

**AMENDED AND RESTATED  
DECLARATION  
FOR  
THE BOUNDARY**

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**AMENDED AND RESTATED  
DECLARATION  
FOR  
THE BOUNDARY**

**THIS AMENDED AND RESTATED DECLARATION FOR THE BOUNDARY** is made and entered into this 20th day of June, 2001, by THE EP BOUNDARY, LLC, a Colorado limited liability company (the "Declarant").

**AMENDMENT AND RESTATEMENT**

**WHEREAS**, the Declaration for The Boundary Townhomes was recorded May 13, 1999 in Book 1129 at Page 711 in the Office of the Clerk and Recorder of Garfield County, Colorado (the "Existing Declaration"); and

**WHEREAS**, Section 13.3 of the Existing Declaration provides that the Declaration may be amended by the vote or agreement of Lot Owners holding at least 75 percent of the votes in The Boundary Townhome Association (the "Association"); and

**WHEREAS**, The EP Boundary, LLC is now the record owner of all of the real property (including all of the Lots) lying within The Boundary at River Valley Ranch, according to the First Amended Plat thereof recorded July 13, 2001 as Reception No. 584310 in the Office of the Clerk and Recorder of Garfield County, Colorado, which is the same real property that is encumbered by the Existing Declaration, and by its execution hereof agrees that the Existing Declaration shall be amended and restated in its entirety as hereinafter set forth; and

**WHEREAS**, by virtue of its ownership of the lands within The Boundary at River Valley Ranch, The EP Boundary, LLC desires to be the "Declarant" in this Amended and Restated Declaration for The Boundary; and

**WHEREAS**, to the extent that it may be necessary or appropriate, Crystal River Limited Partnership, a Delaware limited partnership, being the developer of River Valley Ranch and the Declarant under the Existing Declaration, desires to consent and agree to the execution and recording of this Amended and Restated Declaration for The Boundary. Provided, that Crystal River Limited Partnership shall not be construed to be a "Declarant" under this Amended and Restated Declaration for any purpose.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the said Existing Declaration is hereby amended and restated in its entirety as follows:

## ARTICLE 1

### GENERAL PURPOSES, DECLARATION, MASTER DECLARATION

#### 1.1 General Purposes

Declarant is the owner of all of the real property lying within The Boundary at River Valley Ranch, Town of Carbondale, Garfield County, Colorado, according to the First Amended Plat thereof recorded July 13, 2001 as Reception No. 584310 in the Office of the Clerk and Recorder of Garfield County, Colorado. Said real property, together with all improvements now or hereafter situated thereon, are hereinafter collectively referred to as the "Real Estate". Declarant intends to develop the Real Estate as a planned community, including a condominium component, under the name and style of "The Boundary" pursuant to the provisions of the Colorado Common Interest Ownership Act, Section 38-33.3-101, et. seq. of the Colorado Revised Statutes, as it may be amended from time to time (the "Act"). The planned community hereby created is hereinafter referred to as the "Boundary Community". The Boundary Community shall contain a maximum of thirty-three (33) Lots (including Townhome Lots) and Condominium Units.

#### 1.2 Declaration

For the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Boundary Community and each Lot thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Boundary Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Boundary Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and all Members of the Association, (iv) all Occupants and (v) all Owners, Occupants and other Persons having or acquiring any right, title, or interest in or to the Boundary Community or any part thereof, including any improvements thereon, and their respective heirs, personal representatives, successors and assigns. This Declaration shall also inure to the benefit of the River Valley Ranch Master Association. Provided always, that in the event Declarant and/or the Association provides certain covenants, conditions and restrictions contained herein, Declarant shall not be bound by or is exempt from the application of certain covenants, conditions or restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.



### **1.3 Master Declaration**

The Real Estate and Boundary Community are subject to the Amended and Restated Master Declaration of Protective Covenants for River Valley Ranch recorded March 25, 1998 in Book 1059 at Page 623 in the Office of the Clerk and Recorder of Garfield County, Colorado, as amended by First Amendment recorded January 18, 1999 as Reception No. 538914 and by Second Amendment recorded June 22, 2000 as Reception No. 567997 (the "Master Declaration"), as said Master Declaration may be amended from time to time. This within Declaration shall constitute a Supplemental Declaration to the Master Declaration, as provided in the Master Declaration and in the Act. The Association (hereinafter described) shall constitute a Subassociation as defined in the Master Declaration.

## **ARTICLE 2**

### **DEFINITIONS**

When used in this Declaration, the following terms shall have the meanings hereinafter specified. If a term is not defined herein, it shall have the meaning ascribed to it in the Master Declaration. If a term is not defined herein or in the Master Declaration, it shall have the meaning ascribed to it in the Act.

### **2.1 Allocated Interests**

"Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot, Townhome Lot and Condominium Unit, which interests are allocated as follows:

- (a) The Common Expenses liability for each of the original Lots set forth on the Plat (excluding Townhome Lots or Condominium Units) is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Boundary Community as of the date of recordation of the Plat. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share thereof. The Common Expenses liability of a Lot (but not a Townhome Lot or Condominium Unit) is determined without reference to the size, location, value or use of the Lot.
- (b) One (1) vote in the Association is allocated to each Lot in the Boundary Community, subject to the provisions of subparagraph 2.1(c) below.
- (c) If a Lot within the Boundary Community is subsequently subdivided into Townhome Lots or Condominium Units, the Common Expenses liability for that Lot shall be reallocated based on the gross livable area of the Townhomes or Condominium Units constructed on the Lot exclusive of garages, decks, porches/patios, or other Limited Common Elements. A Townhome Lot's or Condominium Unit's Common Expenses liability is a percentage calculated by dividing the gross livable area of said Townhome or Condominium Unit into the total

gross livable area of all of the Townhomes or Condominium Units constructed on the subject Lot, and then multiplying the quotient derived thereby by 1/11, with the resulting number rounded off to the nearest thousandth. Following any such subdivision of a Lot into Townhome Lots or Condominium Units, one vote in the Association shall be allocated to each such Townhome Lot or Condominium Unit, and the original Lot shall no longer have one vote.

The Allocated Interests for the Boundary Community are specifically set forth on Exhibit A attached hereto and made a part hereof by this reference, as said Exhibit A may be amended from time to time (through Reallocation Amendments or otherwise).

## **2.2 Articles of Incorporation**

"Articles of Incorporation" or "Articles" means the Articles of Incorporation of The Boundary Association, which have been or will be filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

## **2.3 Assessment**

"Assessment" means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

## **2.4 Association**

"Association" means The Boundary Association, a Colorado nonprofit corporation, its successors and assigns.

## **2.5 Board of Directors**

"Board of Directors" or "Board" means the executive body of the Association.

## **2.6 Boundary Community**

"Boundary Community" means the real property depicted and described as The Boundary at River Valley Ranch, Town of Carbondale, Garfield County, Colorado, according to the First Amended Plat thereof recorded July 13, 2001 as Reception No. 584310, together with all improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

## **2.7 Budget**

"Budget" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Board of Directors pursuant to Section 10.7 of this Declaration.

## **2.8 Building or Buildings**

"Building" or "Buildings" means one or more of the townhome or condominium structures that may be constructed from time to time on the Real Estate.

## **2.9 Bylaws**

"Bylaws" means the Bylaws of the Association which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

## **2.10 Common Areas**

"Common Areas" means all of the Boundary Community except the portions thereof which constitute Lots (including Townhome Lots), Condominium Units, and Common Elements. The Common Areas shall be conveyed to the Association upon completion of construction of all Buildings, and shall include, but are not limited to:

- (a) All land designated as Common Area on Resubdivision Plats, and all improvements, landscaping, fixtures and personal property thereon which may from time to time be owned by the Association, and all common lighting, common access road (including without limitation the common water and sewer header system), common access road, and water features within the Boundary Community; and
- (b) All easements created or reserved on the Plat, the Resubdivision Plats, the Condominium Maps, in this Declaration, or in any separate agreement, for the use and benefit of the Association.

## **2.11 Common Elements**

The Boundary Community will contain a condominium component, comprised of up to twelve (12) Condominium Units, which Condominium Units may be constructed and sold in phases. "Common Elements" means all portions of any Condominium (as defined herein) that may be created within the Boundary Community, other than the Condominium Units within the Condominium. Without limiting the generality of the foregoing, the Common Elements include the Lot(s) on which the Condominium Units are constructed, as shown on the Plat, all structural components of the Buildings containing the Condominium Units, all mechanical systems and equipment in such Buildings which exist for the common use of the Condominium Units, and all other parts of the Condominiums used in common by the Owners of the Condominium Units, including the air space above such Lot(s), but not including the Condominium Units. "General Common Elements" means all Common Elements except Limited Common Elements.

## **2.12 Common Expenses**

"Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, but not limited to, the following:

- (a) The costs of maintenance, management, operation, snowplowing, repair and replacement of the Common Areas (including any Limited Common Areas), the Common Elements of the Condominiums, and of all other parts of the Boundary Community which are managed or maintained by the Association;

(b) The costs of maintaining, repairing, and repainting and replacing as needed the exterior walls of the Townhomes and the Condominium Buildings, and reasonable reserves for any of such costs;

(c) The costs of maintaining, repairing, and replacing as needed the roofs of the Townhomes and the Condominium Buildings, and all common utilities within the Boundary Community, and reasonable reserves for any of such costs;

(d) The costs of maintaining and repairing the structural elements of the Townhome Buildings and the Common Elements of the Condominiums, the sidewalks, walkways, driveways, and trash bins within the Boundary Community (including snowplowing), and reasonable reserves for any of such costs;

(e) The costs of maintaining, replacing, and improving the landscaping on the Common Areas and the Common Elements;

(f) The costs of improvements constructed from time to time by the Association on or in connection with the Common Areas, if such costs were included within a duly adopted Budget.

(g) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(h) The costs of insurance maintained by the Association as required or permitted herein;

(i) The costs of utilities and services which are provided to the Association or the Boundary Community or parts thereof and not individually metered or assessed to Lots or Condominium Units, which are provided to the Association or the Boundary Community or parts thereof and not individually metered or assessed to Lots or Condominium Units, and other services which generally benefit and enhance the value and desirability of the Boundary Community;

(j) Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Board of Directors to meet anticipated repairs and expenses including, but not limited to, maintenance, repair and replacement of Common Areas and Common Elements which must be maintained, repaired or replaced on a periodic basis;

(k) Taxes paid by the Association;

(l) The costs incurred by any committees that may be established from time to time by the Board of Directors and compensation that may be paid by the Association to members of such committees;

(m) All expenses expressly declared to be Common Expenses by this Declaration, and all expenses lawfully determined to be Common Expenses by the Board of Directors; and

(n) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas or the Common Elements, or the cost of any other item or service provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, or Rules and Regulations, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

### **2.13 Condominium**

"Condominium" means any part of the Boundary Community depicted on a Condominium Map, in which portions of the real estate (i.e., the Condominium Units) are designated for separate ownership and the remaining real estate (i.e., the Common Elements) is designated for common ownership in undivided interests solely by the Owners of said Condominium Units.

### **2.14 Condominium Map**

"Condominium Map" means the Map of each Condominium in the Boundary Community, as recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, as said Map may be amended from time to time. As provided in the Act, a Condominium Map and a Plat (including a Resubdivision Plat) may be combined in one instrument. In addition to the requirements set forth in Section 38-33.3-209 of the Act, said Map shall depict the floor plan and elevation plan (i.e., horizontal boundaries) of the Condominium Building, the location and dimensions of the horizontal and vertical boundaries of the Condominium Unit (i.e., the elevations of the unfinished interior surfaces of the floors and ceilings of the Condominium Units as established from a datum plane, and the linear measurements showing the thickness of the exterior or perimeter walls of the Condominium Units), and the horizontal location and identification of any Limited Common Elements, including porches, balconies and patios, and the identifying number of each Condominium Unit.

To the extent appropriate, a Condominium Map may amend the lot lines of the underlying Lot platted and shown on the Plat to conform to the as-built locations of the improvements constructed on said Lot, and shall contain such additional dedications, recitals and notes as may be deemed appropriate by Declarant.

Each Condominium Map, and any amendments thereto, shall contain a certificate by a registered land surveyor certifying that the Map contains (i) all of the information required by Section 38-33.3-209 of the Act, and (ii) that the Map was prepared subsequent to substantial completion of the improvements shown thereon.

Declarant hereby reserves to itself and grants and reserves to the Board of Directors the right from time to time, without the consent of any Owner or Mortgagee being required, to amend a Condominium Map (i) to provide consistency between the Condominium Map and

this Declaration, (ii) to satisfy any requirements contained in the Act, and/or (iii) to correct any errors or omissions on the Condominium Map.

#### **2.15 Condominium Unit**

"Condominium Unit" means each of the Condominium Units designated on a Condominium Map, together with all fixtures and improvements therein and appurtenances thereto. Each such Condominium Unit is an individual air space unit, the exterior walls (or the perimeter walls, where such Condominium Units adjoin each other), floors, ceilings, windows and window frames and door frames of the Condominium Building, and which is separately identified on a Condominium Map. The boundaries of each Condominium Unit shall be further defined by the provisions of Section 38-33.3-202 of the Act. A Condominium Unit shall include such Common Elements and Limited Common Elements as may be appurtenant thereto as reflected on the Condominium Map that creates such Condominium Units. A Condominium Unit under this Declaration shall also be a Unit under the Master Declaration.

#### **2.16 Declarant**

"Declarant" means The EP Boundary, LLC, a Colorado limited liability company, its successors, assigns and affiliates. A person shall be deemed to be a "successor and assign" of Declarant if specifically designated in a duly recorded instrument as a successor and assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument. The term "affiliate of Declarant" shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

#### **2.17 Declaration**

"Declaration" means this Declaration for The Boundary, as it may be amended from time to time.

#### **2.18 Limited Common Area**

"Limited Common Area" means a Common Area that is designated by this Declaration, on the Plat, or on a Resubdivision Plat, for the exclusive use of one or more Lots in the Boundary Community but fewer than all of the Lots.

#### **2.19 Limited Common Element**

"Limited Common Element" means a portion of the Common Elements in a Condominium allocated by the Condominium Map by which said Condominium is created for the exclusive use of one or more Condominium Units in the Condominium but fewer than all of said Condominium Units.

#### **2.20 Lot**

"Lot" means each of Lots 1-11 as depicted and described on the Plat. Upon the recording of a Resubdivision Plat or a Condominium Map for one or more of the Lots depicted on the

Plat, said resubdivided or condominiumized Lot(s) shall no longer constitute a Lot (or Lots) under this Declaration, said Lot(s) being superseded by the Townhome Lots or Condominium Units depicted on the Resubdivision Plat(s) or Condominium Map(s). A Lot under this Declaration shall also be a Lot under the Master Declaration.

#### **2.21 Master Association**

"Master Association" means the River Valley Ranch Master Association, a Colorado nonprofit corporation, its successors and assigns.

#### **2.22 Master Declaration**

"Master Declaration" means the Amended and Restated Master Declaration of Protective Covenants for River Valley Ranch recorded March 25, 1998 in Book 1059 at Page 623 in the Office of the Clerk and Recorder of Garfield County, Colorado, as it may have been amended or may hereafter be amended from time to time.

#### **2.23 Member**

"Member" means each Lot or Condominium Unit Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Condominium Unit.

#### **2.24 Mortgage**

"Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Townhome Lot or Condominium Unit, creating a real property security interest in a Townhome Lot or Condominium Unit and recorded in the records of the Clerk and Recorder of Garfield County. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Townhome Lot or Condominium Unit. The term "First Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

#### **2.25 Mortgagee**

"Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

#### **2.26 Mortgagor**

"Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgagor" includes a trustor or grantor under a Deed of Trust.

#### **2.27 Occupant**

"Occupant" means any person who is a tenant in a Townhome on a Townhome Lot, or in a Condominium Unit, pursuant to a lease or agreement with the Owner or any person who is present within the Boundary Community as a family member, guest or invitee of an Owner, an Occupant, or the Association.

### **2.28 Owner**

"Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Lot or Condominium Unit, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Unit Owner", as that term is defined in the Act.

### **2.29 Permitted Exceptions**

"Permitted Exceptions" means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of record, as of the date this Declaration is recorded, which encumber the title to all or any part of the Boundary Community. This Declaration shall be subject to such Permitted Exceptions.

### **2.30 Person**

"Person" means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity.

### **2.31 Plat**

"Plat" means the First Amended Plat of The Boundary at River Valley Ranch as recorded July 13, 2001 as Reception No. 584310 in the Office of the Clerk and Recorder of Garfield County, Colorado, as said Plat may be amended from time to time.

### **2.32 Reallocation Amendment**

"Reallocation Amendment" means the document that is recorded contemporaneously with the recording of a Resubdivision Plat or a Condominium Map for purposes of (i) reallocating the Allocated Interests set forth in Exhibit A hereto in accordance with Section 2.1 above, and (ii) reallocating the Allocated Interests set forth in Exhibit C to the Master Declaration to reflect the new Lot and Condominium Unit total in River Valley Ranch following the recording of the Resubdivision Plat or Condominium Map.

### **2.33 Regular Assessment**

"Regular Assessment" means a charge against each Owner and the Owner's Lot or Condominium Unit for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Board of Directors in accordance with Section 10.6 below, and are allocated to the Lots or Condominium Units in accordance with the Allocated Interests, except that Common Expenses that benefit fewer than all of the Lots or Condominium Units shall be allocated exclusively to the Lots or Condominium Units benefited.

### **2.34 Reimbursement Assessment**

"Reimbursement Assessment" means a charge against a particular Owner and the Owner's Lot or Condominium Unit for the purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying or repairing of any violation by the Owner or an Occupant of this



Declaration, or any amendment thereto, the Articles, Bylaws, or Rules and Regulations, or for other purposes set forth in the Declaration, pursuant to Section 10.9 hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Lot or Condominium Unit Owner or of such Owner's Occupants.

### **2.35 Resubdivision Plat**

"Resubdivision Plat" means each Resubdivision Plat that may be recorded from time to time for purposes of subdividing a Lot or Lots depicted on the Plat into Townhome Lots, as said Resubdivision Plat may be amended from time to time. To the extent appropriate, a Resubdivision Plat shall amend the Lot lines of the Lot(s) platted and shown on the Plat to conform to the as-built locations of the improvements constructed on the Lot(s) depicted on the Resubdivision Plat, and shall contain such additional dedications, recitals and notes as may be deemed appropriate by Declarant. Each such Resubdivision Plat shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, and shall be deemed incorporated in this Declaration by this reference. As provided in the Act, a Resubdivision Plat and a Condominium Map may be combined in one instrument.

A Resubdivision Plat, and any amendments thereto, shall contain a certificate by a registered land surveyor that the Plat contains (i) all of the information required by Section 38-33.3-209 of the Act, and (ii) that the Plat was prepared following substantial completion of the improvements shown thereon.

Declarant hereby reserves to itself and grants and reserves to the Board of Directors the right from time to time, without the consent of any Owner or Mortgagee being required, to amend a Resubdivision Plat (i) to provide consistency between the Resubdivision Plat and this Declaration, (ii) to satisfy any requirements contained in the Act, and/or (iii) to correct any errors or omissions on the Resubdivision Plat.

### **2.36 Rules and Regulations**

"Rules and Regulations" means such rules and regulations as may be adopted from time to time by the Board of Directors, as provided in Section 7.3 of this Declaration.

### **2.37 Special Assessment**

"Special Assessment" means a charge against each Owner and the Owner's Lot or Condominium Unit for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair or replacement of capital improvements within the Boundary Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association, as authorized by the Board of Directors from time to time as provided herein.

### **2.38 Town**

"Town" means the Town of Carbondale, Colorado.

### **2.39 Townhome**

"Townhome" means the residential improvements that may be constructed from time to time on each of the Townhome Lots.

### **2.40 Townhome Lot**

"Townhome Lot" means each Townhome Lot that may be depicted and described on a Resubdivision Plat. Each Townhome Lot shall be considered a Lot for purposes of this Declaration and the Master Declaration.

## **ARTICLE 3**

### **GENERAL PROVISIONS AND RESTRICTIONS APPLICABLE TO THE BOUNDARY COMMUNITY**

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Boundary Community, all in order to enhance the value, desirability, and attractiveness of the Boundary Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Boundary Community shall be owned, held, used occupied, improved, altered, maintained, conveyed, leased, rented, hypothecated, encumbered, transferred and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions.

#### **3.1 Description of a Lot or Condominium Unit**

Every contract, deed, lease, security interest and every other legal document or instrument affecting title to a Lot or Condominium Unit may legally describe that Lot or Condominium Unit as follows:

(a) Lot \_\_\_\_ [or Townhome Lot \_\_\_\_], The Boundary, according to the First Amended Plat recorded \_\_\_\_\_, 2001 as Reception No. \_\_\_\_\_ [or the Resubdivision Plat recorded as Reception No. \_\_\_\_\_], and according to the Amended and Restated Declaration for The Boundary recorded in Book \_\_\_\_ at Page \_\_\_\_, all in the Office of the Clerk and Recorder of Garfield County, Colorado, or

(b) Condominium Unit \_\_\_\_, The Boundary, according to the Condominium Map recorded as Reception No. \_\_\_\_\_, and according to the Amended and Restated Declaration for The Boundary recorded in Book \_\_\_\_ at Page \_\_\_\_, all in the office of the Clerk and Recorder of Garfield County, Colorado

Such description shall be legally sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Lot or Condominium Unit and its appurtenances, including all improvements thereon [and, in the case of Condominium Units, their respective undivided

interests in the Common Elements], and to incorporate all of the rights, interests, obligations, restrictions and burdens appurtenant or incident to ownership of a Lot or Condominium Unit as set forth in this Declaration, the Master Declaration, the Plat, and the pertinent Resubdivision Plat or Condominium Map. Each such description shall be deemed to include a non-exclusive easement over the Common Areas [and the Common Elements, in the case of a Condominium Unit] for appropriate ingress and egress to and from each Lot or Condominium Unit, and a non-exclusive right to use and enjoy the Common Areas (excepting any Limited Common Areas), subject to this Declaration.

### **3.2 Townhome Lot and Condominium Unit Boundaries**

The Lot lines shown on a Resubdivision Plat shall be the perimeter boundaries of the Townhome Lots, except where exterior structural elements of a Townhome as originally constructed extend beyond such Lot lines, in which case the structural elements as built shall represent the perimeter boundary of the Townhome Lot. Where two Townhomes share a common wall, said common wall shall be deemed divided equally in half vertically through its center, and each half shall be deemed a part of and owned by the Lot adjacent to that half of the common wall. Townhome Lots shall not be deemed to have an uppermost horizontal boundary, as each Townhome Lot includes ownership of the underlying platted Lot. With respect to Condominium Units, the boundaries of the airspace units are described in Section 2.15 above.

### **3.3 No Partition or Subdivision**

Common Areas shall be owned by the Association as herein provided and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the Common Areas. Similarly, no action shall be brought for the subdivision or physical partition of a Townhome Lot or the improvements thereon between or among two or more Owners thereof. With respect to the Common Elements appurtenant to the Condominium Units, no Owner thereof and no other Person shall bring any action for partition or physical division of said Common Elements.

### **3.4 Separate Assessment**

Declarant shall give written notice to the Assessor of Garfield County, Colorado requesting that the Lots and Condominium Units be separately assessed and taxed and that the total value of the Common Areas be assessed and taxed proportionately in accordance with the allocated Common Expense liability of each Lot and Condominium Unit. After this Declaration has been recorded in the real estate records of Garfield County, Colorado, Declarant shall deliver a copy of this Declaration as recorded to the Assessor of Garfield County, Colorado.

### **3.5 Mechanic's Liens**

- (a) If any Owner shall cause or permit any material to be furnished to such Owner's Lot or Condominium Unit or any labor or services to be performed thereon, no

Owner of any other Lot or Condominium Unit shall be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor, services or materials to such Owner's Lot or Condominium Unit. Nothing herein contained shall authorize any Owner or any person dealing with any Owner to charge the Common Areas or any Lot or Condominium Unit other than that of such Owner with any mechanic's or materialmen's lien or other lien or encumbrance whatsoever. Notice is hereby given that the Lot(s) to which that the Limited Common Area is appurtenant, or any lien or encumbrance of any kind against the Common Areas or against any Owner or any Owner's Lot or Condominium Unit for work done or materials furnished to any other Owner's Lot or Condominium Unit is hereby expressly denied.

(b) If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against any of the Common Areas or against any other Owner's Lot or Condominium Unit or against the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall, at such Owner's own cost and expense, cause said lien or order to be canceled or bonded or over in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within twenty (20) days after the filing thereof, and further such Owner shall indemnify and hold harmless the Association, any other Owner or the Association affected from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees resulting therefrom.

### **3.6 Additions, Alterations or Improvements**

No additions, alterations, changes or improvements shall be constructed, made, done, or performed to any Lot or Townhome or Condominium Unit by any Owner, Occupant, or employee or agent thereof, without the prior written approval of the Board of Directors. Without limiting the generality of the foregoing, said restrictions shall apply to and include (i) alteration or change of any structural elements of a Townhome or Condominium Building, including the roof, (ii) painting, staining or other alteration or change of the exterior of a Townhome or Condominium Building, including doors and windows, (iii) alteration or change of any Common Elements (including Limited Common Elements) appurtenant to the Condominium Units, or (iv) addition, alteration, change or removal of any landscaping. The foregoing restrictions shall not apply to nonstructural additions, alterations, changes or improvements to the interior of a Townhome or of a Condominium Unit, that are not visible from outside the Townhome or Condominium Unit, that have no adverse impact on another Townhome or Condominium Unit, and that are in compliance with this Declaration and with all applicable laws, ordinances, regulations and codes. Except for alterations to Limited

Common Areas which have received the prior written approval of the Board of Directors of the Association, no Owner or Occupant shall have any right to alter, change or improve any Common Areas or any part thereof, said Common Areas being the exclusive responsibility and jurisdiction of the Association.

If an Owner applies for approval to modify the exterior of a Townhome or Condominium Unit, the Board of Directors shall exercise its best judgment to the effect that all modifications conform to and harmonize with neighboring structures. The Board of Directors shall have the absolute right to deny any requested changes which the Board of Directors reasonably determines do not conform to and harmonize with neighboring structures. The provisions for architectural control contained in the Master Declaration shall be in addition to, and not in lieu of, the development review provisions contained in the Master Declaration. The Board of Directors' granting of approval for proposed modifications hereunder shall not dispense with the need to comply with the review and approval procedures set forth in Article 4 of the Master Declaration. All proposed alterations shall first be approved pursuant to this Declaration before being submitted for approval pursuant to the Master Declaration.

If the Association desires to make any additions, alterations, changes or improvements to the exterior of any Townhome or Condominium Building, or to the Common Areas, the Association shall first obtain the consent of the Development Review Committee of the Master Association pursuant to the requirements and procedures set forth in Article 4 of the Master Declaration.

### **3.7 Maintenance of the Boundary Community**

All property within the Boundary Community, including without limitation all Lots, Townhomes, Condominium Units and Buildings, Common Areas and Limited Common Areas, and Common Elements and Limited Common Elements shall be kept and maintained in a clean and attractive condition and in good condition and repair.

(a) Association Maintenance Responsibilities. The Association shall be responsible for (i) maintaining, repairing and replacing as needed the structural elements and roofs of all Buildings, (ii) landscaping and maintaining the landscaping on any portions of the Lots or Condominiums lying between the lot lines and the Buildings, (iii) maintaining (including snowplowing, repairing, and altering and improving when necessary or desirable, all Common Areas (including Limited Common Areas) and Common Elements (including Limited Common Elements), including without limitation landscaping, irrigation and drainage systems, water features, streets, driveways, parking areas, sidewalks, walkways, and common lighting and utilities, (iv) maintaining any common utility lines within the Townhome Lots or Condominiums, and (v) maintaining, repairing, improving, painting, staining or other resurfacing when necessary of the exterior portions of all Buildings, including but not limited to

the exterior doors, windows, decks, balconies, porches and patios of the Townhomes and Condominiums. No individual Lot or Condominium Unit Owner shall have any right to do any of such things without the express prior written consent of the Board of Directors. The Association shall have the sole authority to determine the time and manner in which the above-described maintenance and improvements shall be performed, as well as the color or type of materials used.

If the need for such maintenance or repair results from the willful or negligent act of or from damage or destruction caused by an Owner or Occupant, the Board of Directors shall have the right to perform such maintenance or repair and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Lot or Condominium Unit for the costs and expenses incurred by the Association in connection therewith. Maintenance and repair of Limited Common Areas or Limited Common Elements shall be charged to the Owners entitled to the use of said Limited Common Areas or Limited Common Elements.

(b) Owner Maintenance Responsibilities. Each Owner shall be responsible for maintaining, repairing and improving as necessary all interior elements and features of the Owner's Townhome or Condominium Unit including interior non-supporting walls, ceilings, floors, improvements, fixtures, equipment, appliances and appurtenances, and for replacing broken window panes. In addition, each Owner shall be responsible for any damage to other Townhomes or Condominium Units or Common Areas or Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth herein. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners or Occupants.

If an Owner fails to perform any such maintenance or repair obligations within 10 days following receipt of a written notice from the Board of Directors requesting the same, the Board of Directors shall have the right to enter upon the Townhome or Condominium Unit of the Owner to cure the violation or otherwise to cause compliance with the provisions of the Bylaws, and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Lot or Condominium Unit for the costs and expenses incurred by the Association in connection therewith.

(c) Standard of Care. The Association and the individual Lot and Condominium Unit Owners shall each use a reasonable standard of care in performing their respective maintenance, repair and upkeep responsibilities so that the entire Boundary Community will reflect a pride of ownership. All repairs and replacement within the Boundary Community shall be substantially similar to the original construction and craftsmanship and shall be of first-class quality.

(d) Emergency Maintenance and Repair. Notwithstanding any other provisions of this Section 3.7, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of persons or property within the Boundary Community, the Board of Directors shall have the authority (without any notice being required) to take whatever remedial action and to undertake such maintenance, repairs and improvements as may be necessary anywhere in the Boundary Community to protect persons and property, including the right to enter into the interior of a Townhome or of a Condominium Unit to perform such responsibilities.

(e) Maintenance Easements. The Association and the Board of Directors and their respective agents, employees and contractors are hereby granted perpetual, non-exclusive easements to enter upon the Lots, Townhomes, Common Areas, Limited Common Areas, Condominium Units, Common Elements and Limited Common Elements, as may be appropriate to perform the maintenance, repair and improvement responsibilities and rights described in this Section 3.7.

### **3.8 Compliance with Laws**

No Owner or Occupant shall do any act or cause or permit anything to be done or kept in or upon its Lot or Condominium Unit or any Common Areas or Common Elements which would be in violation of any federal, state, or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Rule or Regulation promulgated by the Association, or of any provision of this Declaration, or which otherwise would result in the increase of, or cancellation of, insurance maintained by the Association.

### **3.9 Residential Use; Parking**

Each Townhome and Condominium Unit shall be improved, occupied and used only for single-family residential purposes. No business, professional or other non-residential or commercial use shall be made of any Townhome or Condominium Unit, or conducted in any Townhome or Condominium Unit, excepting in-home businesses that do not involve business other than Owners, the solicitation or invitation of the general public, or the servicing of customers, and which activities are conducted entirely within the Townhome or Condominium Unit and do not cause any additional traffic or parking within the Boundary Community or otherwise create a nuisance for neighboring Townhomes or Condominium Units or the Boundary Community. In two-bedroom Townhomes or Condominium Units with one-car garages, the garages must in fact be used for the parking of a motor vehicle, and only the leftover space (if any) may be used for storage.

### **3.10 Unsightliness; Sporting Equipment; Clothes Drying**

Decks, patios, balconies, porches, Limited Common Areas and Limited Common Elements shall not be used for storage of personal property of any kind, and nothing shall be placed on window sills or windows or doors or otherwise on the exterior of Townhomes or

Condominium Units which create an unsightly appearance. Sporting equipment (e.g., skis, snowboard, bikes, mountain bikes, kayaks, canoes, etc.), must be stored completely within the Townhome or Condominium Units and shall not be allowed to remain outside except when in actual use. No laundry or wash shall be dried or hung outside anywhere within the Boundary Community.

### **3.11 Association Landscaping**

All landscaping within the Boundary Community shall be the responsibility of the Association, and no Owner or Occupant shall perform any landscaping activities within the Boundary Community (including without limitation the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens) without the express prior written approval of the Board of Directors.

### **3.12 Right of Entry**

During reasonable hours and upon reasonable notice to the Owner or Occupant of a Townhome or Condominium Unit, any member of the Board of Directors, and any authorized representative thereof, shall have the right to enter upon and inspect any Townhome or Condominium Unit, except for any Townhome or Condominium Unit that is in the occupancy of a tenant, if written permission is required for the permission of the occupant except in the case of emergency, as provided in Section 3.5 below), for the purpose of ascertaining whether or not the provisions of this Declaration or of the Master Declaration or any Rules or Regulations have been or are being complied with and such individuals shall not be deemed guilty of trespass by reason of such entry.

### **3.13 Health, Safety and Welfare, Rules and Regulations**

In the event any uses, occupancies, activities, and facilities within the Boundary Community are deemed by the Board of Directors to be an unreasonable annoyance or nuisance, or to threaten the health, safety or welfare of Owners or Occupants, the Board of Directors may adopt reasonable Rules and Regulations of general application in order to appropriately restrict and regulate such uses, occupancies, activities and facilities within the Boundary Community. Such Rules and Regulations shall be consistent with the purposes and provisions of this Declaration.

### **3.14 Declarant Activities**

Nothing contained in this Declaration is intended or shall be construed to prevent or restrict in any way Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease or dispose of the Boundary Community, the Lots, the Townhome Lots, and the Condominium Units, or any part thereof, including the right to construct improvements and install signs thereon, all in the complete discretion of Declarant.



## **ARTICLE 4**

### **DECLARANT'S RESERVED RIGHTS**

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration in the County Clerk and Recorder's office and terminating as of such date as established under Section 4.10 below. It is expressly understood that Declarant shall not be obligated to exercise any one of these reserved rights.

Except as limited by this Article 4, such reserved rights may be exercised upon or in connection with all or any portion of the Boundary Community. Such rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which parcels may be subjected to the exercise of these reserved rights, even if a particular use is to a phase or phasing appears in a legal description, Plat, P.U.D. Agreement or other agreement relating to the property; and (ii) if a particular reserved right is exercised in any portion of the real estate subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of that real estate.

The reserved rights hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and Condominium Units and other portions of the Boundary Community shall, whether or not by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article 4, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article 4 shall limit or impair any legal rights that Declarant may have independent of these reserved rights, or any other rights granted or reserved to Declarant by other provisions of this Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

#### **4.1 Completion of Improvements**

The right throughout the Boundary Community to complete (and perform warranty work on) improvements indicated on the Plat or any Resubdivision Plat or Condominium Map, as such Plat or Resubdivision Plat or Condominium Map may be amended from time to time, including the Townhome and Condominium Buildings. Furthermore, the right to grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted easements, upon or across any portion of the Boundary Community except Townhome or Condominium Buildings, as may be reasonably required for completion of improvements or

the effective exercise by Declarant of any of the other reserved rights described in this Article 4.

#### **4.2 Sales, Marketing and Management**

The right to construct, locate or operate, and to maintain upon, and to remove from, any portion of the Boundary Community (including Townhomes and Condominium Units) owned by Declarant, and/or the Common Areas or Common Elements, in the discretion of Declarant, and in such number, size and location as may be reasonably required for connection with the completion of improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

- (a) Sales offices, management offices and/or construction offices, and structures containing or relating to the same. Such offices shall be occupied by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot or Condominium Unit Owner.
- (b) Signs identifying and advertising the Boundary Community and the Lots and Condominium Units therein, or relating to development or construction thereon.
- (c) Model Townhomes or Condominium Units.
- (d) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Boundary Community and the Lots and Condominium Units to prospective Owners.
- (e) Employees in offices; equipment, vehicles, and marketing and construction materials

Together with the right to attract, invite or bring prospective purchasers of Lots or Condominium Units into the Boundary Community at all times.

#### **4.3 Merger**

The right to merge or consolidate the Boundary Community with another common interest community of the same form of ownership.

#### **4.4 Declarant Control of Association**

The right to appoint or remove any member of the Board of Directors or officer of the Association, as more specifically set forth in Section 7.6 below, but only for and during the "Period of Declarant Control" as defined in said Section 7.6.

#### **4.5 Withdrawal Rights and Procedures**

The right at any time and from time to time to withdraw from the Boundary Community any Declarant-owned Lot or Lots or Common Areas.

Withdrawal shall be accomplished by the recording by Declarant of an amendment to this Declaration and an amendment to the Plat. Upon the recording of such amendments, the withdrawn Lots and/or Common Areas shall no longer be part of the Boundary Community and are subject to this Declaration in any way.

Each Declarant-owned Lot, and each Declarant-owned Common Area, is hereby described and declared to be a separate portion of real estate that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant-owned Lots and/or all or a portion of any Declarant-owned Common Area from the Boundary Community, and to vacate any platted easements thereon. Once a Lot has been conveyed to a Lot Owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal.

Likewise, once a Common Area has been conveyed to the Association, that portion of the real estate is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be essential for access or utility service to, or operation or management or use or enjoyment of, the Boundary Community or any part thereof. Similarly, the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property over and across the Common Areas within the Boundary Community. At the time any withdrawal of real estate is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the Garfield County records.

#### **4.6 Effect of Contraction**

In the event any real property is withdrawn from the Boundary Community as provided herein, the definitions used in this Declaration shall be automatically contracted to encompass and refer to the Boundary Community as contracted, e.g., "Boundary Community" shall mean the real property described herein minus any property withdrawn therefrom, similarly, "Common Areas" and "Lots" shall mean and include those areas as described herein less those so designated on any amendment to a Declaration or Plat relating to any real property which is withdrawn pursuant to this Article 4. References to this Declaration shall mean this Declaration as so amended.

The recording of amendments to the Declaration and Plat which reallocate the Allocated Interests in the Boundary Community shall automatically:

- (a) Vest in each existing Lot and Condominium Unit Owner the reallocated Allocated Interests appurtenant to the Owner's Lot or Condominium Unit; and
- (b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot or Condominium Unit.

#### **4.7 Subdivision or Condominiumization of Lots**

Declarant shall have and hereby reserves the right to subdivide or condominiumize any Declarant-owned Lot located within the Boundary Community to create Townhome Lots and Common Areas or Condominium Units and Common Elements, subject to the maximum number of Lots and Condominium Units set forth in the Recitals to this Declaration, and to record a Reallocation Amendment in connection therewith. Upon the subdivision or condominiumization of one or more Lots into Townhome Lots and Common Areas or Condominium Units and Common Elements, the Allocated Interests of all Owners shall be reallocated by Reallocation Amendment in accordance with the definition of Allocated Interests contained in this Declaration.

#### **4.8 Other Reserved Development Rights**

The right with respect to all or any Declarant-owned portion of the Boundary Community (including the Lots and Condominium Units) to (a) create Common Areas or Limited Common Areas, (b) create or designate Limited Common Elements, (c) create additional Townhome Lots or Condominium Units, subject to the maximum set forth in the Recitals to this Declaration; (d) subdivide or condominiumize Lots as set forth in Section 4.7 above, (e) combine Lots or Townhome Lots or Condominium Units, (f) convert Lots or portions of Lots into Common Areas, and (g) convert Common Areas or portions of Common Areas into Lots or Townhome Lots.

#### **4.9 Transfer of Declarant's Reserved Rights**

Any one or more rights created or reserved under this Article 4 for the benefit of Declarant, specifically including without limitation the right to subdivide or condominiumize a Lot into Townhome Lots and Common Areas or Condominium Units and Common Elements and to record a Reallocation Amendment in connection therewith, may be transferred to any Person by an instrument describing the right or rights transferred and recorded in Garfield County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of Declarant's reserved rights.

#### **4.10 Termination of Declarant's Reserved Rights**

With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, which is addressed in Section 7.5 below, the rights reserved to Declarant in this Article 4 shall automatically terminate and expire upon the first to occur of (i) the date which is 30 years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the

development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

## **ARTICLE 5**

### **EASEMENTS**

#### **5.1 Easements for Incidental Encroachments**

If any portion of a Building encroaches upon a Common Area or Common Elements, including any future encroachments arising or resulting from the repair or reconstruction of a Building subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment. In addition, there is hereby created, granted and reserved to each Owner from time to time of a Lot, non-exclusive easements over, upon and beneath the Common Areas and the Lots of other Owners for the horizontal and lateral support of said Owner's Townhome.

#### **5.2 Blanket Association Utility and Drainage Easement Over Common Areas and Common Elements**

There is hereby created, granted and reserved to the Association, its agents, employees and assigns a perpetual, non-exclusive blanket easement over, across, upon and under the Common Areas and Common Elements for construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, pipes, wires, circuits, conduits, meters, facilities and systems, and drainage systems, for the benefit of the Boundary Community or any part thereof or neighboring lands, including but not limited to water, sewer, gas, telephone, electricity, cable TV and other common TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes. The Association or other person or entity exercising such utility and drainage easement rights shall be obligated to repair any damage occasioned and/or relandscape the surface of any disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility work.

#### **5.3 Association Common Utility Easement Within Townhome Lots and Condominium Buildings**

There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement along the course of all utility lines that may exist from time to time within the Townhome Lots and the Condominium Buildings and that serve more than one Townhome or Condominium Unit, for the operation, maintenance, repair, removal and replacement of such common utility lines, together with an easement for access, ingress and egress over the Townhome Lots or Condominium Units/Common Elements to accomplish such purposes. The Association or other person or entity exercising

such utility easement rights shall be obligated to repair any damage occasioned by the exercise of such rights.

#### **5.4 Association Administrative Easement Over Common Areas and Common Elements**

There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Common Areas and Common Elements and a right to use the Common Areas and Common Elements for purposes of enabling the Association to perform its various rights under this Declaration and to exercise its various rights under this Declaration.

#### **5.5 Association Easement Upon Townhome Lots and Townhomes and Condominium Units for Maintenance, Repair and Emergencies**

There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon all Townhome Lots and Townhomes and Condominium Units as necessary for the performance of the Association's rights and responsibilities under this Declaration (including the exercise of the Association's common utility easement rights) and for the making of emergency repairs or reconstruction to the Buildings, the Townhomes, the Common Areas, the Condominium Units, and/or the Common Elements. For routine maintenance and non-emergency repairs (including routine maintenance and repair of common utility lines within Townhome Lots or Condominium Buildings), entry to a Townhome or Condominium Unit shall be made only on a regular business day during regular business hours, after giving no less than 24 hours' notice in writing to the Owner or Occupant. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided there is a reasonable effort is made to give notice and permitted entry. The Board of Directors is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Townhome or Condominium Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and/or damage results from the willful or gross negligence of an Owner or Occupant, in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage. These costs can be levied, assessed and collected by the Board of Directors as a Reimbursement Assessment pursuant to the provisions of this Declaration.

#### **5.6 Declarant Easement Over Common Areas and Common Elements**

There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all Common Areas and Common Elements, including without limitation all easements benefiting the Association, including a right of access, ingress and egress thereto, and a right to use such Common Areas and Common Elements and Association easements, and each and every part thereof, for all

purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing, and sale of the Boundary Community and all portions thereof, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or under the Supplemental Subdivision Improvement Agreement recorded in Book 1129 at Page 692, as amended, or any other Declarant obligations relating to the Boundary Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the date which is thirty (30) years after the recording of this Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by recorded instrument.

#### **5.7 Blanket Emergency Services Easement**

There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Boundary Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Boundary Community, for use in the lawful performance of their duties.

#### **5.8 Easements Deemed Created**

All conveyances of Lots and Condominium Units hereafter made, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 5 and elsewhere in this Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

#### **5.9 Recorded Easements and Licenses**

In addition to the easements described in this Article 5 and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Boundary Community are set forth on Exhibit B attached hereto and made a part hereof by this reference.

### **ARTICLE 6**

#### **COMMON AREAS**

##### **6.1 Use and Enjoyment of Common Areas**

With the exception of Limited Common Areas, and except as otherwise provided in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas in common with all other Owners (and Occupants) for all purposes for which such Common Areas were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot or Condominium Unit owned by the Owner or Common Areas available for the Owner's use. This right to use and enjoy the Common Areas shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and shall be appurtenant to each Lot and Condominium

Unit, subject at all times to the provisions of this Declaration, the Articles and Bylaws, and any Rules and Regulations adopted by the Board of Directors of from time to time. No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Areas, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Area by all Owners and by the Association.

With respect to Limited Common Areas, each Owner (and Occupant) of a Townhome Lot and Condominium Unit designated by this Declaration or by a Resubdivision Plat for the use of such Limited Common Areas shall have the non-exclusive right to use and enjoy the same in common with all other Owners (and Occupants) of Townhome Lot and Condominium Units as designated for all purposes for which the Limited Common Area was created, subject to such Rules and Regulations as may be adopted from time to time by the Board of Directors.

#### **6.2 Association May Regulate Use of Common Areas**

The Association, acting through the Board of Directors, shall have the right and authority to regulate the use of the Common Areas (including the Limited Common Areas) by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association deems necessary or appropriate for the protection and preservation of the Common Areas and the enhancement of the use and enjoyment thereof by the Owners and Occupants.

#### **6.3 Association to Maintain and Improve Common Areas**

The Association, its agents and employees, shall maintain, snowplow and otherwise manage the Common Areas (including the Limited Common Areas), including, but not limited to, any improvements, landscaping, water features, streets, driveways, parking areas, sidewalks, common utilities, and recreational and other facilities located thereon. The Association shall construct, alter and remove improvements and landscaping upon the Common Areas as the Association in its discretion considers necessary, desirable or appropriate from time to time, and shall do all such other and further acts which the Board of Directors deems necessary or appropriate to preserve, protect and enhance the Common Areas and the beauty thereof in accordance with the general objectives for the Boundary Community reflected in this Declaration. Separate bids shall be obtained for the maintenance of Limited Common Areas so that the costs thereof can be assessed exclusively to the Lots benefited thereby.

#### **6.4 Owner Liability for Owner or Occupant Damage to Common Areas**

Each Owner shall be liable to the Association for any damage to Common Areas or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Areas arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation or code, including without limitation any environmental



law, or of any provisions of this Declaration, or the Rules and Regulations relating to the Common Areas. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against a Lot or Condominium Unit Owner to recover the costs, expenses, damage, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations by the Owner or the Owner's Occupant.

#### **6.5 Damage or Destruction to Common Areas**

In the event of damage to or destruction of the Common Areas, including improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Section 8.2 below. Repair, reconstruction, or replacement of Common Areas shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and operation of Common Areas or for any other use deemed appropriate by the Board of Directors. Damage to any personal property within a Limited Common Area shall be the responsibility of the Owner(s) of the Lot(s) to which said Limited Common Area is appurtenant.

#### **6.6 Condemnation of Common Areas**

If any Common Area or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Common Area taken or purchased shall be paid to the Association. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other persons therein. Any award or funds received by the Association shall be held by the Association for the purposes stated in Section 6.5 above or as a reserve for future maintenance, repair, reconstruction, or replacement of Common Areas or may be used for improvements or additions to or operations of Common Areas or such other uses as may be deemed appropriate by the Board of Directors. Except as may otherwise be provided by the Act, no Owner or other person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

#### **6.7 Title to Common Areas Upon Dissolution of Association**

In the event of dissolution of the Association, the Common Areas shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for which the Common Areas were held by the Association. If the foregoing is not possible, the Common Areas shall be sold or disposed of and the proceeds

from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Association.

#### **6.8 Mechanic's Liens on Common Areas**

Declarant shall be responsible for the release of mechanics' liens filed with respect to Common Areas, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanic's liens filed with respect to Common Areas, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot or Condominium Unit at the instance of the Owner thereof shall be the basis for filing a lien against the Common Areas. No labor performed or materials furnished with respect to a Common Area at the instance of the Board of Directors shall be the basis for filing a lien against any Lot or Condominium Unit.

### **ARTICLE 7**

#### **ASSOCIATION**

##### **7.1 Association; General Powers**

The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Boundary Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas and Common Elements, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles and the Bylaws. The Association shall have all of the powers and duties as may be necessary or appropriate for the management of the business and affairs of the Boundary Community, including without limitation all of the powers, authority and duties of a Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act. The Association shall have the power to assign its right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Lots and Condominium Units holding at least 51 percent of the votes in the Association. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

The Association shall have the power to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants. The Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or

managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot and Condominium Unit. All financial and other records of the Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

## **7.2 Association Board of Directors**

The affairs of the Association shall be managed by a Board of Directors. The number, term, and qualifications of the members of the Board of Directors shall be fixed in the Articles of Incorporation or the Bylaws, except that there shall never be less than 3 members. A quorum shall be deemed present throughout any meeting of the Board of Directors if persons entitled to cast at least 30 percent of the votes on the Board of Directors are present at the beginning of the meeting or grant their proxies, as provided in Colorado Revised Statutes Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3) of the Act, all regular and special meetings of the Board of Directors or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no joint meeting or discussion involving both Directors or any committee thereof shall be open to attendance by all Members of the Association or their representatives during an executive session. Agendas for meetings of the Board of Directors shall be made reasonably available for examination by all Members of the Association or their representatives.

The Board of Directors shall have all of the powers, authority and duties granted or delegated to it by the Act, this Declaration, the Articles or Bylaws. Except as provided in the Act, this Declaration, the Articles or Bylaws, the Board of Directors may act in all instances on behalf of the Association.

The Board of Directors may not, however, act on behalf of the Association to amend this Declaration, to terminate the Boundary Community, or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of Board of Directors members, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. No member of the Board of Directors and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

### **7.3 Rules and Regulations**

The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Board of Directors may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, and the use and enjoyment of the Common Areas and/or Common Elements. Such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner. Each Owner shall receive at least one copy of the currently effective Rules and Regulations upon request and payment of the reasonable expense of copying the same. Each Lot and Condominium Unit Owner shall receive a notice of Occupants claiming through such Owner comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between such Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

### **7.4 Membership in Association**

There shall be one Membership in the Association for each Lot (including Townhome Lot) and Condominium Unit within the Boundary Community. The person or persons who constitute the Owner of a Lot or Condominium Unit shall automatically be the holder of the Membership appurtenant to that Lot or Condominium Unit, and shall collectively be the "Member" of the Association with respect to that Lot or Condominium Unit, and the Membership appurtenant to that Lot or Condominium Unit shall automatically pass with fee simple title to the Lot or Condominium Unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot or Condominium Unit, and may not otherwise be separated from ownership of a Lot or Condominium Unit.

### **7.5 Voting Rights of Members**

Each Lot (including Townhome Lot) and Condominium Unit in the Boundary Community shall be entitled to one vote in the Association, i.e., one vote per Owner/Member. Occupants of Lots or Condominium Units shall not have voting rights. If title to a Lot or Condominium Unit is owned by more than one (1) person, such joint Membership vote shall carry one vote

per Owner/Member at Owner meetings. If only one of the multiple owners of a Lot or Condominium Unit is present at an Association meeting, such owner is entitled to cast the vote allocated to that Lot or Condominium Unit. If more than one of the multiple owners is present, the vote allocated to that Lot or Condominium Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the vote allocated to that Lot or Condominium Unit without prompt written protest to the person presiding over the meeting by any of the other owners of the Lot or Condominium Unit without prompt written protest to the person presiding over the meeting by any of the other owners and a majority of the multiple owners of the Lot or Condominium Unit cannot agree how to cast their vote, any vote cast for that Lot or Condominium Unit shall be null and void with regard to the issue being voted upon. Such multiple owners and their Lot or Condominium Unit shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least 50 percent of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, the Articles, or the Bylaws.

The vote allocated to a Lot or Condominium Unit may be cast pursuant to a proxy duly executed by a Lot or Condominium Unit Owner. If a Lot or Condominium Unit is owned by more than one person, each owner of the Lot or Condominium Unit may vote or register protest to the casting of a vote by the other owners of the Lot or Condominium Unit through a duly executed proxy. A Lot or Condominium Unit Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

The Lot and Condominium Unit Owners, by a vote of 67 percent of all Members present and entitled to vote at any meeting of the Lot and Condominium Unit Owners at which a quorum is present, may remove any member of the Board of Directors with or without cause.

#### **7.6 Period of Declarant Control of Association**

Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board of Directors and the officers of the Association during the period commencing upon the recording of this Declaration and terminating not later than the earlier of (a) 60 days after conveyance of 75 percent of the Lots (including Townhome Lots) and Condominium Units that may be created

to Lot and Condominium Unit Owners other than Declarant, or (b) 2 years after the last conveyance of a Lot (including a Townhome Lot) or Condominium Unit by the Declarant in the ordinary course of business, or (c) 2 years after any right to add new Townhome Lots or Condominium Units was last exercised by Declarant.

During said Period of Declarant Control of the Association:

(i) Not later than 60 days after conveyance of 25 percent of the Lots and Condominium Units that may be created to Lot Owners other than Declarant, at least one member and not less than 25 percent of the members of the Board of Directors must be elected by Lot and Condominium Unit Owners other than Declarant.

(ii) Not later than 60 days after conveyance of 50 percent of the Lots and Condominium Units that may be created to Lot and Condominium Unit Owners other than Declarant, not less than 33-1/3 percent of the members of the Board of Directors must be elected by Lot and Condominium Unit Owners other than Declarant.

At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish, in its sole discretion, the right to appoint and remove officers and members of the Board of Directors, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its discretion and option, and it is optional and optional and shall invalidate any such action by the Board of Directors or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Lot and Condominium Unit Owners (including Declarant) shall elect a Board of Directors of at least three members. At least a majority of whom must be Lot or Condominium Unit Owners other than Declarant or designated representatives of Lot or Condominium Unit Owners other than Declarant, and the Board of Directors shall elect the officers of the Association. The Board of Directors and officers are to take office upon election. Pursuant to Section 38-33.3-303(9) of the Act, within 60 days after Lot and Condominium Unit Owners other than Declarant elect a majority of the members of the Board of Directors, Declarant shall deliver to the Association all property of the Lot and Condominium Unit Owners and of the Association held or controlled by Declarant.

#### **7.7 Termination of Contracts and Leases of Declarant**

The following contracts and leases, if entered into before the Board of Directors is elected by the Lot and Condominium Unit Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Board of Directors elected by the Lot and Condominium Unit Owners pursuant to said Section 38-33.3-303(7)

takes office, upon not less than 90 days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or (iii) Any contract or lease that is not bona fide or was unconscionable to the Lot and Condominium Unit Owners at the time entered into under the circumstances then prevailing.

## **ARTICLE 8**

### **INSURANCE**

#### **8.1 Insurance Requirements**

The Association shall obtain, maintain and keep in full force and effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) Casualty Insurance. Property insurance on all Buildings, all fixtures that are part of such Buildings, all Common Areas, and improvements thereon (excepting any such improvements installed by Lot or Condominium Unit Owners), and all Common Elements within the Boundary Community. Such insurance shall not include or cover the finished interior surfaces of the walls, floors and ceilings of the Townhomes and Condominium Units. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies, and shall include such endorsements as the Board of Directors considers appropriate from time to time.

(b) Liability Insurance. Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of Common Areas and Common Elements within the Boundary Community and covering liability claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (a) have limits of not less than Three Million Dollars (\$3,000,000.00) per person and Three Million Dollars (\$3,000,000.00) per occurrence; (b) insure the Board of Directors, the Association and its officers, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Common Areas or Common Elements; (e) cover claims of one

or more insured parties against other insured parties; and (f) be written on an occurrence basis.

(c) Worker's Compensation. A Worker's Compensation policy, if necessary, to meet the requirements of law.

(d) Directors and Officers Liability Insurance. The Association may, in its discretion, carry directors and officers liability insurance in such amount as the Board of Directors may deem appropriate.

(e) Other Insurance. Such other insurance in such amounts as the Board of Directors shall determine, from time to time, to be appropriate to protect the Association or the Lot and Condominium Unit Owners, or as may be required by the Act.

(f) General Provisions. Respecting Insurance. Insurance policies carried pursuant to Sections 8.1(a) and 8.1(b) above shall provide that (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or Common Elements or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any person claiming by, through or under each Owner or other director, agent or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, some other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy to the Association pursuant to Sections 8.1(a) and 8.1(b) above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Lot or Condominium Unit Owner or holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in Section 8.1(a) above must be adjusted with the Association, 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 insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Lot and Condominium Unit Owners, and lienholders are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or the Boundary Community is terminated.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any



other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Townhome or Condominium Unit is damaged by a loss, the Association in its reasonable discretion may assess each Lot and Condominium Unit Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of subrogation rights as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in light of the current values of Common Areas and Common Elements and in light of the possible or potential liabilities of the Association and other insured parties.

In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

(g) Nonliability of Association or Board of Directors. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board of Directors member, shall be liable to any Lot or Condominium Unit Owner, Occupant, mortgagee or other person, if any risks or hazards are not covered by insurance, or if insurance coverage is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Lot and Condominium Unit Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Lot or Condominium Unit Owner or Occupant may desire.

(h) Premiums. Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any base premium occasioned by the use, misuse, occupancy or abandonment of a Townhome or Condominium Unit and its appurtenances, or Common Areas or Common Elements, by a Lot or Condominium Unit Owner or Occupant, may at the Board of Directors' election, be assessed against that particular Lot Owner and his Lot or Condominium Unit as a Reimbursement Assessment.

(i) Insurance Claims. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under

insurance policies purchased by the Association and to execute and deliver proof of loss upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board of Directors has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses and any payments under such insurance policy for the Association.

(j) Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Lot and Condominium Unit Owners, or the Occupants, as their interests may appear.

(k) Other Insurance to be Carried by Lot and Condominium Unit Owners. Insurance coverage on the improvements, furnishings and other items of personal property belonging to a Lot or Condominium Unit Owner or Occupant, and public liability insurance coverage upon each Lot (and Townhome) and Condominium Unit and Common Areas or Limited Common Elements designated for the use of that Lot or Condominium Unit shall be the responsibility of the Owner or Occupant of the Lot or Condominium Unit.

## **8.2 Damage to Boundary Community**

Any portion of the Boundary Community for which insurance is required under Section 38-33.3-313 of the Act that is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Boundary Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) 67 percent of the Lot and Condominium Unit Owners, including owners of every Townhome and Condominium Unit that will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Boundary Community is not repaired or replaced, the insurance proceeds attributable to the damaged Buildings, Common Areas or Common Elements must be used to restore the damaged property to a condition compatible with the remainder of the Boundary Community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Townhomes, Condominium Units, Common Areas and Common Elements that are not rebuilt must be distributed to the Owners of those properties, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Lot or Condominium Unit Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all Lots and Condominium Units.

## **ARTICLE 9**

### **LIMITED LIABILITY**

Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association and the Board of Directors shall not be liable to any Owner or Occupant or other person for any action or for any failure to act with respect to the action taken or any failure to act in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association and the Board of Directors against claims, damages or other liabilities resulting from such good faith acts.

## **ARTICLE 10**

### **ASSESSMENTS**

#### **10.1 Assessment Obligation**

Declarant, for each Lot (including Townhome Lot) and Condominium Unit in the Boundary Community, shall be deemed to covenant and agree, and each Lot (including Townhome Lot) and Condominium Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot or Condominium Unit against which each such Assessment is charged. The obligation of each Lot and Condominium Unit Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand and without set-off or deduction of any kind or nature. Each Lot and Condominium Unit Owner is liable for Assessments made against such Owner's Lot or Condominium Unit during his period of ownership, whether or not the Lot or Condominium Unit Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Lot or Condominium Unit at the time when the Assessment became due. Upon the transfer of title to a Lot or Condominium Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior

to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

### **10.2 Statutory Lien**

The Association has a statutory lien pursuant to §38-33.3-316 of the Act on the Lot or Condominium Unit of an Owner for Assessments levied against such Lot or Condominium Unit or fines imposed against such Lot's or Condominium Unit's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges and attorneys' fees, fines and interest charges are enforceable as Assessment items from the time such items become due, including the due date set by the Board of Directors' acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within six (6) years after full payment becomes due.

### **10.3 Lien Superior to Homestead and Other Exemptions**

An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

### **10.4 Priority of Lien**

An Assessment Lien is prior to all other liens and encumbrances on a Lot or Condominium Unit except as follows:

- (a) Liens and encumbrances recorded before the recordation of this Declaration;
- (b) A security interest on the Lot or Condominium Unit which has priority over all other security interests on the Lot or Condominium Unit and which was recorded before the date on which the Assessment ought to be enforced became due, or any part thereof, became due. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 10.7 below) which would have become due, in the absence of any acceleration, during the 6 months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 10 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot or Condominium Unit;
- (d) Liens for assessments levied on the Lot or Condominium Unit by the Master Association; and

(e) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act.

This Article 10 does not prohibit an action or suit to recover sums for which this Article 10 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot or Condominium Unit shall not affect the lien for an Assessment

#### **10.5 Perfection of Lien**

The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

#### **10.6 Regular Assessments**

(a) A Regular Assessment shall be made annually against each Lot and Condominium Unit, based upon an annual Budget prepared by the Board of Directors, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots and Condominium Units, which shall be assessed only to the Lots or Condominium Units benefited and then equally among them, (iii) reasonable reserves for contingencies, replacements, and other proper purposes, and (iv) such other matters as may be reasonably determined by the Board of Directors to be the subject of a Regular Assessment;

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot and Condominium Unit in the Boundary Community, except that (i) any Common Expense or portion thereof benefiting fewer than all Lots or Condominium Units may be assessed exclusively against the Lots or Condominium Units benefited, and (ii) any Common Expense associated with the maintenance, repair, improvement or replacement of a Limited Common Area or Limited Common Element may be assessed only against the Townhome Lot or Condominium Unit(s) for which the Limited Common Area or Limited Common Element is designated. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot (including Townhome Lot) or Condominium Unit is conveyed by Declarant to a person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Board of Directors may determine from time to time, and shall be due

and payable on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Board of Directors, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Lot or Condominium Unit Owner acquiring a Lot or Condominium Unit between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Board of Directors shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least 30 days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Board of Directors timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments as last established for that or subsequent years as soon as the Board of Directors levies the Regular Assessment and provides notice thereof.

(e) The Board of Directors shall also mail to each Owner at least 10 days prior to the due date thereof a written notice of the amount due monthly or quarterly or semi-annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph (d) above. Failure of the Board of Directors to send written notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment of Regular Assessment as soon as the Board of Directors in fact provides such notice.

(f) In accordance with §38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's budget.

### **10.7 Association Budget**

The Board of Directors has adopted a Budget for the final \_\_\_\_ of 2001 which establishes a Regular Assessment for the period in the amount of \$\_\_\_\_\_ per Lot and Condominium Unit in the Boundary Community. During the last 3 months of 2001, and annually thereafter, the Board of Directors shall prepare or cause to be prepared an operating budget (the "Budget") for the next calendar year. The Budget shall provide for the allocation of any expenses attributable to the Association from any previous Budget period. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Lot and Condominium Unit Owners and shall set a date for a meeting of the Lot and Condominium Unit Owners to consider ratification of the Budget not less than 14 nor more than 60 days

after the mailing or other delivery of the summary. Such meeting need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting 67 percent of all Lot and Condominium Unit Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Lot and Condominium Unit Owners shall be continued until such time as the Lot and Condominium Unit Owners ratify a subsequent Budget proposed by the Board of Directors.

#### **10.8 Special Assessments**

In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 10, the Board of Directors may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Boundary Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, or an excess tort liability, where no membership vote shall be required, the Board of Directors shall not levy a Special Assessment without the approval of the Lot and Condominium Unit Owners in the Boundary Community as provided below.

Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than 30 or more than 50 days before the meeting. At the meeting, the presence of Owners in person or by proxy that are entitled to cast 50 percent of the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be one-half of the percent of the votes in the Association. No such second meeting shall be held more than 60 days following the date of the first meeting.

Provided a quorum of Owners entitled to vote is present in person or by proxy, in accordance with the quorum requirements set forth in the preceding paragraph, then the affirmative vote of a majority of the Owners so present shall constitute approval of the Special Assessment.

For purposes of this Section 10.8, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot and Condominium Unit in the Boundary Community, and shall be due and payable to the Association on the due date fixed by the Board of Directors in the notice given to the Owners of such Special Assessment, which due date shall be not sooner than ten (10) days after the giving of such notice.

### **10.9 Reimbursement Assessments**

In addition to the Regular and Special Assessments authorized hereunder, the Board of Directors may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation by the Owner, of this Declaration, the Articles and Bylaws, or any Rules and Regulations, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Board of Directors for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine as assessed against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Board of Directors in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than 30 days after the giving of such notice.

### **10.10 Effect of Nonpayment of Assessments; Remedies of the Association**

Any Assessment or portion or installment thereof (or any charge for which this Article 10 creates a lien or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Board of Directors from time to time, which shall not be less than 12 percent nor more than 21 percent per year, and the Board of Directors may also assess a late charge (and/or a bad check charge) thereon. The Board of Directors may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Board of Directors may but shall not be required to record a Notice of Delinquent Assessment or charge against any Lot or Condominium Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board of Directors, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot or Condominium Unit.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot or Condominium Unit at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against the Owner's Lot or Condominium Unit at the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Area or by abandonment of the Lot or Condominium Unit against which the Assessments are made.



In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Lot or Condominium Unit Owner prior to during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

#### **10.11 Statement of Unpaid Assessments**

The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmission or by certified mail, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot or Condominium Unit, whether delinquent or not. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall lose the right to assert a lien upon the Lot or Condominium Unit for unpaid Assessments which were due as of the date of the request.

#### **10.12 Assessments for Tort Liability**

In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

### **ARTICLE 11**

#### **EMINENT DOMAIN**

##### **11.1 Definition of Taking**

The term "taking", as used in this Article 11, shall mean condemnation by eminent domain or sale under threat of condemnation.

##### **11.2 Representation in Condemnation Proceedings of Common Areas or Common Elements**

In the event of a threatened taking of all or any portion of the Common Areas or Common Elements, the Lot and Condominium Unit Owners hereby appoint the Association through such persons as the Board of Directors may designate to represent the Association and all of the Lot and Condominium Unit Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on any one Lot or Condominium Unit Owner shall

constitute sufficient notice to all Lot and Condominium Unit Owners, and service of process on each individual Lot and Condominium Unit Owner shall not be necessary.

### **11.3 Award for Common Areas or Common Elements**

Any awards received by the Association on account of the taking of Common Areas or Common Elements shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Lot or Condominium Unit Owners as their interests may appear. The rights of a Lot or Condominium Unit Owner and the mortgagee of a Lot or Condominium Unit as to any such distribution shall be governed by the provisions of the mortgage of such Lot or Condominium Unit as to any such distribution.

### **11.4 Taking of Lots or Condominium Units**

If a Lot (including a Townhome Lot) or Condominium Unit is acquired by eminent domain or part of a Lot or Condominium Unit is acquired by eminent domain leaving the Lot or Condominium Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Lot or Condominium Unit Owner for the acquired Lot or Condominium Unit and its Allocated Interests. Upon acquisition, unless the decree otherwise provides, that Lot's or Condominium Unit's Allocated Interests are automatically reallocated to the remaining Lots and Condominium Units (as appropriate) in proportion to the respective Allocated Interests of those Lots and Condominium Units before the taking. Any amount of a Lot remaining part of a Lot or a Lot is taken is thereafter a Common Area. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Lot Owner for the reduction in value of the Lot. Upon acquisition, unless the decree otherwise provides:

- (a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and
- (b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Lot and to the remaining Lots and Condominium Units (as appropriate) in proportion to the respective interests of those Lots and Condominium Units before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

### **11.5 Miscellaneous**

The court decree shall be recorded in Garfield County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

## **ARTICLE 12**

### **MASTER DECLARATION AND MASTER ASSOCIATION**

#### **12.1 Master Declaration Matters**

Each Owner, by accepting a deed to a Lot (including a Townhome Lot) or Condominium Unit, recognizes that the Boundary Community is subject to the Master Declaration and all covenants, conditions and restrictions set forth therein (except as amended by this Declaration), and (ii) by virtue of his or her ownership of a Lot or Condominium Unit, such Owner has become a member of River Valley Ranch Master Association. Each Owner, by accepting a deed to a Lot or Condominium Unit, acknowledges receipt of a copy of the Master Declaration, as amended. The Owner agrees to perform all of the Owner's obligations as a member of River Valley Ranch Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of River Valley Ranch Master Association. The Board of Directors of the Association may from time to time, in its discretion, delegate certain of its powers to the Master Association.

#### **12.2 Enforcement of Master Declaration**

(a) The Association shall have the power, subject to the primary power of the Executive Board of the Master Association, to enforce the covenants and restrictions contained in the Master Declaration, but only for said covenants and restrictions relate to the Boundary Community, and to collect assessments on behalf of the Master Association if an agreement to do so is entered into between the Association and the Master Association.

(b) This Declaration is intended to amend and supplement the Master Declaration as it applies to the Boundary Community. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Bylaws or the Articles of Incorporation, the Association shall be subject to any obligations imposed upon it pursuant to the Master Declaration and the Articles and Bylaws of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Declaration and the Articles and Bylaws of the Master Association.

## **ARTICLE 13**

### **GENERAL PROVISIONS**

#### **13.1 Duration of Declaration**

The term of this Declaration shall be perpetual.

### **13.2 Termination of Boundary Community**

The Boundary Community may be terminated only by the agreement of (i) Lot and Condominium Unit Owners holding at least 80 percent of the votes in the Association, and (ii) the holders of all first mortgages on Lots and Condominium Units. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

### **13.3 Amendment of Declaration and Plat**

This Declaration and the Plat (including any Resubdivision Plat and any Condominium Map) may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration (including the Plat) may be amended by the Declarant in certain defined circumstances, including without limitation (a) to exercise any of the exercise reserved rights under Article 4 hereof, (b) for purposes of correcting clerical, typographical or technical errors, or (c) to comply with the requirements, standards, or procedures of recognized securities markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. The Act also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, and subject always to any provisions of this Declaration requiring the consent of Declarant to certain actions, this Declaration (including the Plat) may be amended only by the vote or agreement of Lot and Condominium Unit Owners holding more than 50 percent of the votes in the Association. No amendment shall be effective to change, impair, limit, reduce or eliminate any right of Declarant as provided in this Declaration unless such amendment is approved in writing by Declarant.

Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Declarant and Association amendments), no amendment may (i) create or increase special Declarant rights, (ii) increase the number of Lots and Condominium Units, or (iii) change the boundaries or any Lot or Condominium Unit or the Allocated Interests of a Lot or Condominium Unit in the absence of a vote or agreement of Lot and Condominium Unit Owners holding at least 67 percent of the votes in the Association, including 67 percent of the votes allocated to Lots and Condominium Units not owned by Declarant.

Further, Section 38-33.3-217(4.5) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may restrict any use to which any Lot or Condominium Unit is restricted in the absence of a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

No consent of any mortgagee or trust deed holder shall be required to accomplish any such amendments.

To the extent that any amendment to this Declaration conflicts with the provisions of the Master Declaration because the amendment is less restrictive than the provisions of the Master Declaration (as they apply to the Boundary Community), the provisions of the Master Declaration shall continue to govern and control. If the amendment is more restrictive, the amendment shall control.

An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Plat", and shall be duly executed by the President or Vice-President and Secretary of the Association and recorded in the Office of the Clerk and Recorder of Garfield County. All amendments to this Declaration shall be indexed in the Grantor's index in the names of the Boundary Community and the Association, and in the Grantor's index in the name of each person executing the amendment.

#### **13.4 Compliance; Enforcement**

Every Owner and Occupant of a Lot (including a Townhome Lot) or Condominium Unit in the Boundary Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration, the Articles, Bylaws, and Rules and Regulations, and all approvals granted by the Board of Directors, as the same or any of them may be amended from time to time. In addition to the remedies that are otherwise provided by this Declaration and by any Person under the terms and provisions of this Declaration, Declarant (for so long as it holds any of the rights set forth in Article 4 hereof), the Association through its Board of Directors, and every Lot and Condominium Unit Owner (except an Owner that is delinquent in the payment of Assessments hereunder), shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, the Articles, Bylaws, Rules and Regulations, and approvals granted by the Board of Directors.

Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, mandatory work orders to remove improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The River Valley Ranch Master Association shall also be entitled to enforce the provisions of this Declaration, to the same extent as the Association, provided that the Master Association has first given the Association 30 days' written notice of the Master Association's concerns and the opportunity to resolve the matter and/or to commence appropriate enforcement actions during that 30-day period.

The Board of Directors shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and

collect a Reimbursement Assessment against any Owner, (c) to enter upon any Lot or Common Element within the Boundary Community, after giving the Lot or Condominium Unit Owner or an Occupant 5 days advance notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation, and/or (d) the Board of Directors may temporarily cut off or all Association utility services or benefits to the subject Owner or Occupant and his Lot or Condominium Unit, including the right to use Common Areas (except access roads), until the violation is cured.

In any action brought under this Section 13.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this Section 13.4 shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against the Declarant or the Association for a breach by the Declarant or the Association of any of such matters or for a failure by the Declarant or the Association to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant, the Declarant and/or the Association at least 30 days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that 30 day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, the Bylaws, the Articles of Incorporation, or the Rules and Regulations, or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation, or the date the action is sought to be brought or maintained.

### **13.5 Rights of First Mortgagees**

Upon the filing of a written request therefor with the Association, the holder of a First Mortgage on any Lot or Condominium Unit in the Boundary Community shall be entitled to: (a) Written notice from the Association that the Owner of the subject Lot or Condominium Unit is delinquent in the payment of Assessments thereon; (b) Inspect the books and records of the Association during normal business hours; (c) Receive copies of annual Association financial statements; (d) Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of

them; (e) Receive written notice of condemnation proceedings affecting any Common Areas or Common Elements; and (f) Receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration. In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against Common Areas or Common Elements and may pay any overdue premiums on hazard or general liability insurance policies covering such property, and shall be entitled to immediate reimbursement therefor from the Association if the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if contested.

### **13.6 Notice**

Each Lot and Condominium Unit Owner, and each First Mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been deposited in the first-class U.S. Mail with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of a Lot or Condominium Unit Owner that has not registered an address, to the Lot or Condominium Unit of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

### **13.7 No Dedication to Public Use**

Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Boundary Community to the public or to any public use.

### **13.8 Interpretation of Declaration**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Boundary Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control.

### **13.9 Conflicts Between Documents**

(a) In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat (including any Resubdivision Plat or Condominium Map), the provisions of the Plat shall govern and control and the Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Plat. (b) In the event of any conflict or inconsistency between this Declaration and the

Articles and Bylaws of the Association, this Declaration shall control. In the event of any conflict or inconsistency between the Articles and the Bylaws of the Association, the Articles shall control.

#### **13.10 Violations Constitute a Nuisance**

Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association to bring an enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

#### **13.11 Declarant's Disclaimer of Representations and Warranties**

No representations or warranties of any kind, express or implied, have or will be given by Declarant or its agents or employees in connection with the Boundary Community or any portion thereof or any improvements thereon, its or their physical condition, zoning, utilities, or in connection with its subdivision, sale, development, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the River Valley Ranch and the neighboring golf property can or will be carried out, or that any land now or hereafter acquired by Declarant or by Crystal River Limited Partnership or will be subjected to this Declaration or the Master Declaration or that any such land (whether or not it is subject to this Declaration or the Master Declaration) is or will be committed to a phase of developed land (or any other use), or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any purchase and sale agreement executed by Declarant, or in any closing document related thereto.

#### **13.12 Captions**

Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

#### **13.13 Singular Includes Plural**

Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.



#### **13.14 Remedies Cumulative**

Each remedy provided under this Declaration is cumulative and not exclusive.

#### **13.15 Costs and Attorneys' Fees**

In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

#### **13.16 Governing Law; Jurisdiction**

The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for Garfield County, Colorado, and by acceptance of a deed to a Lot or Condominium Unit each Lot and Condominium Unit Owner voluntarily submits to the jurisdiction of such court.

#### **13.17 Severability**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Declarant's reasonable opinion would be considered not to be unconscionable.

#### **13.18 Disclaimer Regarding Safety**

DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE BOUNDARY COMMUNITY. ANY OWNER OR OCCUPANT OF PROPERTY WITHIN THE BOUNDARY COMMUNITY ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, OR IN THE ACT, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE BOUNDARY COMMUNITY.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, Declarant and the Association have executed this Amended and Restated Declaration the day and year first above written.

DECLARANT: THE EP BOUNDARY, LLC, a Colorado  
limited liability company

By: Daniel Fitchett, Manager

STATE OF COLORADO )

) ss.

COUNTY OF EAGLE )

The foregoing Amended and Restated Declaration was acknowledged before me this 20th day of June, 2001, by Daniel Fitchett as Manager of The EP Boundary, LLC, a Colorado limited liability company, Declarant.

Witness my hand and official seal.

My commission expires: 2-18-01

(SEAL)

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### ALLOCATED INTERESTS

#### RIVER VALLEY RANCH (THE BOUNDARY)

The Common Expense liability and votes in the Association allocated to each Lot existing as of the recordation of the Plat shall be as follows:

Lot No.	Percentage Share of Common Expenses	Votes in Association
1	1/11	1
2	1/11	1
3	1/11	1
4	1/11	1
5	1/11	1
6	1/11	1
7	1/11	1
8	1/11	1
9	1/11	1
10	1/11	1
11	1/11	1
Totals:	100%	11

## EXHIBIT B

### RECORDED EASEMENTS AND LICENSES

#### (THE BOUNDARY)

1. All recorded easements and licenses set forth on Exhibit B to the original Declaration for The Boundary Townhomes recorded May 13, 1999 as Reception No. 54583.
2. Easements, rights-of-way and other matters set forth on the First Amended Plat of The Boundary recorded July 13, 2001 as Reception No. 584310.

**CONSENT AND AGREEMENT OF CRYSTAL RIVER LIMITED PARTNERSHIP**

The undersigned Crystal River Limited Partnership, a Delaware limited partnership, being the developer of River Valley Ranch and the Declarant under the Existing Declaration which is being amended and restated by this instrument, and being the Declarant under the Amended and Restated Master Declaration of Protective Covenants for River Valley Ranch, hereby consents and agrees to the execution and recording of this Amended and Restated Declaration for The Boundary.

Dated this 28th day of June, 2001.

CRYSTAL RIVER LIMITED PARTNERSHIP,

a Delaware limited partnership

By: HINES COLORADO CORPORATION,

A Texas corporation, General Partner

By: \_\_\_\_\_

Its: Vice President

STATE OF COLORADO )

) ss.

COUNTY OF PITKIN )

The foregoing Consent and Agreement was acknowledged before me this 28th day of June, 2001, by Robert E. Daniel as Vice President of Hines Colorado Corporation, a Texas corporation, General Partner of Crystal River Limited Partnership, a Delaware limited partnership.

Witness my hand and official seal.

My commission expires: 12-18-01

\_\_\_\_\_  
Notary Public

## CONSENT AND SUBORDINATION OF MORTGAGEE

The undersigned Alpine Bank, being the beneficiary under that certain Deed of Trust recorded June 26, 2000 as Reception No. 581233 Rec 905 in the Office of the Clerk and Recorder of Garfield County, Colorado (the "Deed of Trust"), hereby consents to the recording of this Amended and Restated Declaration for The Boundary, and hereby agrees that the Deed of Trust shall be subordinate in all respects to said Amended and Restated Declaration.

Dated this 27th day of June, 2001.

Alpine Bank

By: \_\_\_\_\_

Its: Sr. Vice President

STATE OF COLORADO )

) ss.

COUNTY OF GARFIELD )

The foregoing Consent and Subordination was acknowledged before me this 27th day of June, 2001, by Trish Meredith as Sr. Vice President of Alpine Bank.

Witness my hand and official seal.

My commission expires: 8/23/02

\_\_\_\_\_  
Notary Public

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END OF DOCUMENT

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