement recorded (same as above) in the records of the Clerk and Recorder of Chaffee County, Colorado, which is incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-7 (A Resolution Granting Step Two Approval to the Little River Ranch Subdivision) dated September 2, 2004, which is incorporated herein by this reference; and

WHEREAS, the Town previously entered into a Subdivision Improvements Agreement dated November 22, 2004 with Hiser Real Estate Investments LLC ("Hiser") for the completion of Improvements in the Subdivision; and

WHEREAS, on June 27, 2005 the Town unanimously carried a motion to approve the request of the assignment of the Subdivision to LRR, due to the sale of the property from Hiser to LRR. Such sale was closed July 19, 2005; and

WHEREAS, from the date of the sale of the property to LRR to the current date, LRR has followed the Subdivision Improvements Agreement between the Town and Hiser. And, the Town previously adopted Resolution #2010-12 entitled A Resolution Acknowledging Approval of the Final Acceptance of Development Improvements Associated with Little River Ranch 1 Planned Unit Development dated November 8, 2010, which is incorporated herein by this reference; and

WHEREAS, as a condition of annexation of the Subdivision to the Town and approval by the Town of the Subdivision, the Final Plat and the Annexation Ordinance #2004-15, the Town has required LRR, and LRR has agreed to enter into this Agreement and construct and install certain public improvements within the Subdivision for the benefit of the public and the future owners of the lots in the Subdivision, all as more particularly described in this Agreement and on the Final Plat; and

WHEREAS, the Parties have reached Agreement regarding the improvements which shall be constructed by LRR; and

WHEREAS, the purpose of this Agreement is to protect the Town from the cost of completing Subdivision improvements itself and is not executed for the benefit of material men, laborers, contractors, subcontractors or others providing work, services or material to the Subdivision or for the benefit of lot owners or occupants in the Subdivision; and

WHEREAS, the Town and LRR never signed the subdivision improvements agreement after LRR purchased the property and are now executing this Agreement to conduct the formal assignment and transfer from Hiser to LRR; and

WHEREAS, the Town and LRR agree to be bound by the terms of this Agreement from July 19, 2005.

NOW, THEREFORE, in consideration of the foregoing premises, the Parties hereto agree as follows:

AGREEMENTS:

1. Scope of Improvements. The improvements (hereinafter the "Improvements") listed and described in Exhibit B (Little River Ranch Improvement Plans ("Improvement Plans")) attached hereto shall be constructed at the sole cost of LRR. No other improvements shall be required of LRR under this Agreement.

2. Subdivision Phasing and Agreements. The Parties agree and acknowledge that the Subdivision may be constructed in three (3) phases (individually "Phase"). Phase 1 will consist of Lots 1-37 and 46-50 (as shown on the Final Plat), Phase 2 will consist of Lots 38-45 and 51-58, and Phase 3 will consist of Lots 59-84. LRR reserves the right to develop each Phase in any order and may combine two or all of the Phases to be developed simultaneously. Lots A and D have been deeded to the Town. If the improvements of a phase of the subdivision are not completed within ten years from the date of this agreement, the subdivision approval for such phase shall lapse. During construction of each Phase, LRR will be allowed to use or lease the undeveloped land for agricultural or farming operations and Chaffee County may tax such land used for agricultural or farming uses at the agricultural tax rate. LRR shall be permitted to locate one or more sales or construction trailers in the Subdivision for purposes of managing each Phase and conducting lot sales within the Subdivision.

3. LRR's Performance. LRR hereby agrees, at its sole expense, to furnish all labor and materials necessary to complete the construction and installation of the improvements in a good and workmanlike manner. Construction and installation of the improvements shall be made in accordance with all applicable regulations of the Town in effect as of January 12, 2004, the State of Colorado, the United States of America, and the various agencies of such entities, including affected special districts and utility companies providing utility services. This includes, but is not limited to: (i) the Town of Poncha Springs Land Use Code in effect as of January 12, 2004, adopted September 28, 1998, as updated February 2003 ("PSLUC"); and (ii) the Standard Design Criteria and Construction Requirements released March 1, 2001, updated April 2003. The Town expressly requires that LRR comply with the following rules, regulations and ordinances: (i) Ordinance #2001-7 (Policy Concerning Extension of Water and Sewer Lines and Reimbursement of Developers by Subsequent Customers); (ii) the Town's Outdoor Lighting Regulation as set forth in Section 2.5.8 of the PSLUC; (iii) Manual on Uniform Traffic Control Devices, as set forth in Section 11 hereof; and (iv) the Landscaping Standards set forth in Section 4.11 of the PSLUC, of which the Town has prescribed the following language for the Subdivision in accordance with Section 4.11(b) of the PSLUC, "All disturbed areas shall be re-vegetated with native grasses and forage by hydro-seed method and maintained in predominately weed free condition." LRR shall consult with the Town on the types of native grasses to be used for such re-vegetation.

LRR acknowledges that it has received a copy of these aforementioned rules, regulations and ordinances and agrees to be bound by their requirements. Without limiting the foregoing, all Improvements shall also be completed in accordance with the Improvement Plans, as may be modified from time to time with prior approval by the Town. Approval by the Town can only occur by the Board of Trustees, not any other representative of the Town, except the Town Engineer may approve, in writing, minor changes during the construction process. The Town agrees that if the Improvements are installed in accordance with this Agreement, then LRR shall be deemed to have satisfied all



terms and conditions of the zoning and subdivision laws, resolutions, rules, regulations, and ordinances of the Town of Poncha Springs, Colorado.

- a. Plans and Drawings. LRR has or will furnish the Town, free of charge, three (3) copies of the Improvement Plans, including a reproducible Mylar and AutoCAD disk and three (3) copies showing such Improvements in their as-built locations within three (3) months of completion of the Improvements. Additionally, LRR shall submit AutoCAD files of all plans and drawings on a disk compatible with the Town's AutoCAD system. Specifications may be on a separate Word Processor disk. LRR shall pay the cost of transferring and posting the as-built drawings to the Town's records. The plans, drawings and legal description shall be prepared and certified by a qualified engineer in accordance with the requirements of the Town prior to the Town's acceptance of the Improvements. If needed due to revisions, the Final Plat shall be amended by a document entitled "Amended and Restated Final Plat" shall be submitted within three (3) months of completion of the as-built drawings of the Improvements and if approved by the Town, recorded in the records of the Clerk and Recorder of Chaffee County, Colorado.
- b. Materials and Workmanship. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. Prior to procurement, LRR shall furnish the Town for the Town's approval, the name of the manufacturer of equipment and materials which LRR contemplates incorporating into the Improvements. LRR shall also furnish information on capacities, efficiencies, sizes as the Town may reasonably require. Samples shall be submitted for approval when requested. Equipment, materials and articles installed or used without the Town's approval shall be at the risk of subsequent rejection.
- c. Permits and Easements. LRR shall furnish all land boundary surveys, permits, licenses, and rights of way of a temporary nature, if any, necessary for the construction of Improvements, and shall secure and pay for any necessary easements of a permanent nature.
- d. Protection. LRR, at its expense, shall continuously maintain adequate protection of all Improvements from damage prior to acceptance by the Town and shall protect the Town's property from injury and loss arising in connection with construction of Improvements under this Agreement. LRR shall adequately protect adjacent property and shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority or local conditions. LRR shall, at all times, whether or not so specifically directed by the Town, take necessary precautions to ensure the protection of the public, including, without limitation, the construction, erection or installation of gates for security purposes as more expressly described in Section 3 (h) of this Agreement. LRR shall furnish, erect, provide, and maintain, at its expense, all necessary barricades, suitable and sufficient lights, and construction signs, and take all necessary precautions for the protection of the work and safety of the public through or around LRR's construction operations as LRR and the Town shall deem reasonably necessary.
- e. Inspections. An inspector (hereinafter "Inspector") shall be designated by the Town to exercise authority on the Town's behalf under this Agreement and to see that this Agreement is performed according to its terms. LRR shall be entitled to review and approve the Inspector's contract with the Town which contract shall include the Inspector's fee schedule, but the decision of the Town shall be final. The Inspector for substantial cause may without cost of claim against the Town, suspend work under this Agreement. All inspections by the Town engineer or Town personnel are performed for the Town's sole benefit at LRR's cost. LRR should retain its own inspector. Although the Inspector, Town engineer or Town personnel may undertake to advise LRR about problems with design, construction, installation or other elements of the Improvements which may arise, the Town intends and accepts no liability or responsibility to LRR as a result of such advice or inspections. Failure of the Town to advise of any deficiencies at any stage of construction shall not give rise to Town, Inspector or Town Engineer liability, and no action or inaction by the Town shall affect or waive the rights of the Town to enforce against LRR all requirements and specifications of construction and all provisions of this Agreement. Further, no third party beneficiary relationship shall be intended or created by virtue of the Town's inspections or advice concerning the Improvements. Unless expressly stated to the contrary, the approval of LRR's or



LRR's engineer's plans or drawings by the Town does not waive, and is not intended to waive, applicable specifications or general requirements for good engineering practice. Furthermore:

- i. The Inspector assigned to the field may observe the day-to-day activities of the contractor and the progress of the Improvements. The Inspector shall forward the information necessary to the Town's Engineer for any required decision(s), each of which shall be in writing. Under no circumstances shall the Inspector render or be required to make any decisions that require deviations or variances from the project drawings, specifications or Town standards without the concurrence of the Town's Engineer. All decisions of the Town's Engineer shall be final, subject to a review by the Town Board of Trustees in accordance with Section 3 hereto or if requested by LRR or Town representatives.
- ii. The Inspector and his authorized representatives shall have free access to the Improvements at all reasonable times, and LRR shall furnish them with the opportunity to ascertain whether the work being performed, or the work which has been completed, is in accordance with the requirements of this Agreement. To assist the Inspector, LRR shall make available for inspection any records kept by LRR concerning work performed in connection with construction of the Improvements.
- iii. The Inspector shall in no way be responsible for how the work is performed, safety in, on or about the work site, methods of performance, or timeliness in the performance of the work.
- iv. Inspections may extend to all or any part of the work and to the preparations and manufacturer of the materials to be used. The Inspector shall not be authorized to alter the provisions of this Agreement or any specifications or to act as foreman for LRR. The Inspector shall have authority to reject defective material and to suspend any work that is being done improperly, subject to a final review by either or both the Town's Engineer and the Board of Trustees (in accordance with Section 3 hereof) or if requested by LRR.

f. Quality of Work.

- i. If the Improvements do not materially conform to the Improvement Plans (as may be modified with the Town's approval) or if work shall have been performed of inferior quality, then such material or labor shall be considered as defective and shall be removed and replaced as directed by the Inspector at the expense of LRR.
- ii. All materials shall be subject to examination and testing at any time during construction or before they have been incorporated into the Improvements. If LRR fails to replace rejected materials, the Town may replace them, or correct defective work and charge the cost thereof to LRR.
- iii. If the specifications, the Inspector's instructions, or laws of any public authority require any work to be specially tested or approved, LRR shall give the Inspector timely notice of LRR's readiness for inspection, and if the inspection is by another authority other than the Inspector, provide the date fixed for such inspection. Inspections by the Inspector shall be promptly made, and where practicable, at the source of supply. If any work is covered up without approval, or consent of the Inspector, it must, if required by the Inspector, be uncovered for examination at LRR's expense.
- iv. The Inspector may order reexamination of questioned work or materials and, if so ordered, LRR must uncover the work or materials. If such work or materials were found to be in accordance with this Agreement and the plans, drawings and specifications as approved by the Town, the Town shall pay all costs associated with such reexamination, replacement, and restoration of the site. If such work or materials were found not in accordance with this Agreement and the plans, drawings, and specifications as approved by the Town, LRR shall pay such costs.
- v. The Inspector may order LRR to suspend work that may be damaged or endangered by climatic conditions.

g. Dedication. LRR shall obtain, at its expense, all rights of way and easements required to effect construction of the Improvements. LRR agrees to dedicate to the public and to convey to the Town, in such form as may be required by the Town, such easements and other rights as acquired by LRR as may be

reasonably required for the construction of the Improvements and as may otherwise be set forth in the Pre-Annexation Agreement, as amended, or on the Final Plat.

h. Non-Gated Subdivision. The Town expressly requires that the Subdivision be a non-gated community. In accordance with Section 1 of Resolution #2004-1, LRR shall be permitted to install gates for security purposes until the Subdivision is twenty-five percent (25%) built out, or until the road extensions connect to the Subdivision stub roads, whichever occurs first. The Town shall not maintain or accept the roads in the Subdivision until the gates are removed.

i. Trails Agreement. In accordance with Section 19 of Resolution #2004-1, the Town shall accept responsibility for the development of the trails within the Subdivision and shall enter into a Trails Improvement Agreement ("Trails Agreement") with LRR, which Trails Agreement is attached hereto as Exhibit C and incorporated herein by this reference.

j. Low-Pressure Sewer Line. In accordance with Section 8 of Resolution #2004-1 and the terms of the Policy and Specifications for Low Pressure Sewer Systems submitted by LRR to the Town, the Parties agree and acknowledge that the Subdivision will be served by the low-pressure sewer system. The low pressure sewer system shall be owned and maintained by the Developer until fifty percent (50%) of the lots within the subdivision have been connected to the system. At which time, LRR shall transfer responsibility for the sewer system to the City of Salida pursuant to the IGA for Provision of Sewer Services and the IGA for Transfer of Sewer Services between the Town of Poncha Springs and the City of Salida effective April 1, 2010. To aid in the maintenance of the sewer line, LRR shall provide the Town with a (fusion welder City of Salida????) LRR shall prepare or cause to be prepared a report detailing the performance of the low pressure line and deliver or cause it to be delivered to the Town at the 50% connection time. The Final Plat and Declaration (as hereafter defined) of the Subdivision contain provisions informing the lot owners served by the low pressure line that they are responsible for installation, maintenance, repair and replacement of the grinder pumps located on each lot and a portion of the lateral service line as further described therein.

k. Well Site and Water Services. The Town agrees and certifies that it has sufficient capacity and water rights, and can and will serve the Subdivision. LRR has deeded Lot D to the Town for a well site. LRR also agrees to design a water main extension from the well site, through the Subdivision, to the existing water main located in Poncha Springs Lane as reflected in the Improvement Plans. LRR also agrees to rough grade the road along the water main extension. The Town agrees that the well site structures will be built and maintained in an architecturally pleasing manner. The Town of Poncha Springs waives the 600' maximum for a dead-end water line, and will work towards a solution to the dead-end water line within three years of _____. LRR shall install at its sole cost and expense, all water lines, fire hydrants and appurtenances within the Subdivision, and to the existing water main in Poncha Springs Lane. Water lines lying within the dedicated right-of-way or easement shall be dedicated to the Town. Unless otherwise specified, LRR's obligations noted above shall be accomplished prior to the completion of all of the Improvements in the Subdivision.

l. Town Park. As set forth on the Final Plat, Lot A has been dedicated & deeded to the Town for use as a public park. The design of the park is depicted and described on the Improvement Plans.

m. Control During Construction of Roads. LRR shall maintain all streets and surrounding areas during construction of street improvements, e.g., employing techniques acceptable to the Town for dust, mud and erosion control.

4. **Schedule of Completion.** As set forth in Section 2 above, the Subdivision may be constructed in three (3) Phases. If the improvements of a phase of the subdivision are not completed within ten years from the date of this agreement (July 19, 2005), the subdivision approval for such phase shall lapse.

5. **Security for Improvements.**

a. Performance. LRR agrees that the Improvements shall be completed in accordance with the Improvement Plans, as may be modified from time to time with prior approval by the Town.

i. The following events shall default by LRR:

- The failure by LRR to make any payment herein required to be made by LRR in connection with work performed to construct the applicable Improvements;
- LRR's other breach of this Agreement; or LRR's violation of any local, State or Federal law, rule or regulation.

ii. Upon LRR's default, and within a reasonable period of time to cure said default after LRR receives written notice from the Town, the Town may complete any such performance on behalf of LRR within a reasonable time and in such manner, by contract with or without public letting, or otherwise, as it may deem advisable, and LRR shall promptly reimburse the Town the necessary money to pay for such performance, provided, however, that in no event shall LRR be obligated to pay to the Town more than the total amount of the money expended by the Town by reason of the default of LRR in performance of the terms, covenants and conditions contained in this Agreement.

iii. The procedures for performance by the Town, in the event of default by LRR under this Agreement, and payment of costs therefore, shall apply whether there is one or more defaults, or a succession of defaults on the part of LRR in performing the terms, covenants and conditions contained in this Agreement.

b. LRR Proceeding at LRR's Sole Risk. Notwithstanding the foregoing, if LRR should choose, LRR may complete the Improvements using LRR's own resources at LRR's sole risk.

6. **Acceptance Process.**

a. Written Certification. Upon completion of the Improvements within a Phase (other than paving), LRR shall provide Town with a written certification of completion from LRR's Engineer that such Improvements in that particular Phase have been completed in accordance with the Improvement Plans.

b. Final Inspection. The Town shall be entitled to make a final inspection of such Improvements within the particular Phase and shall not unreasonably refuse to accept the Improvements.

c. Letter of Deficiencies. If the Town determines that such Improvements within a Phase, or any portion thereof, are not constructed in compliance with the Improvement Plans, the Town shall furnish a letter of potential deficiencies to LRR within thirty (30) days from the date of the Town's receipt of the certification of completion by LRR's Engineer.

d. Acceptance. If a letter of potential deficiencies is not furnished to LRR within said thirty (30) days, all Improvements within that particular Phase that were certified as complete by LRR's Engineer shall be deemed accepted.

e. Confirmation. If a letter of potential deficiencies is furnished to LRR within said thirty (30) day period, the Town shall have sixty (60) days to complete the Town's investigation and provide a written confirmation of the deficiencies to LRR.

f. Remedy of Deficiencies. Upon receipt of a confirmation of the deficiencies, LRR shall then have a reasonable time to remedy the confirmed deficiencies not to exceed ninety (90) days unless extended by the Town because of circumstances beyond LRR's control. Upon LRR's remedy and the Town's confirmation that the deficiencies are cured, all Improvements within that particular Phase shall be deemed accepted.

g. Complete Acceptance. Notwithstanding the foregoing, the Town's final inspection and acceptance of a portion of the Improvements within a Phase shall not constitute acceptance of all Improvements within that particular Phase, the latter of which shall result in the beginning of LRR's warranty period addressed in the next Section of this Agreement. Upon the Town's written acceptance of all Improvements within a Phase (other than paving) as set forth above, the Town shall thereafter own and assume responsibility for the operation and maintenance of the Improvements within that particular Phase, except as set out above, subject to LRR's warranty as set forth below.

7. **Warranty.** In addition, at or prior to the time the Town accepts all Improvements within a Phase, LRR will provide the Town with a written warranty that all such Improvements within that particular Phase will be free of defects in design, materials, and construction for a period of one (1) year following the date of completion of all such Improvements within that particular Phase. The "date of completion" for any individual Improvement within that particular Phase shall be the date all Improvements within that particular Phase are accepted in accordance with the terms of Section 6 above. Paving shall be completed within two years of completion of each phase.

8. **Sale of Lots/Issuance of Building Permits.** Upon recordation of the Final Plat, LRR shall be entitled to contract for and convey all lots identified and shown on the Final Plat, as recorded. During the construction of the Improvements in each Phase, the third-party purchaser of any lot in that particular Phase may apply for a building permit from the County for review and approval by the Town at the time such purchaser enters into the contract; provided however, that the Town's approval of such a building permit shall be conditioned upon the closing of the purchase contract and conveyance of a deed to such third-party purchaser. The Town acknowledges and agrees that the construction of the Improvements and the construction of any structure or residence on a lot or in that particular Phase may be accomplished simultaneously.

9. **Certificates of Occupancy/Restrictions on Construction Periods.** Only the Improvements (other than paving) required to be constructed or installed by the Town (either pursuant to this Agreement or in the PSLOC, as of January 12, 2004) in a particular Phase and which Improvements are located within the frontage of any lot in that phase, must be completed and accepted by the Town before the Town will grant its approval to the County for its issuance of a certificate of occupancy for such lot.

10. **Other Utilities.** The Parties understand and agree that in accordance with standard operating procedures of certain public utility companies which will be providing service to each particular Phase in the Subdivision (e.g., electric utility, natural gas utility, and the like), LRR will be responsible for advance payment of one hundred percent (100%) of the cost of installing such utilities to that Phase in the Subdivision. Thereafter, the applicable utility company will install such utility services to that Phase in the Subdivision. The plans and specifications for all such utilities shall be subject to prior approval by the Town and the affected utility company. Notwithstanding the foregoing, LRR shall arrange for, be responsible for, and pay any and all amounts necessary to extend all such utilities to all of the lots within that particular Phase in the Subdivision. All such utilities shall be underground. Street Improvements required by this Agreement to be completed by LRR will not be deemed complete until all utility lines to be placed in or under the streets have been completely installed.

11. **Street Names, Traffic Control Signs, and Street Lighting.** All public street name and traffic control signs within the Subdivision shall be supplied at LRR's expense. All signs shall conform to the Manual on Uniform Traffic Control Devices (MUTCD). LRR shall install said signs in the Subdivision at the time other Improvements

are completed, at locations directed by the Town and at no cost to the Town. Streetlights shall be installed as set out in the plans. Once the Town has accepted all of the improvements, including the streetlights, the Town shall be responsible for the payment of the utility bills associated with the streetlights.

12. Landscaping. LRR shall install and maintain landscaping within the Subdivision as shown in Exhibit B, which may be amended modified or supplemented from time to time by LRR with the Town's approval.

13. Indemnification. To the extent allowed by law, LRR agrees to indemnify and hold the Town harmless for claims which may arise as a result of LRR's installation of Improvements pursuant to this Agreement; provided, however, LRR does not indemnify the Town for claims made asserting that those standards imposed by the Town on LRR are improper or the cause of the injury asserted. The Town shall be required to notify LRR of receipt of a notice of claim or notice of intent to sue and shall afford LRR the option of defending any such claim or action. Failure to notify and provide such option to LRR shall extinguish the Town's rights under this Section. Nothing herein shall be interpreted to require LRR to indemnify the Town for claims, which may arise from the negligent acts or omissions of the Town.

14. Breach by LRR; Breach by Town.

a. Breach by LRR; Town's Remedies. In the event of any default or breach by LRR of any term, condition, covenant or obligation under this Agreement, the Town shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include all those provided under the Security for Improvements, and the following:

- i. The refusal to grant its approval for the issuance to LRR of any building permit or Certificate of Occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described in subparagraph (ii) below has been recorded.
- ii. The recording with the Chaffee County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Administrator or his or her designee, stating that LRR has breached the terms and conditions of this Agreement. At the next scheduled Board meeting, the Town Board shall either approve the filing of said affidavit or direct the Town Administrator to file an affidavit stating that the breach, or default, has been cured. The execution of an affidavit by the Town Administrator or his or her designee and approved by the Board stating that the default has been cured shall remove this restriction;
- iii. The refusal to consider further development plans within the Subdivision; and/or
- iv. Any other remedy available by law.

Unless necessary to protect the immediate health, safety and welfare of the Town or Town residents, the Town shall provide LRR ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period LRR may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described in this paragraph has been recorded with the Chaffee County Clerk and Recorder, any person dealing with LRR shall be entitled to assume that no default by LRR has occurred hereunder unless a notice of breach has been served upon LRR as described above, in which event LRR shall be expressly responsible for informing any such third party of the claimed default by the Town.

b. Breach by Town; LRR's Remedies. A "breach" or "default" by the Town under this Agreement shall be defined as:

- i. Any zoning or land use action by the Town which would alter, impair, prevent, diminish, impose a moratorium on development, or unreasonably delay the development plan in any particular Phase including but not limited to: (a) the construction and installation of the Improvements; (b) the



connection to any utility, water or sewer provider; (c) the issuance of building permits; or (d) the sale of finished or unfinished lots within the Subdivision; provided however, that any non-discriminatory regulatory actions or circumstances beyond the reasonable control of the Town and other Town actions allowed under this Agreement shall not be deemed a breach of default.

- ii. The Town's failure to fulfill or perform any material obligation of the Town contained in this Agreement.

If any default by the Town under this Agreement is not cured as described herein, LRR shall have the right to pursue the defaulting party's remedies allowable by Colorado law, subject to the limitations herein. Although C.R.S. Section 24-68-101 et seq., as amended, may allow for certain monetary damages (reimbursement to LRR) or other remedies in the event of Town breach or default, LRR's sole remedies hereunder shall be to enforce the Town's obligations under this Agreement by an action for any available equitable remedy, including, without limitation, specific performance or mandatory or prohibitory injunction. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement.

15. Subdivision Covenants. LRR has established the Little River Ranch Home Owners' Association, Inc. ("Association") which will govern the Subdivision and enforce the provisions contained in the Declaration of Covenants, Conditions and Restrictions of Little River Ranch ("Declaration") recorded in the records of the Clerk and Recorder of Chaffee County, Colorado. The Town shall be deemed a party able to enforce the Section 25 (Environmental Restrictions Related to Limited Common Areas) of Article X (Restrictions) in the event the Association fails to comply with the same. The Town shall have no obligation to do so unless the Town Board decides that it is in the best interest of the Town to do so.

16. Approval of Final Plat. The Town has also executed the signature page for the Final Plat, which is recorded with the Chaffee County Clerk and Recorder.

17. Amendment. The parties hereto mutually agree that this Agreement may be amended from time to time, provided that any such amendment is in writing and signed by all Parties hereto.

18. Assignment. The Parties hereby mutually agree that this Agreement may be assigned by LRR, in writing, to a third-party entity ("Assignee") to be established and that at the time of the mutual execution and delivery of such assignment, all rights and obligations of LRR hereunder shall terminate and such Assignee shall assume all rights and obligations of LRR hereunder and provide a copy of such assignment to the Town within five (5) days of such mutual execution. Any assignment will be subject to the prior approval of the Town of Poncha Springs so that the Town can be assured that the assignee is qualified to complete the improvements.

19. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given: (i) upon tender if delivered in person, (ii) upon receipt if sent by express delivery with handling prepaid, or (iii) three (3) days after mailing if sent by registered or certified mail, return receipt requested, postage prepaid. The addresses of the Parties are as follows:

Little River Ranch, LLC
David Martin, Manager
PO Box 280
Poncha Springs, CO 81242
Telephone: 719/539-2196
Facsimile: 719/539-4365

Town of Poncha Springs
Attn: Town Administrator
P. O. Box 190
Poncha Springs, CO 81242
Telephone: 719/539-6882
Facsimile: 719/539-6898
Copy to:
Brad D. Redmiles
Poncha Springs Town Attorney
PO Box 774
Salida, CO 81201

Any Party may change its address by written notice given in any manner set forth above.

20. **Road Access.** The Subdivision lots will take access from U.S. Highway 50 and Poncha Springs Lane.
21. **Force Majeure.** Neither Party shall be liable to the other for damages for any failure or delay in performance under this Agreement caused directly or indirectly by any third person, authority, event or circumstance beyond such party's reasonable control and without such party's fault or negligence, including without limitation, fire, casualty, strike, lockout, government control and shortages resulting there from, failure in supply of any necessary utility service or act of God.
22. **Binding Effect.** This Agreement shall be a covenant running with the title to each lot within the Subdivision, and shall be enforceable against LRR, LRR's successors, legal representatives, and assigns.
23. **Attorney Fees and Costs.** In the event that either Party deems it necessary to pursue litigation to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees and costs of suit actually incurred in such litigation.
24. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Colorado. Venue shall be in the state courts for the County of Chaffee.
25. **Terms/Captions.** Any word contained in the text of this Agreement shall be read as the singular or the plural as may be applicable in the particular context. The captions of this Agreement are for convenience only, are not part of the Agreement, and do not in any way limit or amplify the terms and provisions hereof.
26. **Integration/Counterparts/Conflict.** Except as provided in the Pre-Annexation Agreement, this Agreement contains all of the agreements and representations between the Parties. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both Parties. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. In the event of a conflict between this Agreement and the Pre-Annexation Agreement, the provisions of this Agreement shall control.
27. LRR, David Martin, individual, and any subsequent assignee, guarantee performance of all provisions of this agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement on 3-28-11, *nunc pro tunc* July 19, 2005.

BOARD OF TRUSTEES OF THE
TOWN OF PONCHA SPRINGS, CO

ATTEST:

Diana K Heeneey
Town Clerk

By: Mah F. Thorpe

Mayor

Little River Ranch, LLC, a Colorado limited liability company

By: David Martin

David Martin, Manager

STATE OF COLORADO)

) ss.

COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this 5th day of April, 2011 by David Martin,
Manager of Little River Ranch, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires:

Jan. 5, 2012

Diana K Heeneey
Notary Public





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12 of 15 SLAGR R\$81.00 D\$0.00

JOYCE M. RENO
Chaffee County Clerk

EXHIBIT A
TO SUBDIVISION IMPROVEMENTS AGREEMENT
(FINAL PLAT OF LITTLE RIVER RANCH)

SEE PLAT RECORDED AT CHAFFEE COUNTY, RECEPTION #349843



EXHIBIT B
TO SUBDIVISION IMPROVEMENTS AGREEMENT
(LITTLE RIVER RANCH IMPROVEMENT PLANS)

<u>Sheet No.</u>	<u>Description</u>
C1	Civil Engineering Plans Cover Sheet, Work Order 02022, dated _____, 2004
C2	Civil Engineering Plans Detail Sheet, Work Order 02022, dated _____, 2004
C3	Overall Site Map – Boundary, Topo, Wetlands, Flood Zones, Work Order 02022, dated _____, 2004
ST1	Street Plans Cover Sheet – Index Map, Work Order 02022, dated _____, 2004
ST2	Hwy 50 Decel Lane – 7+49.04 to 11+94.10 – Plan & Profile, Work Order 02022, dated _____, 2004
ST3	Poncha Springs Lane – 1+00 to 8+77.32 – Plan & Profile, Work Order 02022, dated _____, 2004
ST4	E Ouray Avenue – 1+00 to 15+00 – Plan & Profile, Work Order 02022, dated _____, 2004
ST5	E Ouray Avenue – 15+00 to 26+92.26 – Plan & Profile, Work Order 02022, dated _____, 2004
ST6	E. Sabeta Avenue – 1+00 to 16+05.49 – Plan & Profile, Work Order 02022, dated _____, 2004
ST7	Little River Lane – 1+00 to 12+00 – Plan & Profile, Work Order 02022, dated _____, 2004
ST8	Little River Lane – 12+00 to 12+00 – Plan & Profile, Work Order 02022, dated _____, 2004
ST9	Bridge “A”, Bridge “B”, & Bridge “C” – Plan & Profile, Work Order 02022, dated _____, 2004
ST10	Bridge Abutment Details – Bridge “B”, Work Order 02022, dated _____, 2004
W1	Water Plans Cover Sheet – Index Map, Work Order 02022, dated _____, 2004
W2	Water Line “A” – 1+00 to 8+78.40 – Plan & Profile, Work Order 02022, dated _____, 2004
W3	Water Line “B” – 1+00 to 15+00 – Plan & Profile, Work Order 02022, dated _____, 2004
W4	Water Line “B” – 15+00 to 27+52.21 – Plan & Profile, Work Order 02022, dated _____, 2004
W5	Water Line “C” – 1+00 to 16+30.39 - Plan & Profile, Work Order 02022, dated _____, 2004
W6	Water Line “D” – 1+00 to 12+00 - Plan & Profile, Work Order 02022, dated _____, 2004
W7	Water Line “D” – 12+00 to 24+35.96 - Plan & Profile, Work Order 02022, dated _____, 2004
W8	Water Line “E” – 1+00 to 11.39.06 - Plan & Profile, Work Order 02022, dated _____, 2004
W9	Water Line “F” – 1+00 to 7+50.20 - Plan & Profile, Work Order 02022, dated _____, 2004



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JOYCE M. RENO

14 of 15 SIAGR R\$81.00 D\$0.00

Chaffee County Clerk

- S1 Sewer Plans Cover Sheet – Index Map, Work Order 02022, dated _____, 2004
- S2 Sewer Line “A” – 1+00 to 8+71.20 - Plan & Profile, Work Order 02022, dated _____, 2004
- S3 Sewer Line “B” – 1+00 to 15+00 - Plan & Profile, Work Order 02022, dated _____, 2004
- S4 Sewer Line “B” – 15+00 to 22+25.86 - Plan & Profile, Work Order 02022, dated _____, 2004
- Sewer Line “F” – 1+00 to 6+87.79 - Plan & Profile, Work Order 02022, dated _____, 2004
- S5 Sewer Line “C” – 1+00 to 15+65.32 - Plan & Profile, Work Order 02022, dated _____, 2004
- S6 Sewer Line “D” – 1+00 to 12+00 - Plan & Profile, Work Order 02022, dated _____, 2004
- S7 Sewer Line “D” – 12+00 to 24+85.37 - Plan & Profile, Work Order 02022, dated _____, 2004
- S8 Sewer Line “E” – 1+00 to 11+26.17 – Plan & Profile, Work Order 02022, dated _____, 2004
- LS1 Landscape Plan – Lot A (Public Park) and Lots 71 & 72, Work Order 02022, dated _____, 2004

31 SHEETS (TOTAL)

EXHIBIT C
TO SUBDIVISION IMPROVEMENTS AGREEMENT
(TRAILS AGREEMENT)

1. The Town shall be responsible for the cost of construction and maintenance of the public trails located along Little River Lane and the Harrington Ditch, as reflected on the Final Plat ("Town Trails"). LRR shall be responsible for the cost of construction of all other public trails within the Subdivision, as reflected on the Final Plat ("Park Trails") and after construction, the Town shall be responsible for the maintenance of the Park Trails.
2. The Parties agree that rough grading of the Town Trails and the Park Trails shall be initiated and completed during the time period set forth for the rough-grading of the roads and streets in the Subdivision and before the installation of any utilities. The trail construction (other than rough-grading) shall commence within sixty (60) days after LRR has installed and received inspection approval of the utility installations (water, sewer, gas, electric, telephone and cable television) unless LRR completed the utility installation and received approval in the winter months, then no later than on the May 30th subsequent to the date of approval. Rough grading means grading to sub-grade. The trail construction shall be completed prior to the hydroseeding of the Easement Lots (as defined in the Final Plat), the areas surrounding any ditches located within the Subdivision and any other areas disbursed during construction.
3. The Parties agree that it is most cost effective and efficient for the contractor engaged by LRR to perform all rough grading of the Town Trails and Park Trails. LRR shall direct the contractor to prepare an estimate of the costs of rough grading the Town Trails and the Remainder Trails and submit a copy of the of the estimate of the costs of rough grading the Town Trails to the Town for its approval prior to commencement of rough grading the Town Trails. LRR shall direct the contractor to separately invoice the costs of rough grading the Town Trails and the costs of rough grading the Park Trails. The Town shall pay the contractor directly for the total cost of rough grading the Town Trails upon the contractor's submission to the Town of a copy of the contractor's invoice setting for the same.
4. The Town Trails and Park Trails consist of four-inches (4") of compacted Class 6 base over compacted native subgrade. The subgrade shall be free of deleterious material.

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TOWN OF PONCHA SPRINGS

Resolution #2011-3

SUBDIVISION IMPROVEMENTS AGREEMENT

LITTLE RIVER RANCH 1

THIS SUBDIVISION IMPROVEMENTS AGREEMENT ("Agreement") is made and entered into this 28 day of March, 2011 *nunc pro tunc* July 19, 2005, between LITTLE RIVER RANCH, LLC, a Colorado limited liability company (hereinafter "LRR") and the TOWN OF PONCHA SPRINGS, COLORADO, a municipal corporation (hereinafter "Town"). LRR and the Town may hereinafter be individually referred to as "Party" or collectively as "Parties."

RECITALS:

WITNESSETH:

WHEREAS, LRR is the owner of certain real property more particularly described upon the Final Plat dated March 15th, 2005, drawing #02022 ("Final Plat") for Little River Ranch (hereinafter the "Subdivision"), which Final Plat has been filed with the Town of Poncha Springs, recorded in the records of the Clerk and Recorder of Chaffee County, Colorado, and is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-1 (Little River Ranch Step 1 Approval) dated January 12, 2004, which is incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-2 (A Resolution Making Findings Concerning the Hiser Real Estate Investments LLC Petition to Annex to the Town of Poncha Springs) dated January 12, 2004, which is incorporated herein by this reference; and

WHEREAS, Hiser and the Town previously entered into a Pre-Annexation Agreement dated February 23, 2004 recorded (should be struck if already recorded) in the records of the Clerk and Recorder of Chaffee County, Colorado, which shall be amended by that First Amendment to the Hiser Annexation Pre-Annexation Agreement recorded (same as above) in the records of the Clerk and Recorder of Chaffee County, Colorado, which is incorporated herein by this reference; and

WHEREAS, the Town previously adopted Resolution #2004-7 (A Resolution Granting Step Two Approval to the Little River Ranch Subdivision) dated September 2, 2004, which is incorporated herein by this reference; and

WHEREAS, the Town previously entered into a Subdivision Improvements Agreement dated November 22, 2004 with Hiser Real Estate Investments LLC ("Hiser") for the completion of Improvements in the Subdivision; and

WHEREAS, on June 27, 2005 the Town unanimously carried a motion to approve the request of the assignment of the Subdivision to LRR, due to the sale of the property from Hiser to LRR. Such sale was closed July 19, 2005; and

WHEREAS, from the date of the sale of the property to LRR to the current date, LRR has followed the Subdivision Improvements Agreement between the Town and Hiser. And, the Town previously adopted Resolution #2010-12 entitled A Resolution Acknowledging Approval of the Final Acceptance of Development Improvements Associated with Little River Ranch 1 Planned Unit Development dated November 8, 2010, which is incorporated herein by this reference; and

WHEREAS, as a condition of annexation of the Subdivision to the Town and approval by the Town of the Subdivision, the Final Plat and the Annexation Ordinance #2004-15, the Town has required LRR, and LRR has agreed to enter into this Agreement and construct and install certain public improvements within the Subdivision for the benefit of the public and the future owners of the lots in the Subdivision, all as more particularly described in this Agreement and on the Final Plat; and

JOYCE M. RENO
Chaffee County Clerk
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