

**SEWER LINE EXTENSION AND CONNECTION AGREEMENT PRE-1375 ERU'S
(Tailwinds Village Filing II)**

THIS SEWER LINE EXTENSION AND CONNECTION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2025, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("Salida"), and Tailwind Group LLC, ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

- 1.1 The Developer contends that it is the fee title owner of certain lands known as the "Tailwinds Village Filing II" and more particularly described on attached **Exhibit A** (the "Property").
- 1.2 The Property is located within the current corporate boundaries of the Town of Poncha Springs ("Poncha Springs" or "Town") and within Salida's Wastewater Service Plan Area as defined in Section 13-2-20 of the Salida Municipal Code.
- 1.3 This Agreement pertains to the Property, as described on attached **Exhibit A**.
- 1.4 Salida provides sewer service in Poncha Springs pursuant to and in accordance with the terms and conditions of two intergovernmental agreements between Salida and Poncha Springs: the Intergovernmental Agreement for Transfer of Sewer System dated April 6, 2010 ("System IGA") as amended in February 2025, and the Intergovernmental Agreement for Provision of Sewer Services dated April 6, 2010 ("Service IGA").
- 1.5 In accordance with the Poncha Springs Land Use Code, the Developer has submitted a plat to the Town of Poncha Springs for the Tailwinds Village Filing II and has obtained final plat approval of the subdivision by the Town Board, on April 25, 2022.
- 1.6 Under the System IGA, Salida operates, maintains, and expands its sewer system to accommodate and not inhibit planned growth and development within Poncha Springs's planning and zoning jurisdiction.
- 1.7 Under the Service IGA, Poncha Springs shall not record any final plat for any development within Poncha Springs until the Town has received written confirmation from Salida that the developer has executed a line extension agreement or line connection agreement with Salida or has otherwise applied for and been granted service per the Salida Municipal Code.
- 1.8 The Property currently is not serviced by a Salida sewer line, and the Developer wishes to perform all excavations, construction, installations, connections and other work necessary to establish a connection to a Salida sewer main ("Sewer Line Extension"), as shown on the Sewer Plans attached as **Exhibit B**.
- 1.9 The Developer and Salida wish to enter into this Agreement in satisfaction of the requirement for an executed extension or line connection agreement under the Service IGA,

and to provide for Salida's provision of sewer service to Tailwinds Village Filing II.

- 1.10 The Developer and Salida acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the System IGA and the Service IGA and the Amended IGA.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, Salida and the Developer agree as follows:

Section 2 – Definitions

As used in this Agreement, the following terms have the following meanings:

- 2.1 **"Agreement"** means this Sewer Line Extension and Connection Agreement. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.
- 2.2 **"Appurtenant Sewer Service Lines"** means all service lines and laterals necessary to deliver wastewater from the Property into the Sewer Main(s).
- 2.3 **"City"** means the City of Salida, a Colorado statutory city.
- 2.4 **"City Administrator"** means the City Administrator of the City of Salida, Colorado, and the City Administrator's designee.
- 2.5 **"City Council"** means the City Council of the City of Salida, Colorado.
- 2.6 **"Developer"** means Tailwind Group LLC, and its successor(s).
- 2.7 **"Development"** means all work on the Property required to accomplish construction and installation of the Public Improvements. When the context so dictates, the verb **"Develop"** may be used in place of the noun **"Development."**
- 2.8 **"Effective Date"** means the date on which City Council approved the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by Salida and the Developer.
- 2.9 **"Extension Taps"** means sewer taps for which Salida will provide service through the Sewer Line Extension.
- 2.10 **"Performance Guarantee"** means the bond or letter of credit of \$849,175.00 posted by the Developer in accordance with the terms of its Subdivision Improvements Agreement with Poncha Springs dated January 31, 2025.
- 2.11 **"Property"** means the land that is known as the "Tailwinds Village Filing II" and described in attached **Exhibit A**.

- 2.12 “Public Improvements” means those Required Improvements constructed and installed by the Developer and dedicated to Salida in accordance with this Agreement, including without limitation wastewater collection mains and laterals and sewer manholes. The Required Improvements that are also Public Improvements are identified on the Bid Tab attached as **Exhibit C**.
- 2.13 “Reimbursable Costs and Fees” means all fees and costs incurred by Salida in connection with Salida’s processing and review of the Public Improvements, and Salida’s drafting, review, and execution of this Agreement.
- 2.14 “Required Improvements” means the public and other improvements that the Developer is required to make to the Property to connect, consistent and in compliance with the final plat approval and with the construction plans and drawings submitted to Salida and Poncha Springs for review and approval.
- 2.15 “Salida Municipal Code” means the City of Salida Municipal Code, as amended.
- 2.16 “Service IGA” means the Intergovernmental Agreement for Provision of Sewer Services made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010.
- 2.17 “Sewer Line Extension” means 2308 linear feet of 10 inch diameter PVC sewer main, 3550 linear feet of 8 inch PVC sewer main, 2808 linear feet of 4 inch PVC sewer service and 112 linear feet of 6 inch PVC sewer service to be constructed and installed by the Developer as shown on **Exhibit B**, to allow the Developer to connect to a sewer main with sufficient capacity to enable Salida to provide sewer service to the Extension Taps.
- 2.18 “System IGA” means the Intergovernmental Agreement for Transfer of Sewer System made by and between the City of Salida and the Town of Poncha Springs on April 6, 2010, as amended in February 2025 by the First Amendment to the IGA for Transfer of Sewer System.
- 2.19 “Town” means the Town of Poncha Springs.
- 2.20 “Warranty Period” means a period of one year from the date that the Salida Public Works Director or City Engineer, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

Section 3 – Purpose of Agreement and Binding Effect

- 3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between Salida and the Developer with respect to extension of sewer service to the Property. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

- 3.2 **Binding Agreement and Covenant Running with the Land.** This Agreement benefits and is binding upon Salida, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.
- 3.3. **Reservation.** Notwithstanding anything to the contrary herein, and to the extent that Salida becomes aware of new information with respect to the Property or the Sewer Line Connection following execution of this Agreement, Salida reserves the right to require new terms or conditions for the Required Improvements or new obligations for the Developer with respect to such improvements.

**Section 4 – Connection to Sewer Line, Extension of Sewer Line,
and Provision of Sewer Service**

- 4.1 Salida agrees to provide sewer service to the Property, and the Developer agrees that it will construct and install the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines, only in accordance with the terms and conditions of this Agreement, the System IGA, and the Service IGA, and with the following:
- 4.1.1 All requirements of the Town Code and the Town's Subdivision Approval Ordinance;
 - 4.1.2 All requirements of the Salida Municipal Code;
 - 4.1.3 The City of Salida's Standard Specifications for Construction, as amended;
 - 4.1.4 The City of Salida Department of Public Works' Design Criteria Manual for Water, Sewer, and Streets, as amended;
 - 4.1.5 The Town's applicable engineering standards for construction and installation of the Sewer Line Extension and Appurtenant Sewer Service Lines, including without limitation standards for compaction in trenches, under pavement, under sidewalks, at valve boxes, and around manholes; and
 - 4.1.6 All other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 4.3 The Developer acknowledges and agrees that in accordance with paragraph 1.c of the Service IGA and in accordance with the Salida Municipal Code, Salida is and will be under no obligation to provide sewer service to the Property until the Public Improvements required hereunder for each approved phase have been completed and accepted by Salida; and that in accordance with paragraph 1.d of the Service IGA, Salida will have no obligation to provide sewer service to the Property until Salida has formally approved and

accepted the Required Improvements for each phase and has confirmed in writing to Poncha Springs that all terms and conditions of the System IGA and the Service IGA have been complied with to Salida's satisfaction.

For any development where the Subdivision Improvement Agreement (including amendments to the Subdivision Improvement Agreements) allows the release of lots for sale in phases, Salida will provide sewer service for each phase when the Public Improvements for each phase are completed and accepted by Salida, .

Section 5 – Terms and Conditions for Sewer Line Extension and Provision of Sewer Service

- 5.1 **Other Applicable Laws and Regulations.** All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the System IGA, the Service IGA, the Salida Municipal Code, and all other applicable laws and regulations, including without limitation all Town Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.
- 5.2 **Submittals to and Approvals by City Administrator.** Unless this Agreement specifically provides to the contrary, all submittals to Salida in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.
- 5.3 **Limitations on Wastewater Delivered Through Sewer Line Connection.** The Developer acknowledges and agrees that Salida's obligation to provide sewer service to the Property is contingent upon the Developer's construction and installation, and Salida's written approval pursuant to paragraph 5.10 below, of the Public Improvements for each phase associated with the Sewer Line Extension.
- 5.3.1 Until and through December 31, 2029, this Agreement is revocable by Salida if Developer cannot provide proof of funds and/or financing for final plat subdivision infrastructure within twelve (12) months of the Effective Date of this Agreement.
- 5.4 **Required Improvements and exhibit Guarantee.** Attached **Exhibit C** provides a detailed list of the Required Improvements for which the Developer is responsible under the Town's final plat approval of the Property, along with the reasonably estimated costs of those Required Improvements, including both labor and materials. Under the Developer's Subdivision Improvement Agreement for the Property, a copy of which agreement is attached as **Exhibit D**, the Developer will furnish a Performance Guarantee, pursuant to Salida Municipal Code section 16-2-60(a), (in the form of **Exhibit E**) in the amount of \$849,175.00, which represents an amount equal to one hundred twenty-five percent (125%) of the estimated cost of said improvements to ensure timely completion of the Required Improvements.
- 5.4.1 In accordance with paragraph 1.c of the Service IGA, the Town made Salida a third-party beneficiary of the Performance Guarantee associated with sewer service

installation sections of the Developer's Subdivision Improvements Agreement for the Property.

- 5.4.2 Also in accordance with paragraph 1.c of the Service IGA, the Developer agrees that Salida is a third-party beneficiary of the Developer's Subdivision Improvements Agreement for the Property, that any default by the Developer hereunder will be deemed a default under the Subdivision Improvements Agreement, and that the Performance Guarantee (or rights to and in the same), to the extent of any estimated costs of the Public Improvements, may be made available to Salida in sufficient amounts in the event of default to provide for the completion of the Public Improvements.
- 5.4.3 In accordance with paragraph 1.d of the Service IGA, Salida agrees to perform all necessary inspections and, when appropriate, to provide required written confirmations in a timely fashion and within the time limitations, if any, imposed on Poncha Springs for inspecting the Required Improvements.
- 5.5 Prior Approval of Plans for Sewer Line Connection. Before the Developer commences construction or installation of the Public Improvements, the Salida Public Works Director or City Engineer must review and approve the drawings and plans for such improvements and proposed phasing, which drawings and plans must be stamped by the engineer retained by the Developer.
- 5.6 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement, industry standards, and Salida's rules, regulations, requirements, and criteria governing such construction.
- 5.7 Conveyance of Public Improvements. Within twenty-eight (28) days of Salida's final acceptance of the Public Improvements in accordance with paragraph 5.11 below, the Developer, at no cost to Salida, shall do the following:
 - 5.7.1 Execute and deliver to Salida a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Consistent with Section 16-2-60(j) of the Salida Municipal Code, acceptance of the Bill of Sale must be authorized by City Council.
 - 5.7.2 Execute and deliver to Salida a good and sufficient General Warranty Deed conveying to Salida, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the _____ subdivision plat recorded at

Reception No. _____. Easements for public utilities must be at least twenty feet wide, ten feet wide on either side of the relevant infrastructure.

- 5.7.3 Deliver to Salida all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements, or make reasonable provision for the same to be delivered to Salida. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.
- 5.8 Warranty. The Developer shall warrant the Public Improvements in accordance with Salida Municipal Code section 16-2-60(f) for the Warranty Period, which is one year from the date that the Salida Public Works Director or City Engineer, in accordance with paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications. The Developer shall provide a one-year Warranty Bond or furnish a letter of credit, for the Public Improvements, including without limitation the Sewer Line Extension and all Appurtenant Sewer Service Lines. In the Warranty Bond or letter of credit, the Developer shall list Salida as the benefitted owner of the Public Improvements.
- 5.8.1 Specifically, but not by way of limitation, the Developer shall warrant the following:
- (1) That the title conveyed shall be good and its transfer rightful; and
 - (2) Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
 - (3) Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- 5.8.2 In the event of any defect in workmanship or quality during the Warranty Period, the Developer shall correct the defect in workmanship or material.
- 5.8.3 In the event that any corrective work is performed by the Developer during the Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed.
- 5.8.4 Should the Developer default in its obligation to correct any defect in workmanship or material during the Warranty Period, the City will be entitled to draw on the Warranty Bond or letter of credit and/or to pursue any other remedy described in Section 7 below.
- 5.8.5 In addition to warranting the Public Improvements as described herein, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Warranty Period.
- 5.8.6 Pursuant to Salida Municipal Code section 16-2-60(n), the performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon

expiration of the one (1) warranty period, and the correction of any defects discovered during such warranty period.

- 5.9 **Observation of Development and Inspection of Public Improvements.** Salida may observe all Development on the Property, and may inspect and test and/or require the Developer's qualified professional consultant(s) to inspect and test each component of the Public Improvements.
- 5.9.1 The Developer shall hire a qualified geotechnical consultant to provide quality assurance testing during the construction and installation of the Public Improvements, and shall deliver to Salida copies of all test reports.
- 5.9.2 The Developer shall hire a professional engineering consultant to provide construction management and inspections during the construction and installation of the Public Improvements, and to stamp the drawings and plans for the Public Improvements before such drawings and plans are reviewed and approved by the Salida Public Works Director or City Engineer pursuant to paragraph 5.5 above.
- 5.9.3 The Developer shall reimburse Salida for any and all costs associated with Salida's observation of Development on the Property and inspection and testing of the Public Improvements, and Salida will not give its written approval of the Public Improvements, as described in paragraph 5.10 below, until such costs, if any, have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction and installation.
- 5.10 **Salida's Written Approval of Public Improvements.** Upon the Developer's request, the Salida Public Works Director or City Engineer shall inspect the Public Improvements for each phase to ascertain whether they have been completed in conformity with the approved plans and specifications. The Salida Public Works Director or City Engineer shall confirm in writing the date on which the Public Improvements for each phase have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the approved plans and specifications.
- 5.11 **Final Acceptance of Public Improvements.** Upon expiration of the Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, Salida shall issue its final written acceptance of the Public Improvements. Thereafter, Salida shall maintain such Public Improvements.
- 5.12 **Inspection Distinguished from Approval.** A Salida official's inspection and/or verbal approval of the Development, at any particular time, will not constitute Salida's approval of the Public Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.10 above.
- 5.13 **Compliance with Environmental Laws.** During Development, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules,

regulations, orders, or requirements, including without limitation the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

5.14 Reimbursable Costs and Fees. The Developer shall pay to Salida the fees described below at the time set forth below:

5.14.1 The Developer shall reimburse Salida for all fees and actual costs incurred by Salida in connection with Salida's processing and review of the proposed Public Improvements, including without limitation Salida's review of the Developer's Subdivision Improvements Agreement with Poncha Springs and supporting documentation; and Salida's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to Salida's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other reasonable costs incurred by Salida in connection with processing and review of the proposed Public Improvements.

5.14.2 Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.

5.14.3 Reimbursable Costs and Fees attributable to work completed by the City Attorney or by Salida's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by Salida for that work.

5.14.4 Interest will be imposed at rate of 1.5% per month on all balances not paid to Salida within 30 days of the effective date of Salida's invoicing of the Developer for the Reimbursable Costs and Fees, with that effective date determined in accordance with the notice provisions of paragraph 10.6 below. In addition to any and all remedies available to Salida and in the event Salida is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, Salida shall be entitled to collect attorneys' fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

5.15 System Development Fee. Until and through December 31, 2029, Developer shall require its individual lot purchasers to pay fifty percent (50%) of the then-applicable wastewater system development fee to Salida upon closing, with the remaining fifty percent (50%) of the system development fee to Salida upon building permit approval. Said individual lot purchasers will have their wastewater system development fee locked in at the amount applicable at the time of lot closing, based upon the then-effective City of Salida Schedule of Fees, and that fee amount shall continue to be in effect as the applicable system development fee on the property until paid in full at building permit approval. However,

this requirement does not arise until the individual lots are sold and does not arise if the Developer is selling the entire development. Subject to Salida's approval as to proper documentation recorded with the Chaffee County Clerk and Recorder, if the Developer sells the entire development, this obligation will arise when the Developer's successor sells the individual lots, but at no point shall this obligation be due later than the time of building permit application.

Section 6 – Development Schedule

- 6.1 **Development Schedule.** Attached **Exhibit G** provides the schedule according to which Development will occur, including construction and installation of the Public Improvements.
- 6.2 **Development Phases.** Each phase of Development must be planned so that the Developer's failure to proceed to a subsequent stage will not have an adverse impact on Salida's wastewater treatment system, process, or facilities.
- 6.3 **Deadline for Completion and Approval of Sewer Line Extension.** The Developer shall construct and install the Sewer Line Extension, and shall obtain Salida's written approval of the Sewer Line Extension in accordance with paragraph 5.10 above, no later than July 1, 2027. The Developer acknowledges and agrees that this deadline is applicable regardless of the number of units constructed within the Property as of July 1, 2027.

Section 7 – Default by Developer and Salida's Remedies

- 7.1 **Salida's Remedies on Developer's Default.** In the event of the Developer's default with respect to any term or condition of this Agreement, Salida may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:
 - 7.1.1 Suspension of all further activities and approvals related to the Public Improvements.
 - 7.1.2 A demand that the Performance Guarantee be paid or honored.
 - 7.1.3 Any other remedy available in equity or at law.
- 7.2 **Notice of Default.** Consistent the Salida Municipal Code, before taking remedial action hereunder, Salida shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If the default has not been cured within thirty days of receipt of the notice or the date of any hearing before the City Council, whichever is later, Salida will consider whether the Developer has undertaken reasonable steps to timely complete the cure if additional time is required.
- 7.3 **Jurisdiction and Venue.** The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.

- 7.4 **Waiver.** Any waiver by Salida of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances.
- 7.5 **Cumulative Remedies.** Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 8 – Indemnification and Release

- 8.1 **Release of Liability.** The Developer acknowledges that Salida cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Salida Municipal Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by Salida or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by Salida or its officers or agents or their designees.
- 8.2 **Indemnification.**
- 8.2.1 The Developer shall indemnify and hold harmless Salida, and Salida's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) acts or omissions by the Developer or its officers, employees, agents, consultants, contractors, or subcontractors in connection with this Agreement; (b) Salida's required disposal of hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Property or the construction and installation of the Public Improvements; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by Salida upon the Property or the Public Improvements; or (c) any other item contained in this Agreement.
- 8.2.2 The Developer shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against Salida as a result of Salida's approval of the Public Improvements; and shall reimburse Salida for all fees, expenses, and costs, including attorneys' fees and costs, associated with any referendum election, review of petition for referendum, protest, or any other proceedings to challenge Salida's approval of the Public Improvements. Nothing in this Agreement obligates or compels Salida to proceed with any action or referendum position.

- 8.2.3 Fees, expenses, and costs attributable to work completed by Salida staff, not including the City Attorney, will be determined based on the then-effective City of Salida Schedule of Fees.
- 8.2.4 Fees, expenses, and costs attributable to work completed by the City Attorney or by Salida's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by Salida for that work.

Section 9 – Representations and Warranties

- 9.1 **Developer's Representations and Warranties.** The Developer represents and warrants to Salida that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:
- 9.1.1 **Authority.** This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.
- 9.1.2 **Authorized signatory.** The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.
- 9.1.3 **No litigation or adverse condition.** To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as contemplated under the approved final plat.
- 9.1.4 **Compliance with environmental laws and regulations.** To the best of the Developer's knowledge, the Public Improvements and associated easements to be conveyed to Salida hereunder are in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.
- 9.1.5 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.

9.2 **Salida's Representations and Warranties.** Salida represents and warrants to the Developer that the following are true and correct as of the date of Salida's execution of this Agreement and will be true and correct as of the Effective Date:

9.2.1 **Authority.** Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of Salida, and is enforceable as to Salida in accordance with its terms.

9.2.2 **Authorized signatory.** The person executing this Agreement on behalf of Salida is duly authorized and empowered to execute this Agreement on behalf of Salida.

9.2.3 **No conflict.** Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which Salida is a party or by which Salida is bound or affected.

Section 10 – General Provisions

10.1 **Waiver of Defects.** In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of Salida to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of any Ordinances or resolutions authorizing or adopting this Agreement.

10.2 **Final Agreement.** This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to the subject hereof, and is the total integrated agreement between the Parties with respect to that subject.

10.3 **Modifications.** This Agreement may be modified only by a subsequent written agreement executed by both Parties.

10.4 **Voluntary Agreement.** The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.

10.5 **Survival.** Salida's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

10.6 **Notice.** All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.

Notice to Salida:

City of Salida

Attn: City Administrator and City Attorney
448 East First Street
Salida, CO 81201

Copy to: Salida City Attorney Nina P. Williams
c/o Wilson Williams Fellman Dittman
1314 Main Street, Suite 101
Louisville, CO 80027

Notice to the Developer: Tailwind Group LLC
7625 Hwy 50,
Salida, CO 81201

- 10.7 **Severability.** The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.
- 10.8 **Recording.** Salida shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense.
- 10.9 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than Salida and the Developer.
- 10.10 **No Waiver of Immunity.** Nothing in this Agreement, express or implied, waives or is intended to waive Salida's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.
- 10.11 **Joint Drafting.** The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.
- 10.12 **Subject to Annual Appropriation.** Any financial obligation of Salida arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.
- 10.13 **Exhibits.** All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.
- 10.14 **Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

WHEREFORE, the Parties have executed duplicate originals of this Agreement on the day and year first written above.

CITY OF SALIDA, COLORADO

By:

_____, Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this _____ day of _____, 202_,
by Dan Shore, as Mayor, and by _____, as City Clerk, on behalf of the City of
Salida, Colorado.

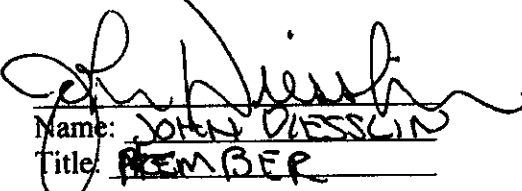
WITNESS my hand and official seal.

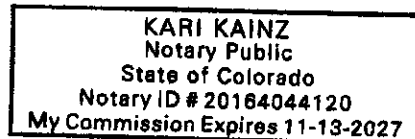
My Commission expires: _____.

Notary Public

TAILWIND GROUP, LLC

By:

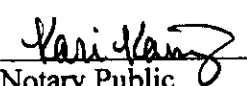

Name: JOHN DIESSLIN
Title: MEMBER



STATE OF COLORADO)
) ss.
COUNTY OF)

Acknowledged, subscribed, and sworn to before me this 31st day of January, 2025 by
John Diesslin

WITNESS my hand and official seal. My Commission expires: 11-13 2027.



Notary Public