

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
TAILWIND VILLAGE,
TOWN OF PONCHA SPRINGS,
CHAFFEE COUNTY, COLORADO**

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**DECLARATION OF COVENANTS, CONDITIONS,
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This Declaration is made this _____ day of December, 2018 by **Tailwind Group LLC**, a Colorado limited liability company, of 129 Starbuck Circle, Salida, CO 81201, (herein “the Declarant”), as follows:

1. CREATION OF COMMON INTEREST COMMUNITY

1.1. **Names of the Common Interest Community and the Association.** The name of the common interest community hereby created is Tailwind Village. The name of the owners’ association organized to govern and administer the common interest community hereby created is Tailwind Village Association, Inc., a Colorado nonprofit corporation (the “Association”).

1.2. **General Purposes.** Declarant owns the real property interests legally described on the recorded plat of Tailwind Village and Exhibit “A” attached hereto and by this reference incorporated herein (the “Property”). Declarant desires to create pursuant to the provisions of the Colorado Common Interest Ownership Act (Article 33.3 of Title 38 of Colorado Revised Statutes), as the same may be amended from time to time (“CCIOA”), a "common interest community" (as such term is defined in CCIOA) on the Property. In order to establish a means to ensure the proper use and appropriate development of the Property as a high quality, aesthetically pleasing and harmoniously designed planned community, the Declarant further desires to submit the property to mutually beneficial covenants, conditions and restrictions for the benefit of Declarant and all future Owners of any portion of the Property.

1.3. **Declaration.** To further the purposes expressed in Section 1.2 hereof, Declarant, for itself and its successors and assigns, hereby declares that the Property shall, at all times, be owned, held, used and occupied subject to the provisions of this instrument, to the covenants, conditions and restrictions contained herein and to all amendments and supplements hereto.

1.4. **Location and Type of Common Interest Community.** The common interest community hereby created is situated in the Town of Poncha Springs, Chaffee County, Colorado. The common interest community hereby created is a "Planned Community" (as such term is defined in CCIOA).

1.5. **Planned Community.**

1.5.1. The Property may be divided into a maximum of 68 Lots as approved by the Town of Poncha Springs. Of these 68 Lots, 62 of them may be subject to subsequent duplex/townhouse conversion resulting in a total of 130 Lots.

1.5.2. A “Lot” shall consist of the real property defined on the Plat.

2. PROPERTY OWNERS ASSOCIATION

2.1. Rights, Duties, Privileges, Powers, and Obligations. The Association shall exercise all of the rights, duties, privileges, powers, and obligations as set forth in this Declaration and the Articles of Incorporation, Bylaws, Responsible Governance Policies, and Rules and Regulations of the Association (the “Association Documents”).

2.1.1. General Purposes and Powers. The Association, through its Executive Board (also known as the “Board of Directors” or the “Board”), shall perform functions and hold and manage property as provided in this Declaration so as to further the interests of Owners of Lots in the Property. The Association shall have all the powers necessary or desirable to effectuate such purposes.

2.1.2. Membership and Voting. The Owner of a Lot shall automatically be a member of the Association. Said membership is appurtenant to the Lot of said Owner, and title to the ownership of the membership for that Lot shall automatically pass with fee simple title to the Lot. If the fee simple title to a Lot is held by more than one person, the membership as to such Lot shall be joint, and a single membership for such Lot shall be issued in the names of all Owners. Membership in the Association shall be limited to Owners of Lots in the Property, and each Lot shall be entitled to the voting rights allocated to that Lot in the Bylaws.

2.1.3. The Board. The affairs of the Association shall be managed by the Board, which may by resolution delegate any portion of its authority to an Executive Committee or to a Managing Agent for the Association. The Board may also appoint other committees as provided in the Bylaws. The Board shall have the authority to adopt Rules and Regulations of the Association. The Board shall have no fewer than three Directors, the specific number to be set forth from time to time in the Bylaws, all of whom shall be Owners of a Lot, except Members appointed by the Declarant.

2.1.4. Association Documents. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the other Association Documents.

2.2. Declarant Control of the Association. Declarant shall be entitled to appoint and remove the members of the Association’s Board and officers of the Association to the fullest extent permitted under CCIOA. The specific restrictions and procedures governing the exercise of Declarant’s right to appoint and remove Directors and officers are set out in the Articles and Bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

2.3. Purpose of Association. The purpose of the Association is to use its authority, as given in the Association Documents:

2.3.1. To enforce the protective covenants;

2.3.2. To assess Owners annual assessments;

2.3.3. To provide upkeep and maintenance to all common ownership lands in the Property, including snow removal, and to maintain other facilities on the Property;

2.3.4. To provide for certain common services, and provide and charge for such additional services as may be undertaken by duly adopted Rules and Regulations or by agreement with the individual Association members; specifically, the Board shall have authority to adopt a Rule and Regulation setting forth a policy whereby the Association shall provide for the plowing and clearing of snow from the driveway portion of each Lot and setting forth the charges and fees for such service; and

2.3.5. To represent all Owners in matters of mutual interest.

2.3.6. To exercise all rights and powers to the fullest extent permitted under CCIOA.

2.4. Assessments. The purposes of the assessments shall include, but not be limited to:

2.4.1. Repairs and maintenance of common areas within the Property, except for damage caused by the negligence, misuse or tortuous act of an Owner or the Owner's agents or guests;

2.4.2. Expenses of management of the Association and its activities;

2.4.3. Taxes and special assessments upon the Association's real and personal common property;

2.4.4. Premiums for all insurance which the Association is required or permitted to maintain;

2.3.5. Common services and additional services to Owners as approved by the Board, such as trash service or snow removal;

2.4.6. Wages for Association employees and payments to Association contractors;

2.4.7. Legal and accounting fees for the Association;

2.4.8. Any deficit remaining from a previous Assessment year;

2.4.9. The creation of reasonable contingency reserves for future maintenance expenses and administrative expenses;

2.4.10. Such other expenses that benefit Owners of Lots within the Property.

2.5. Common Areas.

2.5.1. General Common Areas to Association. General Common Areas shall include alleys, Outlots, sidewalks, and easements, as shown on the Plat (herein the "Plat"). Specifically, Outlot B, C and D shall be dedicated and conveyed to the Association by the Declarant. Use of General Common Areas owned by the Association shall be governed by the Rules and Regulations adopted by the Board.

2.5.2. Dedication to Town of Poncha Springs. Outlot A is dedicated to the Town of Poncha Springs for non-motorized access, emergency access to adjoining property, and utilities. It shall not be the obligation of the Association to maintain the gate installed on the southern end of Outlot A. The park shown on the Plat is dedicated to the Town of Poncha Springs as a public park. The streets and Lane will be dedicated and accepted by the Town of Poncha Springs as public streets to be maintained by the Town.

2.5.3. Dedication of General Common Areas. All General Common Areas within the Property are intended for the common use and enjoyment by the Owners within the Project. The General Common Areas are hereby dedicated to the above and foregoing uses for the Owners, their families, tenants, employees, guests, and invitees under the terms and conditions contained in the Association Documents.

2.5.4. Management of General Common Areas. The Association shall be responsible for the management and control of the General Common Areas and all improvements thereon, and shall keep them in a good, clean, attractive and pleasant condition and shall landscape, maintain, and repair the same consistent with the purposes and uses of the General Common Areas as set forth in the Association Documents.

2.5.5. Streets and Alleys. In accordance with the Plat, the streets and Lane will be dedicated and accepted by the Town of Poncha Springs as public streets to be maintained by the Town. The alleys within the subdivision shall be owned, when conveyed by the Declarant, and maintained by the Association, but shall be subject to easements for public utilities.

2.5.6. Utilities. Water and sewer mains shall be dedicated to the corresponding municipal service provider.

2.5.7. Murray Ditch. The Association shall be responsible for the maintenance and costs and other responsibilities set forth in the Ditch Agreement dated October 4, 2018 between Declarant and the Murray Ditch. This agreement sets forth the ongoing obligations of the Association with respect to those portions of the Murray Ditch which cross the Property. The obligations include the duty to indemnify and perpetuity the ditch owners for any flooding caused by the ditch within the Property. Further, the Association and each Owner, by accepting title to any Lot, hereby acknowledges the risks associated with the ditch, including it being a drowning hazard for children and pets. The Association shall be responsible for installation and maintenance of signage within the project pertaining to the potential risks associated with the ditch and shall be responsible for communication to the owners regarding ditch maintenance, hazards, and safety. The perpetual duties of maintenance shall include those portions of the ditch and the maintenance and replacement if necessary of culverts and related improvements within the Property. Further, the Association and each Owner acknowledges that the ditch owners shall have free access to the ditch from all streets, rear lanes, alleys, or parks as well as through the identified ditch easement shown on the Plat. The planting of shrubs or trees is restricted within the ditch easement. The Association and each Owner acknowledge that they do not have any rights of ownership or the right to use the water being conveyed by the Murray Ditch. Disputes concerning the Murray Ditch and the Ditch Agreement shall be resolved using the Right to Ranch Conflict Resolution Procedures adopted by Chaffee County, as amended.

2.5.8. Acequia Ditch. The Property is subject to the identified ditch easement shown on the Plat for the Acequia Ditch. The Association shall be responsible for the maintenance and costs and other responsibilities set forth in the recorded Ditch Agreement between Declarant and the Acequia Ditch owner identified therein. This agreement sets forth the ongoing obligations of the Association with respect to those portions of the Acequia Ditch which cross the Property. The obligations include the duty to indemnify and perpetuity the ditch owners for any flooding caused by the ditch within the Property. Further, the Association and each Owner, by accepting title to any Lot, hereby acknowledges the risks associated with the ditch, including it being a drowning hazard for children and pets. The Association shall be responsible for installation and maintenance of signage within the project pertaining to the potential risks associated with the ditch and shall be responsible for communication to the owners regarding ditch maintenance, hazards, and safety. The perpetual duties of maintenance shall include those portions of the ditch and the maintenance and replacement if necessary of culverts and related improvements within the Property. Further, the Association and each Owner acknowledges that the ditch owners shall have free access to the ditch from all streets, rear lanes, alleys, or parks as well as through the identified ditch easement shown on the Plat. The planting of shrubs or trees is restricted within the ditch easement. The Association and each Owner acknowledge that they do not have any rights of ownership or the right to use the water being conveyed by the Murray Ditch. Disputes concerning the Acequia Ditch owner and the Ditch Agreement shall be resolved using the Right to Ranch Conflict Resolution Procedures adopted by Chaffee County, as amended.

3. ARCHITECTURAL CONTROL

3.1. Architectural Control Committee Membership. The Board of Directors shall appoint the Architectural Control Committee (“ACC”) to administer the architectural approvals required pursuant to the Declaration. It shall consist always of either three (3) or five (5) members. Absent a specific appointment by the Board, the members of the Board shall be the members of the ACC. The Board may reduce the number of members of the ACC to three and increase it to five as often as it wishes. Members of the ACC may be removed at any time without cause by the Board of Directors. From among the members of the ACC, the Board may appoint a Chairman of the ACC who shall coordinate the operation of the ACC.

3.2. Purpose and General Authority. The ACC will review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the Architectural Guidelines and such rules and regulations as the ACC may establish from time to time to govern its proceedings. No improvement or structure will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements have been approved by the ACC; provided, however, that Improvements that are completely within a Building may be undertaken without such approval, except as set forth in the Architectural Guidelines. All improvements will be constructed only in accordance with approved plans.

3.3. Committee Discretion. The ACC will exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, garage placement, quality and type of construction, seals, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations of the Property. The ACC, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

3.4. Organization and Operation of Committee.

3.4.1. Term. The term of office of each member of the ACC, will be two (2) years, and continuing until his successor shall have been appointed. Should an ACC member resign, retire, or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed.

3.4.2. Operations. The ACC chairman will take charge of and conduct all meetings and will provide for reasonable notice to each member of the ACC prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

3.4.3. Voting. The affirmative vote of a majority of the members of the ACC will govern its actions and be the act of the ACC.

3.4.4. Expert Consultation. The ACC may avail itself of technical and professional advice and consultants as it deems appropriate, and the ACC may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the ACC. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant will be equivalent to approval or disapproval by the entire ACC.

3.5. Expenses. Except as provided in this section below, all expenses of the ACC will be paid by the Association and will constitute a Common Expense.

3.6. Other Requirements. Compliance with Association's architectural review process is not a substitute for compliance with the Town of Poncha Springs building, zoning, and subdivision regulations, and any other applicable state, federal, or local code or regulation. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. Further, the establishment of the Architectural Control Committee and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and improvements as otherwise required under the Association Documents.

3.7. Limitation of Liability. The ACC will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the ACC, the Association, the Board, nor any individual ACC member will be liable to any person for any official act of the ACC in connection with submitted plans and specifications. Approval by the ACC does not necessarily assure approval by the appropriate governmental board or commission for Chaffee County. Notwithstanding that the ACC has approved plans and specifications, neither the ACC nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval or denial of the construction of the Improvements. Neither the Board, the Architectural Control Committee, nor any agent thereof, nor Declarant, nor any of its members, managers, employees, agents, or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the ACC will be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the ACC's decision.

3.8. Enforcement.

3.8.1. Inspection. Any member or authorized consultant of the Architectural Control Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with

Association Documents and the plans and specifications approved by the Architectural Control Committee.

3.8.2. Completion of Construction. Except for improvements constructed by Declarant, before any improvements on a Lot may be occupied, the Owner of the Lot will be required to obtain a temporary certificate of compliance issued by the Architectural Control Committee indicating substantial completion of the Improvements in accordance with the plans and specifications approved by the ACC, and imposing such conditions for issuance of a final certificate of compliance issued by the Architectural Control Committee as the ACC may determine appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the ACC may require that the Owner deposit with the ACC such sums as may be necessary to complete the construction and landscaping on the Lot by a specified date. If the construction and landscaping is not completed as scheduled, the ACC may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with these Covenants, including without limitation the remedies set forth in Section 3.8.3.

3.8.3. Certificate of Compliance. Upon completion of construction, the ACC will issue an acknowledged certificate of compliance setting forth generally whether, to the best of the ACC's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Architectural Guidelines.

3.8.4 Fines for Violations. The Board may adopt a schedule of fines for failure to abide by the ACC rules and the Architectural Guidelines, including fines for failure to obtain any required approval from the ACC.

3.9. Continuity of Construction. All Improvements commenced on the Lot will be prosecuted diligently to completion and will be completed within sixteen (16) months after commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required sixteen (16) month period, then after notice and opportunity for hearing the Association may impose a fine to be established by the Board to be charged against the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control.

4. PROPERTY USE RESTRICTIONS

4.1. Permitted Structures and Construction Standards. Any and all structures must conform to the Architectural Guidelines, applicable governmental regulations, and the approved Site Plan of Tailwind Village. No trailer or mobile homes and no manufactured or modular homes shall be permitted. Exterior design and color scheme of all residential structures must be finished with two different materials; however vinyl siding shall be prohibited.

4.2. Commercial Lots. Lots 1 through 4 are designated for commercial use pursuant to applicable zoning regulations. Further, the use and permitted structures on Lots 1 through 4

shall be subject to the provisions herein. Metal façades on the exterior of buildings shall be prohibited. The exterior finishes may include stone and stucco. Other requirements and restrictions may be set forth in the Architectural Guidelines. Mixed use of commercial and residential shall be permitted on Lots 3 and 4. The Declarant reserves the right to form a sub Association for the commercial Lots. Construction on these Lots shall require site plan approval from the Town of Poncha Springs.

4.3. Multi-Family Lots. Lots 5 and 6 are each permitted for multifamily structures up to a maximum of 64 residential units total on both of these Lots. In accordance with applicable zoning and approvals by the Town of Poncha Springs, multiple buildings shall be permitted on each of these Lots. Construction on these Lots shall require site plan approval from the Town of Poncha Springs. The multifamily structures may be converted to condominiums subject to approval by the Town of Poncha Springs. On Lots 5 and 6, certain commercial operations with the primary purpose of serving the residents of the multifamily structures may be permitted by the Board.

4.4. Townhouse Lots. Each townhouse unit constructed must have a total minimum square footage of living space of 800 ft.² with a ground level footprint of 500 ft.². “Footprint” in this Declaration means the land area of the structure calculated on the basis of the exterior dimensions of the outermost perimeter walls or bounds of the structure whether at or above ground level, but excludes the land occupied by any enclosed porches, steps, stairs, patios, decks, terraces, balconies, eaves, pergolas, breezeways, carports, and attached garages.

4.5. Single Family Residences. Single family residences must have a minimum square footage of 1000 ft.² of total living space with a minimum footprint on the ground level of 600 ft.² plus at least one single - car garage in addition to these minimum square footage is of living space.

4.6. Accessory Dwelling Units. Subject to all applicable land-use codes and building codes, an accessory dwelling unit (“ADU”), may be constructed on any Lot designated for single family residential or townhouse. One ADU may be built on any Lot resulting from a duplex/townhouse conversion.

4.7. Home Occupations. No business, commercial, industrial, trade, professional or other non-residential activity or use of any nature, type, kind or description shall be operated upon or from or within any residential structure, which includes single-family residences, townhome, accessory dwelling units, and residential units in a multifamily structure, except that an occupant residing in a residential structure may conduct business activities within the residential structure so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residential structure; specifically, there shall be no exterior signage or advertising on the residential structure or Lot in conjunction with any business or home occupation use of the residential structure except as permitted herein; (ii) the business activity conforms to all zoning requirements for the Lot; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board’s reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked at the Lot which is noticeably greater than that

which is typical of residential structures in which no business activity is being conducted; (v) the business activity does not involve any employee of the business other than the Owner or occupant working at or from the residential structure; (vi) the business activity does not require customers or clients to come to the residential structure for the service to be rendered; and (vii) the business activity does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

4.8. Leasing. An Owner shall have the right to lease that Owner's residential structure upon such terms and conditions as such Owner may deem advisable, subject to the following conditions: (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of the Declaration, Articles, Bylaws, and Rules and Regulations; (ii) a residential structure may be leased only for the uses and occupancies permitted in this Declaration; (iii) specifically use of any residential structure shall not exceed the residential capacity of the residential structure; (iv) any failure of a lessee to comply with the terms of the Declaration, the Articles, the Bylaws, or the Rules and Regulations shall constitute a default by such Owner under the applicable document; and (v) any failure of a lessee to comply with the terms of the Declaration, Articles, Bylaws, and Rules and Regulations shall be a default under the lease and shall be enforceable by the Association as a third-party beneficiary, including the right to initiate and prosecute eviction proceedings. The restrictions contained in this Section shall not apply to Declarant to the extent Declarant exercises any of the rights of Declarant set forth in this Declaration.

4.4. Declarant's Use During Construction. During any period of construction of improvements to the Property, Declarant, its agents, employees and contractors shall be permitted to maintain on any portion of the Property, such facilities as in the sole discretion of Declarant may be reasonably required, convenient or incidental to such construction, including, without limitation, storage areas, construction yards, construction offices, parking areas, lighting, and temporary parking facilities. Declarant, its agents, employees and contractors hereby reserve an Easement over, across, through and upon the Property for the purposes of (a) discharging Declarant's obligations under the Declaration or CCIOA; (b) exercising any of the Special Declarant rights described in Article 9 hereof; or (c) exercising any of Declarant's other rights under the Declaration. The Owners acknowledge that there shall be noise and other disturbances related to the Declarant's construction activities. Declarant, its agents, and contractors shall not be liable to any Owner or Owner's guest for any claim of any kind related noise and other disturbances related to the Declarant's construction activities. For Owners completing improvements on that Owner's Lot, all trucks, equipment and materials must be stored and operated on that Owner's Lot and shall not encroach on adjoining Lots.

4.5. Owner's Responsibility for Lot and Landscaping. Submit plan and finish front yard, including planting and maintaining one tree, subject to Board approval. Except as provided in Association Documents or by written agreement with the Declarant or the Association, all maintenance of a Lot and the improvements located on it will be the sole responsibility of the Owner of the Lot. The Board shall have authority to adopt guidelines and standards for the landscaping of front yards. Each Owner will maintain his Lot and landscaping in accordance with any such guidelines and standards adopted for the Property. These guidelines and standards

shall include the planting and maintaining of one tree and shall include the requirement of submitting a plan to the Board and finishing the installation of the landscaping within the timeframe established by the guidelines. The Association will, at the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and the Board will take action for the violation in accordance with the Association's Responsible Governance Policies. If, after notice and hearing, the Owner is determined to be in violation of this covenant, the Owner shall must commence and diligently pursue remedial action within thirty (30) days after such decision is rendered. If the Owner fails to do so, then the Association may proceed with remedial action in its discretion. The expenses of any maintenance performed by the Association will be the Owner's responsibility, to be reimbursed within the thirty (30) day period that follows the Board's action. If the Owner fails to reimburse the Association as set forth herein, the amounts due shall become a continuing lien on the Owner's Lot, enforceable in the same manner as an assessment lien.

4.6. Fencing. The Declarant may build a fence on the South boundary of the Property. However, the ownership of said fence will shall inure to the owner of each Lot adjacent to the South boundary of the Property, and these owners shall be responsible for all costs of maintenance and repair of their respective section of this boundary fence. The Declarant may install other perimeter fencing, along or near the boundary line of the Property. Declarant shall have the right to install temporary fencing in connection with construction activities. Other than fencing installed by the Declarant, no fencing will be erected, installed or altered except as permitted herein. An Owner may construct and maintain fencing along the perimeter of that Owner's Lot; however, the specifications of the fencing material shall be specified by the Board in accordance with the Architectural Guidelines to maintain a uniform appearance within the Property. Further, fences or walls shall be no more than four (4) feet high between the face of a building or structure and the front property line. Fences shall not exceed six (6) feet in height along the side and rear yard. Fences shall not exceed the aforementioned heights when measured from the existing natural grade at the base to the highest point of fence or wall. No fence or wall may be artificially elevated by means of a berm or other method for purposes of height calculation.

4.7. Restrictions on Animals. Dogs and cats may be kept as household pets. Other domesticated household animals may be kept by an Owner as household pets subject to the rules and regulations adopted by the Board, which specifically limit and restrict what types of household pets may be kept, specifically including, but not limited to, restrictions on certain breeds of animals (other than dogs breeds of which shall not be restricted), size, and numbers of pets. Animals shall not be allowed to roam or enter upon the Property belonging to Owners or occupants of other Lots, and animals shall at all times be under the direct control of its owner or other responsible person. Animals shall not be tied or chained to any decks, balconies, patios or other parts of the Lot, and any such animal(s) so tied or chained may be removed by the Association or its agents. Each Owner or resident must promptly remedy or remove any pet which causes undue noise or disturbance so as to constitute a nuisance to other Owners or occupants of the Lots. The Board shall have the absolute power to prohibit any pet from being kept upon the Property or on any Lot, if such pet violates the terms of this Declaration or the

rules or regulations of the Board, as the same may be amended from time to time.

4.8. Parking and Garages. No vehicle of any type may be parked on the Property except in garages, driveways, and designated street parking. The number of passenger vehicles which an Owner may park on any Lot shall be no more than two (2), one of which must be parked inside the garage of that residential structure, and the other must be parked in front of that Townhome's garage door. Garages shall be used only for the parking and storage of vehicles, and personal property, and shall not be used for overnight occupancy. Garages shall not be leased or rented for use by any party other than the Owner or occupant. The limitations set forth herein shall also apply to any Lot upon which there has been an ADU constructed.

4.9. Limitations on Types of Vehicles. No commercial type of vehicle larger than a full-size pickup and no recreational vehicles shall be stored or parked on the Property or a Lot except as set forth herein. For purposes of this Declaration, the term "recreational vehicle" shall include, but not necessarily be limited to, motor homes, motor coaches, buses, pickup trucks with large camper tops or similar accessories, boats, camping trailers or trailers of any type. Recreational vehicles, boats, camper tops or similar accessories, and camping trailers may be stored inside a garage, but may not be left, parked, or stored on a driveway. Recreational vehicles, boats, camper tops or similar accessories, and camping trailers may be parked in the Open space shown on the Plat in accordance with Rules and Regulations adopted by the Board.

Notwithstanding the foregoing, an Owner or occupant of a Lot may park a motor vehicle on a street, parking space, or guest parking area on the Property if the vehicle is required to be available at designated periods at the Owner's or occupant's residence as a condition of the Owner's or occupant's employment and all of the following criteria are met:

4.9.1. The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

4.9.2. The Owner or occupant is a bona fide member of a volunteer fire department or is employed by an emergency service provider, as defined in section 29-11-101(1.6), C.R.S.;

4.9.3. The vehicle bears an official emblem or other visible designation of the emergency service provider; and

4.9.4. Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners and occupants to use streets and driveways within the Property.

4.10. Signs. Except for signs which Declarant is entitled to maintain, including, but not limited to, signs advertising the Property or advertising the builder, and except for a "for sale" sign or "for rent" sign, no signs, flags, or banners of any kind or nature, including hand-drawn or hand-painted signs, shall be placed on any portion of the Property without the prior written approval of the Association of the size and design of any proposed sign. The Association shall prohibit any display of any material which discriminates based on race, religion, or political

affiliation or constitutes hate speech. Notwithstanding the foregoing, Owners and occupants of Lots may display political campaign signs during campaign season in accordance with CCIOA, local ordinances and regulations, or as may be determined by the Board. Notwithstanding the foregoing, the owners and occupants of Lots shall have the right to construct, place, and maintain signs connected with any permitted business in accordance with Rules and Regulations duly adopted by the Board pertaining to the placement, dimensions, materials, lettering, and lighting of signs.

4.11. Abandoned and Inoperable Vehicles. No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of any Lot, street, alley, or elsewhere on the Property. "Abandoned or inoperable vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of one (1) month or longer; provided, however, this will not include vehicles parked by Owners or occupants while on vacation or residing away from the Property. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or occupant, as applicable, or posted on the unused vehicle. If such vehicle has not been removed within seventy-two (72) hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be charged against the Owner.

4.12. Auto Repair. No work on automobiles or any other vehicles shall be performed in any visible or exposed portion of the Property. Routine maintenance will be permitted within garages. However, major repairs, painting, rebuilding, or restoration of vehicles shall be prohibited.

4.13. Trash and Unsightly Uses. Except for the trash containers and recycling bins, or any other similar trash placed by the road at the end of Owner's driveway for collection no sooner than the evening before collection is scheduled, Owners shall not be permitted to place trash containers, recycling bins, or any other similar storage container, or to store, place or accumulate refuse piles or other unsightly objects and material anywhere on the Property. The Association shall have the right to enter upon the Property and to remove such refuse piles or other unsightly objects and material at the expense of the Owner causing the same, and such entry shall not be deemed a trespass.

4.14. No Noxious, Offensive Hazardous or Annoying Activities. Except as otherwise expressly provided in this Declaration, the Property and each Townhome shall be used and occupied for the purposes described in this Article 4. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted in any Townhome or upon the Property, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could cause unreasonable discomfort or annoyance to other Owners, and the Board shall have the power to make and to enforce reasonable Rules and Regulations in furtherance of this Section.

4.15. No Imperiling of Insurance. No Owner and no Owner's Guest shall do anything or cause anything to be kept in or on the Property that might result in an increase in the premiums of insurance obtained for the Property or which cause cancellation of such insurance

without the prior written consent of the Association first having been obtained, unless such use is permitted use under this Article 4.

4.16. No Violation of Law. No Owner and no Owner's Guest shall do anything or keep anything in or on the Property which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

4.17. Outside Storage. The outside storage of any personal property, swing set, play equipment, or clothesline, tank of any kind, either elevated or buried, shall not be permitted on any Lot the Property without prior written approval of the Association. The Association may adopt specific Rules pertaining to storage of personal property on the Property, which Rules may vary the limitations set forth herein without the necessity of amendment to the Declaration. Unless and until the Association adopts such Rules, the following shall apply: in the front yards, porches or patios, the storage of any personal property, including bicycles, kayaks and other sports equipment, shall not be permitted. Grills shall not be permitted to be stored or used on the front porches or patios; customary storage may be allowed on an Owner's back porch or patio, provided that such storage shall not be unsightly.

4.18. Accessory Structures. Additional structures, sheds, storage facilities, or outbuildings of any kind shall be permitted only in the back yard area of any Lot and shall be prohibited in front yards.

4.19. Outdoor Spas and Hot Tubs. Outdoor spas or hot tubs shall be permitted only on ground level deck areas or patios that are located in the back yard area of any Lot. There shall be no outdoor spas or hot tubs anywhere else on any Lot.

4.20. Pressurized Sewage System. For any Lot required to have a pressurized sewage system, it shall be the Owner's responsibility to maintain the equipment and related facilities located on the Lot.

5. PARTY WALL PROVISIONS

5.1. Use of Party Wall. The following provisions shall apply to any Townhome constructed on any Lot, specifically Lots 7 through 38, and any other Lot subsequently approved for a duplex/townhouse conversion by the Town of Poncha Springs. Each Townhome may be conveyed separately subject to compliance with all applicable regulations and approvals required by the Town of Poncha Springs. The wall common to each of the adjacent Townhomes is an insulated fire wall which separates the Townhomes. Those portions of this common wall together with the footings directly beneath and the portions of the roof directly above are collectively designated a "Party Wall". Each Owner shall have the right to use the Party Wall jointly with the other adjacent Owner. Each Owner shall have the right to use the Party Wall for the insertion or attachment of beams and other structural or finishing materials, or in any other lawful manner as a party wall for the benefit and support of the Townhome now constructed on the Lot, except as provided below. However, such use shall not in any way injure or impair any adjoining Townhome or the property of the adjoining Owner, and shall not impair the party wall benefits

and support to which the adjoining Townhome is entitled. No party shall make or provide openings in the Wall of any nature whatsoever without the prior written consent of the adjoining Owner and approval of the Board in accordance with Article 3 above. No Owner shall have the right to add to or extend the Party Wall in any direction, either horizontally or vertically.

5.2. Maintenance and Repair Obligations.

5.2.1. Maintenance. Each Party Wall shall be maintained and kept in good repair at all times by both adjoining Owners, and at a cost to be equally shared by both adjoining Owners, except as set forth herein. The maintenance, repairs, and decoration of the surface or finish of interior walls shall be the responsibility of each Owner.

5.2.2. Damage. Should the Wall be injured or destroyed by any act or omission of an Owner, whether intentional or unintentional, the Party Wall shall be repaired or rebuilt at that Owner's expense. Any repairing or rebuilding of the Party Wall shall be of the same material or similar material of the same quality as that used in the original Party Wall. Should the Party Wall at any time be injured or destroyed by any cause other than the act or omission of an Owner, the Party Wall shall be repaired or rebuilt at a cost to be shared equally by both adjoining Owners. The rights of both adjoining Owners with respect to a new Party Wall shall be the same as their rights as set forth in this Declaration with respect to the original Party Wall.

5.2.3. Construction and Repair. Any Owner who engages in construction or repair work as described in this Declaration shall have the right to enter onto the property of the adjoining Owner to the extent it may be reasonably necessary in connection with that work, only upon prior written approval of the adjoining Owner. Adjoining Owners shall not unreasonably withhold such consent. When entering onto the property of the adjoining Owner, the entering party shall take and observe due precaution and care to protect the property of the adjoining Owner.

5.2.4. Utilities. Each Owner may run or place new utility lines on the surface of the Party Wall but shall not create openings in the Party Wall without the consent of the adjoining Owner.

5.3. Real Property Taxes. The Owner of each Townhome shall take such steps as are necessary to have his or her Townhome thereon assessed and taxed separately and in the name of its Owner.

5.4. Insurance.

5.4.1. Property Owner's Insurance. Each Owner shall keep his Lot and all improvements, including the Party Wall, and fixtures thereon insured against loss or damage by fire and extended coverage perils (including vandalism and malicious mischief) for the actual replacement value thereof.

5.4.2. Certificates of Insurance. Upon request, each Owner shall deliver to the adjoining Owner certificates evidencing insurance required to be carried under Section 5.4. Each

Owner shall have the right to inspect and copy all such insurance policies of the adjoining Owner and require evidence of the payment of premiums thereon.

5.4.3. No Imperiling of Insurance. No Owner and no Owner's Guest shall do anything or cause anything to be kept in or on their Lot that might result in an increase in the premiums of insurance obtained for the adjoining Owner's Lot or which may cause cancellation of such insurance.

5.5. Easements.

5.5.1. Party Wall Easements. Each Owner shall have a perpetual reciprocal easement in and to that part of the Lot owned by the adjacent Owner and on which said Party Wall is located, for Party Wall purposes, including maintenance, repair and inspection. Mutual reciprocal easements for mutual support are hereby established and declared for each Party Wall. Nothing contained in this Declaration shall operate to convey to any party the fee to any part of the property owned or to be acquired by the adjoining Owner, the creation of rights and obligations with respect to each Party Wall being the sole purpose of this Article of this Declaration.

5.5.2. Easements for Encroachment. If any portion of a Townhome encroaches upon or over the adjoining Lot, an easement for the encroachment and for the maintenance of the same is hereby granted, so long as the encroachment exists. Encroachments referred to in this paragraph include, but are not limited to, encroachments caused by error in the original construction of the Townhomes, by error in the plat of the Lots, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Townhomes. An easement is not granted by this provision for improvements made by an Owner that are made in violation of this Declaration.

5.6. Failure to Pay for Damage, Repair, or Other Costs. In the event an Owner neglects or refuses to pay his costs or expenses as set forth herein, the Owner of the adjoining Lot may pay the reasonable costs therefore and shall then have a lien against the non-paying Owner's Lot and improvements for the amount of such payment superior to all other liens and encumbrances, except only for tax and special assessment liens on the Lot in favor of any assessing entity, and all sums unpaid on any prior mortgage or deed of trust of record including all unpaid obligatory sums as may be provided by such encumbrances. The Owner paying the adjoining Owner's share shall be entitled to interest at the legal rate, and all costs of collection, including attorney's fees.

5.7. Perfection and Foreclosure of Lien. Any lien created pursuant to the terms set forth herein may be perfected by recording in the office of the Recorder of Chaffee County a written statement, signed by the party claiming the lien, the reason for the lien, a description of the Lot against which the lien is claimed, and the name of the reputed Owner by sending it by certified mail, return receipt requested, at his last known address, or by personal service. Foreclosure on the lien shall be pursuant to and in the same manner as judicial foreclosure on a mortgage under the statutes of Colorado. In case of a sale or other transfer of a Lot with respect to which sums shall be unpaid by a defaulting Owner, except transfers to a first lien or in

connection with the foreclosure of its lien or deed in lieu of such foreclosure, the purchaser or other transferee or an interest in such Lot shall be jointly and severally liable with the seller or transferor thereof for such unpaid sums.

5.8. Destruction of Premises. In the event either or both adjoining Townhomes are destroyed or damaged to the extent that renders the Townhomes unusable, the Owner or Owners shall promptly replace the Townhomes with a structure substantially similar to the structure prior to its destruction, unless the Association and the Owner of both Lots agree otherwise in writing.

5.9. Indemnification. Except as otherwise provided for herein, each Owner party agrees to indemnify and hold the adjoining Owner harmless from and against any and all liability for injury and damage to the adjoining Owner's real or personal property, or to any person or persons, in the event such injury or damage shall result from, arise out of, or be attributable to any action pursuant to this Declaration.

5.10. Other Remedies for Breach. The lien provisions of this Agreement shall not bar an Owner from seeking such other relief as the law may provide, including declaratory relief, injunctive relief or damages.

5.11. No Mechanic's Liens. Except for items incurred as a joint obligation of two adjoining Owners as provided above, if any Owner shall cause any material to be furnished to his Lot, or any labor to be performed therein or thereon, the adjoining Owner shall not under any circumstances be liable for the payment of any expense incurred or for the value of any work done or materials furnished; all such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, material men and other persons furnishing labor or materials to his Lot.

6. ASSESSMENTS

6.1. Personal Obligation for Assessments. Each Owner of any Lot, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (a) the Annual Assessments imposed by the Declarant and/or the Board as necessary to fund the maintenance and insurance of the Common Areas (as shown on the Plat of the Property) and to generally carry out the functions of the Association; (b) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (c) Default Assessments which may be assessed against a Lot pursuant to Association Documents for the Owner's failure to perform an obligation under Association Documents or because the Association has incurred an expense on behalf of the Owner under Association Documents. The Board shall have the authority to levy assessments of different dollar amounts for each type of Lot, townhouse, single family, multifamily, and commercial.

6.2. Annual Assessments. The Board shall prepare and adopt an initial budget as soon as practicable, but not more than ninety (90) days after the sale of a Lot to an Owner other than Declarant. Thereafter, the Board shall prepare and adopt the annual budget not less than ninety (90) days prior to the commencement of each fiscal year. After the Members consider the budget in accordance with 6.2.2. below, the Board shall adopt a final budget and shall determine, levy,

and assess the Assessments for the following year in accordance with the Colorado Common Interest Ownership Act as now existing or as the same may be amended, modified, or changed. The budget and the Annual Assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Common Areas; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds and common lighting within the Common Areas and/or the Lots, if such maintenance and care is provided by the Association; routine renovations within the Common Areas; wages of agents and employees; common water and utility charges for the Common Areas; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs and replacement of improvements within the Common Areas on a periodic basis.

6.3. Approval of Budget. Within ninety days after adoption of any proposed budget for the common interest community, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as provided for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of the all of the Owners of Lots within the Property, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners.

6.4. Apportionment of Annual Assessments.

6.4.1. Each Owner will be responsible for that Owner's share of the Common Expenses. As a general rule, Common Expenses will be divided equally among the Lots included in the Property under this Declaration. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the number of Lots then platted and incorporated in the Property.

6.4.2. For Phase 1, each Owner shall be billed by the Town of Poncha Springs for water charges and by the City of Salida for sewer charges.

6.4.3. The Association shall have the authority to allocate certain expenses on a basis other than the equal allocation set forth in 6.4.1 and 6.4.2 when equal allocation would be inequitable or unreasonable. In general, (i) any Common Expense, fee for services, or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited; (ii) any Common Expense, fee for services, or portion thereof benefitting Lots in a manner that is not substantially equal shall be assessed in a manner that reasonably relates to each Lot's proportionate share of usage or services; and (iii) if any Common Expense is caused

by the misconduct or negligence of any Lot owner, the Association may assess that expense exclusively against such Owner's Lot. The Association shall have the authority to adopt rules or policies related to allocation of Common Expenses and fees for services.

6.5. Collection. Annual Assessments will be collected annually, quarterly, or monthly, as the Board may determine, but until the Board directs otherwise, they will be payable monthly within thirty (30) days of mailing of the due date set forth in the assessment notice.

6.6. Special Assessments.

6.6.1. Determination by Board. The Board may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or after adopting and submitting a revised budget to the Association as may be required by CCIOA, to make up any shortfall in the current year's budget.

6.6.2. Notice. Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least thirty (30) days prior to the due date.

7. ENFORCEMENT OF ASSESSMENTS

7.1. Nonpayment of Assessments. Any Assessment, whether Regular, Special, or Default Assessment, which is not paid within thirty (30) days of the due date, or such other time period as may be established in the Association's Rules and/or Responsible Governance Policies shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association shall follow the procedure set forth in the Association's Responsible Governance Policies, which shall comply and be adopted in accordance with Colorado Revised Statutes § 38-33.3-209.5, as amended. After providing Notice of Delinquency and an opportunity to cure as provided in the Responsible Governance Policies, if an Owner fails to cure the delinquency, the Board may take any or all of the following actions:

7.1.1. Assess a late charge, to be determined by the Board and set forth in the Association's Responsible Governance Policies, on the amount due and owing per each delinquency;

7.1.2. Assess an interest rate charge from the date of delinquency at a rate determined by the Board and set forth in the Association's Responsible Governance Policies;

7.1.3. Suspend the voting rights of the Owner during any period of delinquency, subject to the requirements of CCIOA and the Association's Responsible Governance Policies;

7.1.4. Bring an action against any Owner personally obligated to pay the delinquent Assessment, subject to the requirements of CCIOA and the Association's Responsible Governance Policies;

7.1.5. File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Chaffee County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent Assessments then owing. The Statement of Lien shall be signed and acknowledged by the President, Vice President, or Secretary of the Association, and shall be sent by certified mail, postage prepaid, to the Owner of the Lot at the latest address the Association may have in its records as to the Owner. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorneys' fees and cost incurred in the preparation and recording of such Statement of Lien and any release thereof; and/or

7.1.6. Foreclose the Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Provided, however, no action to foreclose shall be commenced unless the Association has followed the procedures set forth in the Association's Responsible Governance Policies, and unless the balance of the assessments and charges secured by the Lien equals or exceeds six months of common expense assessments based on a periodic budget adopted by the Association. Prior to bringing any such action, the Board must formally resolve, by a recorded vote, the filing of a legal action against the specific Lot on an individual basis. In any action for the payment or foreclosure of such Assessment, the Association shall be entitled to recover as part of the action, the interest, costs, and reasonable attorneys' fees with respect to the action.

7.2. Successors' Liability for Assessments. In addition to the personal obligation of each Owner of a Lot to pay all Assessments and the Association's lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses, and attorneys' fees against such Lot.

7.3. Liens for Unpaid Assessments.

7.3.1. The Association has a statutory lien on a Lot for Assessments levied against the Lot or fines imposed against its Owner from the time the Assessment or fine becomes due. Fees, charges, late charges, fines, and interest charged pursuant to CCIOA and the Association Documents are also enforceable as Assessments under this Section. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for an Assessment is not required.

7.3.2. As provided in CCIOA, a lien under this Section is prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recordation of the Declaration; (b) a first Security Interest on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real estate taxes and other

governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in subdivision (b) of this subsection to the extent that the Assessments are based on the periodic budget adopted by the Association pursuant to Section 6.2.1 and would have become due in the absence of acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association's lien of an action or a non-judicial foreclosure either to enforce or extinguish the Association's lien. This subsection does not affect the priority of mechanic's or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the exemptions provided by Colorado homestead laws, which are specifically waived by an Owner as evidenced by acceptance of a deed to a Lot.

8. INSURANCE AND ASSUMPTION OF RISK

8.1. Authority to Purchase. The Board, or its duly authorized agent, shall have the authority and the duty to purchase insurance policies on behalf of the Association in accordance with the provisions of CCIOA and the terms of this Declaration. The Board will not be liable for failure to obtain any coverage required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in Sections 8.2 and 8.3 below is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly will cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and any other parties in interest.

8.2. General Insurance Provisions. All such insurance coverage obtained by the Board will be governed by the following provisions:

8.2.1. The deductible, if any, on any insurance policy purchased for the benefit of the Association may be treated as a Common Expense payable from Annual Assessments or Special Assessments (allocable to all of the Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners), or as an item to be paid from working capital reserves established by the Board.

8.2.2. Any loss covered by the physical damage insurance policy described in Section 8.3 must be adjusted with the Association or its agent, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

8.3. Physical Damage Insurance on Common Areas. The Association will obtain insurance for all insurable common improvements, if any, in an amount equal to the full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation,

excavation, depreciation on personal property, and other items normally excluded from coverage), which will include all buildings, building service equipment and the like, common personal property and supplies, and any common fixtures or equipment. In addition, such policy will afford protection against at least the following:

8.3.1. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard “all-risk” endorsement covering sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage.

8.3.2. Such other risks as will customarily be covered with respect to projects similar in construction, location, and use to the Property.

8.4. Liability Insurance. The Association will obtain a comprehensive policy of commercial general liability insurance (including libel, slander, false arrest, and invasion of privacy coverage) and property damage insurance with such limits as the Board may determine, insuring each member of the Board, the Association and the respective employees, agents, and all persons acting as agents against any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Common Areas within the Property and any other areas under the control of the Association. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas. The Board will review the coverage limits at least once every two years, but, generally the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Property, and in no event will such coverage be less than \$1,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

8.5. Fidelity Insurance. The Association shall obtain fidelity insurance that meets or exceeds the requirements of CCIOA. If the Property consists of thirty 30 or more Lots, and any unit owner or employee of the Association controls or disburses funds of the Association, the Association must obtain and maintain fidelity insurance, to the extent reasonably available, and the coverage amount shall be not less than two month’s current assessments plus reserves, as calculated from the current budget of the Association.

8.6. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of this Section above will be subject to the following provisions and limitations:

8.6.1. The named insured under any such policies will include the Association, as attorney-in-fact for the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into any insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the Insurance Trustee), who will have exclusive authority to negotiate losses under such policies.

8.6.2. Each Owner will be an insured person with respect to liability arising out of the Owner’s interest in the Common Areas or membership in the Association.

8.6.3. In no event will the insurance coverage obtained and maintained pursuant to this Section be brought into contribution with insurance purchased by the Owners or their Mortgagees.

8.6.4. The policies will provide that coverage will not be prejudiced by (a) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees and guests) when such act or neglect is not within the control of the Association, or (b) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

8.6.5. The policies will contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be cancelled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice mailed to the Association and to each Owner, Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known address.

8.6.6. The policies will contain a waiver by the insurer of any right to claim by way of subrogation against the Board, the Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households.

8.6.7. The policies described in Sections 8.3 and 8.4 above will provide that any "no other insurance" clause will expressly exclude individual Owners' policies from its operation so that the physical damage policy or policies purchased by the Board will be deemed primary coverage, and any individual Owners' policies will be deemed excess coverage.

8.7. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance will be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

8.8. Workers' Compensation Insurance. The Association will obtain Worker's Compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

8.9. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.

8.10. Insurance Obtained by Owners. Each Owner will have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and improvements, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the amount which the Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance

coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right of subrogation against the Association and other Owners, if reasonably available.

8.11. Limitation of Liability. Neither the Association nor any officer or member of the Board or Committee member will be liable to any party for any action or failure to act with respect to any matter arising by, through or under Association Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers, Directors, ACC members, and other Committee members with respect to any act taken in their official capacity to the fullest extent provided by law, and as further provided in the Association Documents.

9. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED DEVELOPMENT RIGHTS AND EASEMENTS

9.1. Reserved Development rights and Rights of Expansion. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Property to the provisions of this Declaration. Specifically, of the 68 Lots, 62 of them may be subject to subsequent duplex/townhouse conversion resulting in a total of 130 Lots, and to withdraw, expand, convert or create Common Elements.

9.1.1 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Supplemental Plats setting forth the Lots and Common Areas, and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property.

9.1.2 Expansion Rights and Limitations. The expansion, which shall contain no more than 130 total Lots, may be accomplished in phases by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand the Project beyond the number of Lots initially submitted to this Declaration. The exercise of Development Rights as to some portions of the Property will not obligate the Declarant to exercise them as to other portions.

9.1.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lots as shown on the Plat plus any additional Lots added by any Supplemental Declarations and Supplemental Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded.

9.1.4 Declaration Operative on Additional Phases. Lots and Common Elements added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) depicting the additional Lots and Common Elements and Supplemental Declaration(s)

with the Clerk and Recorder. In the event that a portion of the Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Property to the provisions of this Declaration. The rights of the Declarant and any Successor Declarant, as described herein, shall apply to all Lots and Common Elements which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

9.1.5 No rights or obligations of any character of any Owner of any additional Lot in the Property shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder annexing the Lots constructed in such area to the Common Interest Community.

9.1.6 Notwithstanding any inclusion of additional Lots under this Declaration, each Owner (regardless of whether such Owner is the Owner of a Lot shown on the original Map or is the Owner of an additional Lot constructed in the Property or the Expansion Property and included by a Supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Elements, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Lot prior to such recording.

9.1.7 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Lots and/or Common Elements, subject to the terms of CCIOA. Declarant specifically reserves for itself and any Successor Declarant the right to withdraw any of the Property in portions and at different times; provided, no Lot may be withdrawn after a Lot has been conveyed by Declarant to a purchaser. Declarant may exercise such rights of Withdrawal on all or any portion of the Property and may withdraw those portions of real estate identified above in whatever order Declarant in its sole discretion determines.

9.2. Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the Plats and Maps; (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Lots and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Lot or, if earlier, twenty (20) years from the recording of this Declaration with the Clerk and Recorder; (c) use easements through the common elements for the purpose of making improvements within the Project or within real estate which may be added to the Project; (d) subject the Property to a master association, (e) merge or consolidate the Project with a common interest community of the same form of ownership, and (e) appoint or remove any officer of the association or any Director during the period of Declarant control.

9.3. Termination of Rights Reserved. Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate twenty (20) years after the date upon which this Declaration is recorded or upon the sale of all Lots which are within the Property up to the maximum number of Lots, whichever shall first occur; provided, however,

such reserved rights may be: (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose; (ii) extended as allowed by law; or (iii) terminated in whole or in part by a written instrument executed by the Declarant in such manner as provided in CCIOA.

9.4. Utility Easements. Limited to underground utilities only, there is hereby created a general easement upon, across, in, and under the Property and the Lots for ingress and egress and for installation, replacement, replat, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electrical, television and a master communications system, specifically limited solely to those utilities easements shown on the Plat. By virtue of this easement, it will be expressly permissible and proper for the companies providing electrical, television, telephone and other communication services to install and maintain necessary equipment on the property and to affix and maintain electrical, television, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement will use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, The Association and Declarant will prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible, and will restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Association will have, and are hereby given, the right and authority to grant such easement upon, across, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement will in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

9.5. Maintenance Easement. An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, and any member of the Board, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Lot, as required by the Association Documents.

9.6. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

9.7. Assignment. Subject to the requirement and limitation of CCIOA, Declarant may assign all of any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Chaffee County, Colorado.

10. ENFORCEMENT

10.1. Violation Deemed a Nuisance. Every violation of this Declaration, the Articles and Bylaws of the Association, Architectural Guidelines or any Rules and Regulations adopted by the Board shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof, subject to the provisions of CCIOA, the Association's Responsible Governance Policies, and other Rules and Regulations of the Association.

10.2. Failure to Comply. The failure to comply with this Declaration, the Architectural Guidelines, or any Rules and Regulations adopted by the Board shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, subject to the provisions of CCIOA, the Association's Responsible Governance Policies, and other Rules and Regulations of the Association.

10.3. Who May Enforce. Any action to enforce any violation of any provision of this Declaration may be brought by the Association in name of the Association and on behalf of the Owners, or by the Owner of any Lot.

10.4. No Waiver. The failure of the Board, the Association, or any Owner to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

10.5. Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction, or the determination of the rights and duties of the parties to this Declaration for the Property or any provision of the Association Documents provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

11. DURATION OF THESE COVENANTS AND AMENDMENT

11.1. Duration and Amendment. Subject to amendment at any time as set forth herein, the covenants, conditions, restrictions and liens of the Declaration shall run with and bind the land, in perpetuity. Prior to the transfer of the first Lot to any third party not related to or associated with Declarant, Declarant may amend this Declaration and the Plat at the Declarant's sole discretion. In addition, Declarant hereby reserves and is granted the right and power to record minor and technical amendments to this Declaration and the Plat at any time for the purpose of correcting spelling, grammar, dates, typographical errors, or as may otherwise be deemed necessary by the Declarant to clarify the meaning of any provisions, without the consent of any of the Owners or first mortgagees. After the transfer of the first Lot as provided herein, this Declaration may be amended, at any time, by an instrument signed by the Owners of sixty-seven percent (67%) of all Lots. If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to so consent and that there is no contrary provision in any mortgage or contract between Owner and a third party that will affect the validity of such consent.

11.2. Declarant's Approval. Notwithstanding the provisions of Section 11.1, no termination, extension, modification or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

11.3. Notice of Amendment. No amendment or revocation of this Declaration will be effective unless a written notice of the proposed amendment is sent to every Owner reasonably in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

11.4. Effective on Recording. Any modification, amendment or revocation will be immediately effective upon recording in Chaffee County, Colorado, a copy of such amendment, modification, or revocation executed and acknowledged by the President of the Association or other Officer authorized by the Association (and by Declarant, as required) to execute such amendment.

12. MISCELLANEOUS PROVISIONS

12.1. Severability. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

12.2. Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

DECLARANT: Tailwind Group LLC, a Colorado limited liability company

By: _____
Eric Schmalz

Its: Member

STATE OF COLORADO)

) ss.

COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this ____ day of December, 2018 by Eric Schmalz as Member of Tailwind Group LLC, a Colorado limited liability company

Witness my hand and official seal. _____
Notary Public

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR
TAILWIND VILLAGE**

Legal Description of the Property

All that part of the SE 1/4 of the NE 1/4 of Section 10, Township 49 North, Range 8 East of the New Mexico Principal Meridian that lies South of U.S. Highway 50, Chaffee County, Colorado.

