



SPECIAL MEETING OF  
MEMBERS

MARCH 3, 2022, AT 5:00 PM  
RVR RANCH HOUSE CONFERENCE ROOM



## WHAT DOCUMENTS AND LAWS GOVERN THE BOUNDARY?

- The Colorado Common Ownership Interest Act (“CCOIA”)
- Declaration for the Boundary Association, including any amendments thereto
- Bylaws
- Policies and Procedures

## WHAT ARE “ALLOCATED INTERESTS” OF AN HOA?

- CCOIA requires that, through the declaration or bylaws, every HOA must allocate:
  - Each owner’s fraction or percentage of common expense liability;
  - The number of votes afforded to each owner; and
  - Each owner’s fraction or percentage of ownership interest in the common elements of the HOA.
- Each owners’ common expense liability, votes afforded, and ownership interest in the common elements are collectively referred to as the “allocated interests.”

C.R.S. § 33-33.3-207



## ALLOCATED INTERESTS ARE HARD TO CHANGE

- There are only two ways to change the allocated interests of an HOA.
- First, the developer of an HOA (aka the “Declarant”), can, in an HOA’s declaration, reserve the right to change the allocated interests as the development progresses and unilaterally file amendments to the declaration to that effect.
- Second, the owners of the HOA can, by no less than 67% approval, vote for an amendment to the declaration that changes the allocated interests.

C.R.S. § 33-33.3-217(4)(a)



## INCEPTION OF THE BOUNDARY

- In 1999, the Boundary was formed by Crystal River Limited Partnership, also known as the “Declarant” of the Boundary Townhome Association
- When it was formed, the Boundary was intended to be solely a “Townhome Community,” with a maximum of 33 “Townhome Lots.”
  - Hence, the initial name of your association was “The Boundary Townhome Association.”
- Originally, there were only seven lots in the Boundary and the Original Declaration was tailored to the “Townhome Community,” although the prospect of further development was allowed.

# ALLOCATED INTERESTS IN THE ORIGINAL DECLARATION

**2.1 Allocated Interests.** "Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot (including Townhome Lot), which interests are allocated as follows:

(a) The Common Expenses liability allocated to each Lot 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 (including Townhome Lots) in the Townhome Community. 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 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 Townhome Community.

(c) If Lots are added to or withdrawn from The Townhome Community or converted to Common Area, (i) the Common Expenses liability for each Lot shall be reallocated 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 Townhome Community following the addition, withdrawal or conversion of such Lots, and (ii) one vote in the Association shall continue to be allocated to each Lot in the Townhome Community following the addition, withdrawal or conversion of such Lots.

The Allocated Interests for the Townhome Community are specifically set forth on Exhibit A attached hereto and made a part hereof by this reference.

# ALLOCATED INTERESTS IN THE ORIGINAL DECLARATION

## EXHIBIT A

### ALLOCATED INTERESTS

#### RIVER VALLEY RANCH (THE BOUNDARY)

The Common Expense liability and votes in the Association allocated to each Lot (including Townhome Lot) shall be as follows:

<u>Lot No.</u>	<u>Percentage Share of Common Expenses</u>	<u>Votes in Association</u>
1	1/7	1
2	1/7	1
3	1/7	1
4	1/7	1
5	1/7	1
6	1/7	1
<u>7</u>	<u>1/7</u>	<u>1</u>
Totals	100%	7



## EARLY DEVELOPMENT OF THE BOUNDARY

- In or around 2001, Crystal River Limited Partnership sold the Boundary and transferred all its development rights to EP Boundary, LLC (“EP”), and, therefore, EP became the new Declarant.
- Shortly thereafter, EP recorded an Amended and Restated Declaration that revised the original declaration for the Boundary.
- The Amended Declaration, among other things,
  - Introduced the concept of Condominium Units, in addition to Townhome Lots; and
  - Changed the name of the association from “The Boundary Townhome Association” to “The Boundary Association.”



# ALLOCATED INTERESTS IN THE AMENDED DECLARATION

**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 a 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).

# ALLOCATED INTERESTS IN THE AMENDED DECLARATION

**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

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## DECLARANT RESERVED RIGHTS IN THE AMENDED DECLARATION

**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 any Lot 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.



## EP REALLOCATION AMENDMENTS

- As development within the Boundary progressed, EP, pursuant to its reserved Declarant Rights, properly created and recorded a series of “Reallocation Amendments” to reallocate the allocated interests among the owners.
- EP recorded reallocation amendments on the following dates:
  - July 13, 2001
  - July 26, 2001
  - November 9, 2001

# JULY 13, 2001 REALLOCATION AMENDMENT

1. The Common Expenses liability and votes in The Boundary Association allocated to each Lot and Condominium Unit in the Boundary shall be as follows:

Lot/Unit No.	Gross Livable Area	Percentage Share of Common Expenses	Votes in Association
Building 1, Unit 1	1,740	.019	1
Building 1, Unit 2	1,740	.019	1
Building 1, Unit 3	2,456	.026	1
Building 1, Unit 4	2,456	.026	1
Lot 2	N/A	.091	1
Lot 3	N/A	.091	1
Lot 4	N/A	.091	1
Lot 5	N/A	.091	1
Lot 6	N/A	.091	1
Lot 7	N/A	.091	1
Lot 8	N/A	.091	1
Lot 9	N/A	.091	1
Lot 10	N/A	.091	1
Lot 11	N/A	.091	1
Totals		100%	14

2. Exhibit A to the Declaration is hereby amended, replaced and superceded in its entirety by Paragraph 1 above.

# JULY 26, 2001 REALLOCATION AMENDMENT

1. The Common Expenses liability and votes in The Boundary Association allocated to each Lot and Condominium Unit in the Boundary shall be as follows:

Lot/Unit No.	Gross Livable Area	Percentage Share of Common Expenses	Votes in Association
Building 1, Unit 1	1,740	1.885	1
Building 1, Unit 2	1,740	1.885	1
Building 1, Unit 3	2,456	2.6605	1
Building 1, Unit 4	2,456	2.6605	1
Building 2, Unit 1	1,740	1.885	1
Building 2, Unit 2	1,740	1.885	1
Building 2, Unit 3	2,456	2.6605	1
Building 2, Unit 4	2,456	2.6605	1
Lot 3	N/A	9.091	1
Lot 4	N/A	9.091	1
Lot 5	N/A	9.091	1
Lot 6	N/A	9.091	1
Lot 7	N/A	9.091	1
Lot 8	N/A	9.091	1
Lot 9	N/A	9.091	1
Lot 10	N/A	9.091	1
Lot 11	N/A	9.091	1
Totals		100%	17

2. Exhibit A to the Declaration is hereby amended, replaced and superceded in its entirety by Paragraph 1 above.

# NOVEMBER 9, 2001 REALLOCATION AMENDMENT

1. The Common Expenses liability and votes in The Boundary Association allocated to each Lot, Townhome Lot and Condominium Unit in the Boundary shall be as follows:

Lot/Unit No.	Gross Livable Area	Percentage Share of Common Expenses	Votes in Association
Building 1, Unit 1	1,740	1.885	1
Building 1, Unit 2	1,740	1.885	1
Building 1, Unit 3	2,456	2.6605	1
Building 1, Unit 4	2,456	2.6605	1
Building 2, Unit 1	1,740	1.885	1
Building 2, Unit 2	1,740	1.885	1
Building 2, Unit 3	2,456	2.6605	1
Building 2, Unit 4	2,456	2.6605	1
Lot 3	N/A	9.091	1
Townhome Lot 4A	N/A	4.5455	1
Townhome Lot 4B	N/A	4.5455	1
Lot 5	N/A	9.091	1
Lot 6	N/A	9.091	1
Lot 7	N/A	9.091	1
Lot 8	N/A	9.091	1
Lot 9	N/A	9.091	1
Lot 10	N/A	9.091	1
Lot 11	N/A	9.091	1
Totals		100%	18

2. Exhibit A to the Declaration is hereby amended, replaced and superceded in its entirety by Paragraph 1 above.



## EP SELLS TO BRAEBURN

- In or around 2006, EP sold its property to Braeburn Real Estate Development, LLC (“Braeburn”) and transferred its reserved declarant rights to Braeburn.
- Braeburn thus became the new Declarant and, by extension, the only entity that could file additional Reallocation Amendments without a vote of the owners of the HOA.
- As the Boundary continued to develop, Braeburn never filed another Reallocation Amendment and never formally relinquished its declarant reserved rights to the Association or transferred them to any other entity.
- This created a nearly thirteen-year gap between Reallocation Amendments.
- From a legal standpoint, Braeburn is still the Declarant and holds the reserved declarant rights.





## SUBSEQUENT REALLOCATION AMENDMENTS

- Beginning in 2014, the Association filed three subsequent Reallocation Amendments:
  - February 18, 2014
  - March 2, 2015
  - November 1, 2021
- This was seemingly done under the belief that the Association took over declarant's Reserved Rights from Braeburn and could unilaterally amend the allocated interests.

# FEBRUARY 18, 2014 REALLOCATION AMENDMENT

Lot Unit Square Feet Building % Lot % Allocation %

1	381	1740	20.73%	16.667%	3.4557%
1	383	1740	20.73%	16.667%	3.4557%
1	385	2456	29.27%	16.667%	4.8777%
1	387	2456	29.27%	16.667%	4.8777%
2	391	1740	20.73%	16.667%	3.4557%
2	393	1740	20.73%	16.667%	3.4557%
2	395	2456	29.27%	16.667%	4.8777%
2	397	2456	29.27%	16.667%	4.8777%
3					0.0000%
4	409	2920	44.92%	16.667%	7.4872%
4	411	3580	55.08%	16.667%	9.1795%
5	421	2920	44.92%	16.667%	7.4872%
5	423	3580	55.08%	16.667%	9.1795%
6	431	3481	37.75%	16.667%	6.2918%
6	433	2132	23.12%	16.667%	3.8535%
6	435	3608	39.13%	16.667%	6.5213%
7					0.0000%
8	451	3481	37.75%	16.667%	6.2918%
8	453	2132	23.12%	16.667%	3.8535%
8	455	3608	39.13%	16.667%	6.5213%
9					0.0000%
10					0.0000%
11					0.0000%

100.0000%

# MARCH 2, 2015 REALLOCATION AMENDMENT

Exhibit A

Lot/Unit No.	Gross Livable Area	Percentage Share of Common Expenses	Votes in Association
Building 1 Unit 1	1740	1.89	1
Building 1 Unit 2	1740	1.89	1
Building 1 Unit 3	2456	2.66	1
Building 1 Unit 4	2456	2.66	1
Building 2 Unit 1	1740	1.89	1
Building 2 Unit 2	1740	1.89	1
Building 2 Unit 3	2456	2.66	1
Building 2 Unit 4	2456	2.66	1
Lot 3	N/A	9.09	1
Townhome Lot 4A	2920	4.08	1
Townhome Lot 4B	3580	5.01	1
Townhome Lot 5A	2920	4.08	1
Townhome Lot 5B	3580	5.01	1
Townhome Lot 6A	3481	3.43	1
Townhome Lot 6B	2132	2.10	1
Townhome Lot 6C	3608	3.56	1
Lot 7	N/A	9.09	1
Townhome lot 8A	3481	3.43	1
Townhome lot 8B	2132	2.10	1
Townhome lot 8C	3608	3.56	1
Lot 9	N/A	9.09	1
Lot 10	N/A	9.09	1
Lot 11	N/A	9.09	1
<b>Totals</b>		100.00	23

1. Exhibit A to the Declaration is hereby amended, replaced and superseded in its entirety by Paragraph 1 above.

# NOVEMBER 1, 2021 REALLOCATION AMENDMENT

Exhibit A

Lot No.	Unit No.	Sq. Ft.	Fraction	Votes
1	381	1740	0.20734	1
1	383	1740	0.20734	1
1	385	2456	0.29266	1
1	387	2456	0.29266	1
2	391	1740	0.20734	1
2	393	1740	0.20734	1
2	395	2456	0.29266	1
2	397	2456	0.29266	1
3	401	2783	0.31151	1
3	403	1684	0.18849	1
3	405	2783	0.31151	1
3	407	1684	0.18849	1
4	409	2920	0.44923	1
4	411	3580	0.55077	1
5	421	2920	0.44923	1
5	423	3580	0.55077	1
6	431	3481	0.37751	1
6	433	2132	0.23121	1
6	435	3608	0.39128	1
7	441	3274	0.37150	1
7	443	2132	0.24192	1
7	445	3407	0.38659	1
8	451	3481	0.37751	1
8	453	2132	0.23121	1
8	455	3608	0.39128	1
9	461	2382	0.32842	1
9	463	2484	0.34248	1
9	465	2387	0.32911	1
10	471	2382	0.32842	1
10	473	2484	0.34248	1
10	475	2387	0.32911	1
11	481	2559	0.49089	1
11	483	2654	0.50911	1
Totals		85692	11.000000	33

1. Exhibit A to the Declaration is hereby amended, replaced and superseded in its entirety by Paragraph 1 above.



## SUBSEQUENT REALLOCATION AMENDMENTS

- From my review of the documents available, it does not appear that Braeburn ever transferred the Declarant's Reserved Rights to the Association.
- It also does not appear that these subsequent Reallocation Amendments were ever voted on or approved by the owners.
- Because these Reallocation Amendments were not done pursuant to Declarant Reserved Rights or approved by a vote, they are likely invalid.



## NEXT STEPS

- At a minimum, the Owners need to vote and approve a Reallocation Amendment that allocates the allocated interests among the 33 Townhome Lots and Condominium Units.
- In so doing, the Owners should consider whether the allocation method required by your declaration is still appropriate or whether a new allocation method is more appropriate for the community.
- There is no law dictating which allocation method you must select (e.g. total number of lots, square footage, etc.).



# QUESTIONS