

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
PONCHA MEADOWS FILING NO. 1, BLOCK 5,  
TOWN OF PONCHA SPRINGS,  
CHAFFEE COUNTY, COLORADO**

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This Declaration is made this 10<sup>th</sup> day of March, 2021 by **Poncha Meadows, LLC**, a Colorado limited liability company, of 7693 U.S. Highway 285, 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 Poncha Meadows Filing No. 1, Block 5. The name of the owners' association organized to govern and administer the common interest community hereby created is Poncha Meadows Filing No. 1, Block 5 Association, Inc., a Colorado nonprofit corporation (the "Association").

1.2. General Purposes. Declarant owns the real property interests on the recorded plat of Poncha Meadows Filing No. 1, per plat recorded January 8, 2020, as Reception No. 456239 of the records of Chaffee County, Town of Poncha Springs, Chaffee County (herein the "Plat") and legally described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"). This Declaration shall not apply to any other Block or any other portion of Poncha Meadows Filing No. 1. 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 eighteen (18) Lots as approved by the Town of Poncha Springs. Lot 19 is a Common Area as set forth herein.

1.5.2. On any Lot one single-family dwelling and one accessory dwelling unit (ADU) per Lot shall be permitted.

1.5.3. Herein, the term "Residential Unit" shall be used to refer to any single family dwelling or ADU.

1.5.4. The following Lots shall be entitled to construct garages as shown on Exhibit B attached hereto: 01, 06, 07, 08, 09, 10, 15, 16, 17, and 18. The Community Parking Area shown on the Plat and on Exhibit B as part of the Common Area (Lot 19) shall include one (1) designated parking space for each of the following Lots: 02, 03, 04, 05, 11, 12, 13, and 14.

1.5.5. The Association shall be responsible for the ownership and maintenance of Lot 19 shown on the Plat upon its conveyance by the Declarant.

## 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, Architectural Guidelines, 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) (the "Board"), shall perform functions and hold and manage Association property as provided in this Declaration. 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.

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.. Regarding restrictions and uses of the Property governed by the Town and regarding issues not specifically addressed by this Declaration, the Association and the Owners shall not have the duty nor the right to enforce any such restrictions;

2.3.2. To assess Owners annual assessments;

2.3.3. To provide upkeep and maintenance to all common ownership lands in the Property;

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

2.4.1. Repairs and maintenance of common area(s) 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;

2.4.5. Common services and additional services to Owners as approved by the Board;

2.4.6. 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.

2.5. Common Areas.

2.5.1. General Common Areas. General Common Areas shall include Lot 19 in Block 5, which includes the Community Parking Area, Common Building Envelope, and Pocket Park as shown on Exhibit B and on the Plat of the Property. Use of General Common Areas shall be governed by the Rules and Regulations adopted by the Board. The Common Building Envelope may be developed with a structure or structures for use by all Lot Owners as determined by the Board. The Pocket Park may be landscaped as determined by the Board. Declarant shall have no duty to install or construct improvements to the Community Parking Area, Common Building Envelope, and Pocket Park and shall have no responsibility for the costs associated with any such improvements unless and until approved by the Board and assessed to all Owners including Declarant.

2.5.2. Community Parking Area. The Community Parking Area shown on the Plat and on Exhibit B as part of the Common Area (Lot 19) shall include one (1) designated parking space for each of the following Lots: 02, 03, 04, 05, 11, 12, 13, and 14. The remainder of the parking spaces in the Community Parking Area shall be available for use by the owners of all Lots and their guests and shall be governed by the Rules and Regulations adopted by the Board. Drive lanes shall be maintained for the owners of Lots 06, 07, 08, 09, 15, 16, 17, and 18 to access their garages. The Community Parking Area may be improved, including surfacing, as determined by the Board. Specifically, the Association shall be responsible for snow removal and general maintenance of the Community Parking Area.

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 condition and shall maintain, and repair the same consistent with the purposes and uses of the General Common Areas as set forth in the Association Documents.

### 3. ARCHITECTURAL CONTROL

3.1. Purpose and General Authority. The Board of Directors shall administer the architectural approvals required pursuant to the Declaration. The Declarant shall administer such approvals until such time as the Association is formed. The Board 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 Board may establish and amend from time to time. No improvement 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 Board; 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. The front of all single-family dwellings must face the adjoining street.

3.2. Board Discretion. The Board 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. 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.

3.3. Expert Consultation. The Board may avail itself of technical and professional advice and consultants as it deems appropriate, and the Board may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Board. 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 Board.

3.4. Expenses. Except as provided in this section below, all expenses of the Board will be paid by the Association and will constitute a common expense.

3.5. Other Requirements. Compliance with the 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 procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots as otherwise required under this Declaration.

3.6. Limitation of Liability. The Board will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. The Board or any of its members shall not 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 or for any official act of the Board in connection with submitted plans and specifications. Neither the Board, 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.



3.7. 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 Board. 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 Board, Inc. 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 that such abandonment is for circumstances beyond the Owner's control.

3.8. Enforcement.

Section 3.8.1. Inspection. Any member or authorized consultant of the Board, or any authorized officer, Director, employee or agent of 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 Board.

Section 3.8.2 Fines for Violations. The Board may adopt a schedule of fines for failure to abide by the Architectural Guidelines, including fines for failure to obtain any required approval from the Board.

Section 3.8.3. Completion of Construction. 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 Board indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Board, and imposing such conditions for issuance of a final certificate of compliance issued by the Board as the Board may determine appropriate in its reasonable discretion. Upon completion of construction, the Board will issue an acknowledged certificate of compliance setting forth generally whether, to the best of the Board's knowledge, the improvements on a particular Lot are in compliance with the terms and conditions of the Architectural Guidelines.

#### 4. PROPERTY USE RESTRICTIONS

4.1. Use. The Lots shall be used and occupied primarily for residential purposes and any other purposes as permitted by the Town of Poncha Springs codes, as may be amended from time to time. Specifically, use of any portion of the Property for a campground or RV Park is expressly prohibited. Further, except as is expressly set forth in this Declaration or in the Governing Documents, it is the intention of the Declarant that the use of the Property be governed by the applicable codes of the Town of Poncha Springs, as amended from time to time. Regarding restrictions and uses of the Property governed by the Town and regarding issues not specifically addressed by this Declaration, the Association and the Owners shall not have the duty nor the right to enforce any such restrictions.

4.2. Construction Standards. As set forth above in Section 3, all improvements shall be in compliance with this Declaration and as further set forth in the Architectural Guidelines and such rules and regulations as the Board may establish and amend from time to time. Further, in accordance with Plat Note No. 10 set forth on the recorded plat of the Property, residences and appurtenant structures shall be site built of new construction, panelized construction (off-site stick-built construction), or modular construction meeting the standards of the International Residential Code; no mobile or manufactured homes (as defined by HUD or as defined by the Town of Poncha Springs Land Use and Zoning Code) shall be permitted.

4.3. Declarant's Use During Construction. During any period of construction of the 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, temporary sales 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 8 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.

4.4. Parking and Limitations on Types of Vehicles. No vehicle of any kind wider than seven feet (7') (excluding mirrors) shall be allowed in on-street dedicated parking. Further, no commercial type of vehicle larger than a full-size pickup and no recreational vehicles shall be stored or parked in on-street dedicated parking. 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.

Notwithstanding any limitation in this Declaration, an Owner or occupant of a Residential 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:

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

4.4.2. 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.;

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

4.4.4. 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.

4.5. Accessory Structures. The placement or construction of accessory dwelling units (ADUs), additional structures, sheds, storage facilities, or outbuildings of any kind shall be governed solely by the codes of the Town of Poncha Springs.

## 5. ASSESSMENTS

5.1. 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.

5.2. 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 5.2.2. 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.

5.3. 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.

5.4. Apportionment of Annual Assessments.

5.4.1. 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.

5.4.2. The Association shall have the authority to allocate certain expenses on a basis other than the equal allocation set forth in 5.4.1 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 or Residential Units or benefited; (ii) any Common Expense, fee for services, or portion thereof benefiting 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 or Residential Unit. The Association shall have the authority to adopt rules or policies related to allocation of Common Expenses and fees for services.

5.5. 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.

5.6. Special Assessments.

5.6.1. 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.

5.6.2. 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.

6. ENFORCEMENT OF ASSESSMENTS

6.1. 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:

6.1.1. 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;

6.1.2. 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;

6.1.3. 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;

6.1.4. 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;

6.1.5. 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

6.1.6. 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.

6.2. 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.

6.3. Liens for Unpaid Assessments.

6.3.1. 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.

6.3.2. 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.

## 7. INSURANCE AND ASSUMPTION OF RISK

7.1. 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 7.2 and 7.3 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.

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

7.2.1. 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.

7.2.2. 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.

7.3. 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:

7.3.1. 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.

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

7.4. 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.

7.5. 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 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.

7.6. 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:

7.6.1. 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.

7.6.2. 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.

7.6.3. 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.

7.6.4. 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.

7.6.5. 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.

7.6.6. 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.



7.6.7. The policies described in Sections 7.3 and 7.4 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.

7.7. 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.

7.8. Workers’ Compensation Insurance. The Association will obtain workmen’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.

7.9. 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.

7.10. 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.

7.11. 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.

## 8. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED DEVELOPMENT RIGHTS AND EASEMENTS

8.1. Reserved Development 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 Areas, provided however that none of the real estate may be withdrawn after any Lot has been conveyed by Declarant to a purchaser.

8.2. Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (i) complete improvements indicated on the Plats and Maps, (ii) to appoint or remove any officer of the Association or any Executive Board

member during the period of Declarant control.

8.3. Termination of Rights Reserved. Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate forty (40) 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.

8.4. 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.

8.5. 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.

8.6. 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.

8.7. 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.

## 9. ENFORCEMENT

9.1. Violation Deemed a Nuisance. Every violation of this Declaration, the Articles and Bylaws of the Association, 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, Architectural Guidelines, and other Rules and Regulations of the Association.

9.2. Failure to Comply. The failure to comply with this Declaration, 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.

9.3. 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. Notwithstanding the foregoing or any other provision to the contrary in this Declaration, as set forth in Section 4.1, it is the intention of the Declarant that the use of the Property be governed the applicable codes of the Town of Poncha Springs, as amended from time to time. Regarding restrictions and uses of the Property governed by the Town and regarding issues not specifically addressed by this Declaration, the Association and the Owners shall not have the duty nor the right to enforce any such restrictions.

9.4. 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.

9.5. 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.

## 10. DURATION OF THESE COVENANTS AND AMENDMENT

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

11. MISCELLANEOUS PROVISIONS

11.1. 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.

11.2. 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.

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**DECLARANT: Poncha Meadows, LLC**

By: Janet L. Sherwood  
Janet L. Sherwood

By: Larry Sherwood  
Larry Sherwood

Its: President

Its: Vice President

STATE OF COLORADO )

) ss.

COUNTY OF CHAFFEE )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of March, 2021 by Janet L. Sherwood as President and Larry Sherwood as Vice President of and on behalf of Poncha Meadows, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Stacy J. Murphy  
Notary Public

STACY J MURPHY  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20064017390  
MY COMMISSION EXPIRES MAY15, 2022

**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR  
PONCHA MEADOWS FILING NO. 1, BLOCK 5**

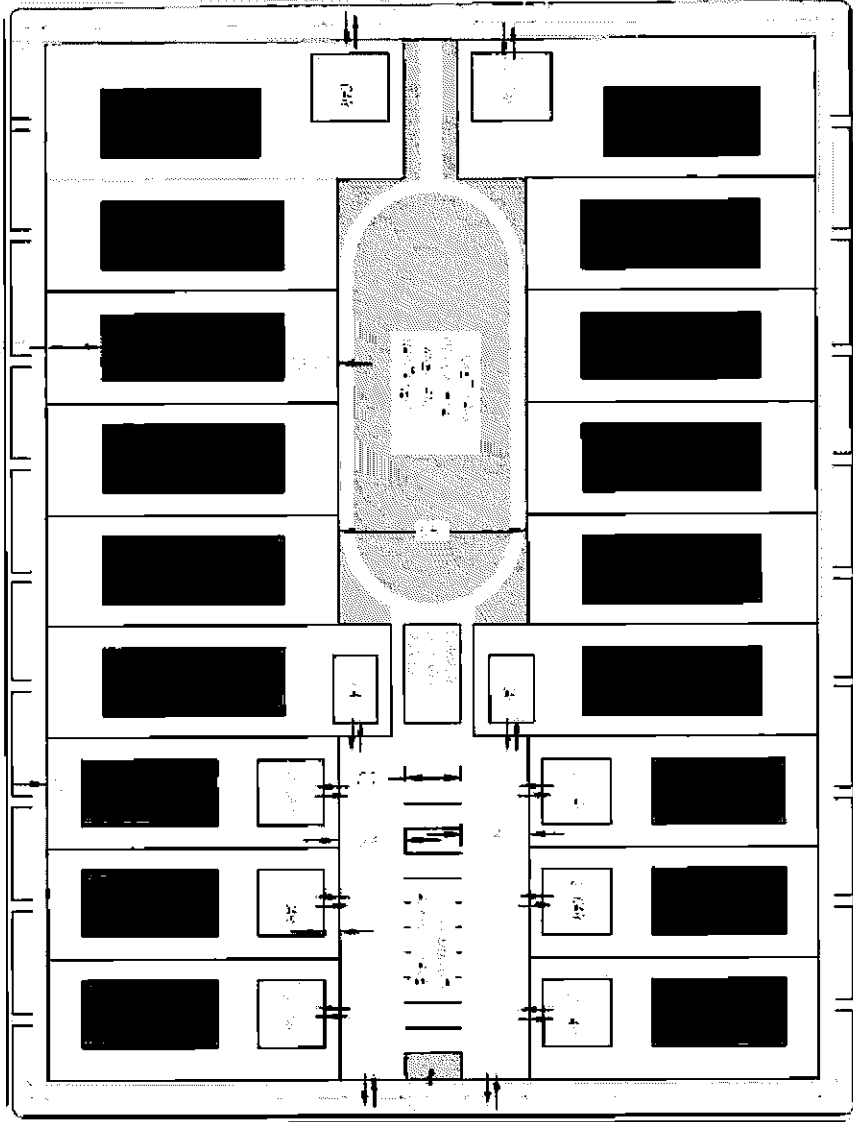
Legal Description of the Property

Block 5,  
Poncha Meadows Filing No. 1,  
Per plat recorded January 8, 2020, as Reception No. 456239 of the records of Chaffee County,  
Town of Poncha Springs,  
Chaffee County, Colorado

EXHIBIT

B

tables



**POCKET NEIGHBORHOOD  
CONCEPT PLAN**

1. THE PLAN IS A CONCEPT PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

THIS PLAN IS A CONCEPT PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE PLAN IS A CONCEPT PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE PLAN IS A CONCEPT PLAN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

