

## AMENDED AND RESTATED BYLAWS

### AVON TOWN SQUARE, LOT 2, CONDOMINIUM ASSOCIATION

(Effective Date: March 23, 2016)

#### ARTICLE I. Organization and Purpose

1. **Purpose.** The Avon Town Square, Lot 2, Condominium Association (the "Association") is a Colorado nonprofit corporation and functions as the governing condominium association for the Avon Town Square, Lot 2 commercial condominium complex in Avon, Colorado.
2. **Office.** The Association's principal office is located in care of Walter Realty, 105 Edwards Village Blvd, C208, Edwards, CO 81632. The board of directors of the Association (the "board") will have discretion to keep and maintain other offices within or outside the State of Colorado.
3. **Governing Law.** The Association is subject to the provisions of the Colorado Revised Nonprofit Corporation Act (the "Act") and the Association's Declaration. The Association has also elected governance under the terms of the Colorado Common Interest Ownership Act (CCIOA).
4. **Defined Terms.** Each capitalized term used without definition shall have the meanings specified in CCIOA, the Declaration or as specifically defined in these Bylaws. The Declaration and any amendments and supplements as well as the Association's Articles of Incorporation, these Bylaws, and the Association's responsible governance policies shall be collectively referred to as the Association's governing documents.
5. **Compliance.** All present or future Owners, tenants, guests, invitees, and other persons who might use the Unit or common areas of the Association in any manner are subject to these Bylaws. The mere act of occupancy of any Unit will signify that these Bylaws have been accepted and will be complied with by all Owners and occupants.

#### ARTICLE II. Membership, Voting, Quorum and Proxies

1. **Membership.** Membership in the Association consists of, and is limited to, record owners of the Units and is subject to the Declaration and all amendments and supplements thereto as recorded in the Eagle County real estate records as well as the terms and provisions of the Association's governing documents.
  - (a) One membership in the Association shall be issued to the record owner of each Unit. In the event a Unit is owned by two or more persons, whether by joint tenancy, tenancy in common or otherwise, the membership shall be joint, and a single membership for such Unit shall be issued in the names of all record owners. One of these owners shall designate in writing to the Association's manager one person to hold the membership and cast the vote(s) allocated to the membership.

If any owner is other than a natural person, that owner shall designate an agent entitled to vote the membership. No membership shall be issued in connection with ownership of a Unit to which a membership has previously been issued except in substitution for an existing membership.

- (b) During any period in which an owner is in default of an obligation to a first mortgagee, the first mortgagee shall provide written notice to the Association of the fact and nature of the default.
2. **Transfer of Membership.** A membership in the Association may not be assigned, encumbered or transferred in any manner except as appurtenant to transfer of title to the Unit to which the membership pertains. A transfer of membership shall occur automatically upon the transfer of title to a Unit, but the Association shall be entitled to treat the transferor in whose name membership is recorded in its records as the member for all purposes until written evidence of the transfer of title, satisfactory to the Association, has been submitted to the Association. Transfer of membership shall not release the transferor from liability for obligations accrued prior to the transfer. In the event of a dispute as to ownership of a Unit and the related membership, title to the Unit, as shown in the records of the County Clerk and Recorder of Eagle County, Colorado, shall be determinative.
3. **Voting Rights.** The voting rights of the members shall be as set forth in the Association's governing documents from time to time.
4. **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of members entitled to vote more than twenty percent (20%) of the total votes of the members shall constitute a quorum.
5. **Proxies.** Votes may be cast in person or by proxy. Every proxy must be executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise provided in the proxy.
6. **Majority Vote.** At any meeting of members, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the members, unless the vote of a greater number is required by law or by the Association's governing documents.

### **ARTICLE III. Administration**

1. **Annual Meeting.** The annual meeting of the members shall be held at a place and time designated by the board of directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in Colorado, such meeting shall be held on the next succeeding business day.
2. **Special Meetings.** Special meetings of the members, for any purpose, unless otherwise

prescribed by statute, may be called by the president or by the board of directors, and shall be called by the president at the request of any group of members who are entitled to vote thirty percent (30%) of more of the total votes of the Association.

3. **Place of Meeting.** The board of directors may designate any place, either within or outside Colorado, as the place for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting shall be called otherwise than by the board, the place of meeting shall be the principal office of the Association in Edwards, Colorado.
4. **Notice of Meeting.** Written or printed notice of any meeting of the members, stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered personally, by mail, by facsimile transmission or e-mail to each Owner entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States first class mail, addressed to the member's address as it appears in the office of the Association, with postage thereon prepaid.
5. **Electronic Meetings.** Any or all of the members may participate in an annual, regular, or special meeting of the members by or through the use of electronic or other means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.
6. **Informal Action by Members.** Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the members.
7. **Voting.** In the election of directors each member shall have the right to vote the number of votes to which the member is entitled for as many persons as there are directors to be elected. Cumulative voting shall not be allowed.
8. **Action by Written Ballot.** Any action that may be taken at any annual, regular, or special meeting of the members may be taken without a meeting if the Association delivers (by mail or otherwise) a written ballot to every member entitled to vote on the matter which sets forth each proposed action and provides an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Solicitations for vote by written ballot must be accompanied by written information sufficient to permit a member to reach an informed decision on the matter and must specify:

- (a) the number of responses needed to meet the quorum requirements;
  - (b) the percentage of approvals necessary to approve each matter other than election of the directors; and
  - (c) the time by which a ballot must be received in order to be counted.
9. **First Lien Holders.** The holder of any first lien encumbering a Unit shall have the right to designate a representative to attend any meeting of members.

#### **ARTICLE IV. Board of Directors**

1. **Number, Tenure and Qualifications.** The business and affairs of the Association shall be managed by a board of directors. The board of directors shall consist of five members. However, the number of directors may be changed by a vote of the board of directors. Any newly-created directorship may be filled by the board of directors. The directors, who must be members of the Association, shall be elected each year at the Association's annual meeting or at any special meeting of the Association.
2. **Resignation; Vacancies.** Any director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors by reason of resignation, death, or an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors. A director elected to fill a vacancy shall be elected to serve until the next annual meeting of the members.
3. **General Powers.** The board of directors shall have and may exercise all the powers of the Association except such as are expressly conferred upon the members, either in their capacity as members of the Association or as Owners of Units by law or pursuant to the Association's governing documents.
4. **Additional Powers and Responsibilities.** In addition to its general powers, the board of directors shall have the authority and the responsibility, acting through the Association's officers:
  - (a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration.
  - (b) To establish, make, amend and enforce compliance with such reasonable policies and rules as may be necessary for the operation, use and occupancy of the common elements and the Units. Policies and rules may be amended by a majority vote at any meeting of the board.
  - (c) To maintain in good order, condition and repair all of the general and limited common elements and all items of personal property used in the Association's property and premises (the "Premises").

- (d) To obtain and maintain insurance for the Association and the Premises, and the common and limited elements in the manner and the amounts provided in the Association's governing documents.
  - (e) To fix, determine, levy and collect monthly and special assessments to be paid by each of the Owners to meet the common expenses as defined in the Declaration, and to create a contingency reserve therefor. Prior to the beginning of the Association's fiscal year, the board shall adopt an estimated budget for that year. The estimated budget shall include, but shall not be limited to, an estimate of the costs of maintenance and repair of the common elements, the cost of utilities and other services to be provided by the Association, the cost of insurance required by the Declaration, and any proposed capital expenditures. The cost of maintenance and repair of the common elements shall be estimated on the basis of the previous year's costs with such adjustments therefrom as the board of directors considers appropriate. Based on these estimates, the budget shall also include an estimate of the annual assessment for each unit. The board may adjust the monthly assessment from time to time as may, in the discretion of the board, be deemed necessary or advisable. Special assessments may be levied whenever in the opinion of the board it is necessary or advisable to do so (i) to meet increased operating or maintenance expenses or costs, (ii) to provide for additional capital expenses, or (iii) because of emergencies. In addition to the provision in the Declaration regarding maintenance and repairs, the monthly assessment may be used to provide for landscaping the common elements and the removal of snow from the common elements.
  - (f) To collect promptly all delinquent assessments by suit or otherwise and to enjoin or seek damages from an Owner as is provided in the Declaration and these Bylaws.
  - (g) To protect and defend the Association and its property from loss and damage by suit or otherwise.
  - (h) To borrow funds in order to pay for any expenditure or outlay authorized by these Bylaws and the Declaration and to provide an assignment of assessment revenues as collateral as well as to execute all such instruments evidencing such indebtedness as the board of directors may deem necessary or advisable.
  - (i) To enter into contracts within the scope of their duties and powers.
  - (j) To establish and maintain deposit accounts for all funds which are required or may be deemed advisable by the board of directors.
  - (k) To maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Association. Upon request, an Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.
5. **Investment Authority.** The board of directors may delegate investment authority concerning the Association reserve and capital funds and other liquid assets to one of the directors or to an investment adviser or securities broker selected by the directors in

accordance with the Association's policy governance statements. The manager shall have authority to establish and maintain cash deposits of the Association in such savings and other time deposit accounts as the manager deems to be appropriate. All funds of the Association shall be invested in the manner and within the guidelines established by the Association governance policy statement concerning the investment of association assets.

6. **Manager.** The board of directors may employ a manager for the Association at a compensation established by the board to perform such duties and services as the board shall authorize including, but not limited to, the duties listed in paragraph 4 of this Article.
7. **Regular Meetings.** Regular meetings of the board of directors shall be held not less often than semi-annually, without notice, at such place and hour as may be fixed by the board. Should said meeting fall upon a legal holiday (a legal holiday being any weekday, other than Saturdays or Sundays, when national banks are closed), then that meeting shall be held at the same time on the next day which is not a legal holiday.
8. **Special Meetings.** Special meetings of the board of directors shall be held when called by the president of the Association, or by any two directors, after not less than two (2) days' notice to each director.
9. **Quorum.** A majority of the number of directors fixed by the Bylaws shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the directors in attendance shall, except where a larger number is required by law, by the Articles of Incorporation or by these Bylaws, decide any question brought before such meeting. In the event of a tie vote on any issue, the issue shall automatically be tabled until the next meeting of the directors or until such time as the directors can take informal action on the issue with a majority vote of the directors. If the directors remain deadlocked on the issue at the next meeting, the Chairman shall be entitled to cast one additional vote on the issue in order to eliminate the tie vote.
10. **Waiver of Notice.** Before, at or after any meeting of the board of director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him except when a director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.
11. **Informal Action by Directors.** Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting by means of the execution of a requirement in writing, setting forth the action so taken, which shall be signed by all of the directors entitled to vote with respect to the subject matter thereof Such consent shall have the same force and effect as a unanimous vote of the directors.

12. **Removal of Directors.** At any regular or special meeting of the Owners, any one or more of the directors may be removed with or without cause and at any time by an affirmative vote of a majority of the total votes represented at the meeting entitled to vote. Successors may then be elected to fill the vacancies thereby created pursuant to these Bylaws.

## ARTICLE V. Officers and Agents

1. **General.** The officers of the Association shall be a president (who shall be chosen from among the members of the board of directors), one or more vice presidents, a secretary and a treasurer. The board of directors may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the board of directors. One person may hold any two officers, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the board of directors, such officer, agent or employee shall follow the orders and instructions of the president.
2. **Resignation and Removal.** Any officer may be removed from office, with or without cause, by the board of directors. Any officer may resign at any time by giving written notice to the board of directors, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
3. **Vacancies.** A vacancy in any office, however occurring, may be filled by the board of directors for the unexpired portion of the term.
4. **President.** The president shall preside at all meetings of the board of directors and members; shall see that orders and resolutions of the board are carried out; shall sign all leases, mortgages, deeds and other written instruments; shall co-sign or authorize a designated agent to co-sign promissory notes and checks of the Association; and shall perform such other duties as required by the board.
5. **Vice-President.** The vice-president, if any, shall act in the place and stead of the president in the event of the president's absence, inability, or refusal to act; and shall perform such other duties as required by the board.
6. **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the board of directors and of the members; shall serve notice of meetings of the board and of the members; shall keep appropriate current records showing the names of the members together with their addresses; shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association; and shall perform such other duties as required by the board.

7. **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the board of directors; shall sign or authorize a designated agent to sign promissory notes and checks of the Association; shall keep proper books of account; shall prepare an annual budget to be presented to the membership, and give a copy or summary thereof to the members (as provided in the Declaration); and shall perform such other duties as required by the board.

The president, vice-president, secretary or treasurer of the Association may prepare, execute, certify, file and/or record amendments to the Declaration, the Articles of Incorporation or these Bylaws, on behalf of the Association, except that the board of directors may authorize other officers to do so.

#### **ARTICLE VI. Committees.**

The board of directors may appoint committee(s), and give them such responsibilities, as the board determines. Each committee serves at the pleasure of the board of directors, has only such authority as may be given to it by the board of directors, and serves only in an advisory capacity to the board. No member of a committee is an "officer" of the association by virtue of service on such committee. Further, all actions and writings of each committee appointed by the board of directors are subject to review and approval by the board.

#### **ARTICLE VII. Books and records**

1. In addition to any records specifically defined in the declaration or these bylaws, or expressly required by section 38-33.3-209.4(2) of CCIOA, the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to Owners:
  - (a) detailed records and receipts and expenditures affecting the operation and administration of the Association;
  - (b) records of claims for construction defects and amounts received pursuant to settlement of those claims;
  - (c) minutes of all meetings of its Owners and board, a record of all actions taken by the Owners or board without a meeting, and a record of all actions taken by any committee of the board;
  - (d) written communications among, and the votes cast by, directors of the board that are:
    - (i) directly related to an action taken by the board without a meeting pursuant to section 7-128-202, C.R.S.; or
    - (ii) directly related to an action taken by the board without a meeting pursuant to these Bylaws;



- (e) the names of Owners in a form that permits preparation of a list of the names of all Owners and the physical mailing addresses at which the Association communicates with them, showing the number of votes each Owner is entitled to vote; except that this subsection does not apply to a Lot, or the Owner thereof, if the Lot is a time-share unit, as defined in C.R.S. 38-33-110(7);
  - (f) the Declaration and, as to the Association, these Bylaws, the Articles of Incorporation, the rules and regulations, the responsible governance policies adopted pursuant to C.R.S. 38-33.3-209.5, and other policies adopted by the board;
  - (g) financial statements as described in section 7-136-106, C.R.S., for the past three (3) years and tax returns of the Association for the past seven (7) years, to the extent available;
  - (h) a list of the names, electronic mail addresses, and physical mailing addresses of its current Board members and officers;
  - (i) the Association's most recent annual report delivered to the Colorado Secretary of State;
  - (j) financial records sufficiently detailed to enable the Association to comply with C.R.S. section 38-33.3-316(8), concerning statements of unpaid assessments;
  - (k) the Association's most recent reserve study, if any;
  - (l) current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two (2) years;
  - (m) records of the board or committee actions to approve or deny any request for design or architectural approval from Owners;
  - (n) ballots, proxies, and other records related to voting by Owners for one year after the election, action, or vote to which they relate;
  - (o) resolutions adopted by the board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members; and
  - (p) all written communications within the past three (3) years to all Owners generally as Owners.
2. Subject to subsections 3, 4, and 5 of this Article, all records maintained by the Association must be available for examination and copying by an Owner or the Owner's authorized agent. The Association may require Owners to submit a written request, describing with reasonable particularity the records sought, at least ten (10) days prior to inspection or production of the documents, and may limit examination and copying times to normal business hours or the next regularly scheduled board meeting if the meeting occurs within thirty (30) days after the request. Notwithstanding any provision

of the Declaration, these Bylaws, the Articles of Incorporation, or rules and regulations of the Association, the Association may not condition the production of records upon the statement of a proper purpose.

- (a) Notwithstanding this subsection 2, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner without consent of the board.
  - (b) Without limiting the generality of this Section, without the consent of the board, a membership list or any part thereof may not be:
    - (i) used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
    - (ii) used for any commercial purpose; or
    - (iii) sold to or purchased by any person.
3. Records maintained by the Association may be withheld from inspection and copying to the extent that they are or concern:
- (a) architectural drawings, plans, and designs, unless released upon the written consent of the legal owner of the drawings, plans, or designs;
  - (b) contracts, leases, bids, or records related to transactions to purchase or provide goods or services that are currently in or under negotiation;
  - (c) communications with legal counsel that are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
  - (d) disclosure of information in violation of law;
  - (e) records of an executive session of the Board;
  - (f) individual Units other than those of the requesting Owner; or
  - (g) the names and physical mailing addresses of Owners if the Unit is a time-share unit, as defined in section 38-33.3-110(7), C.R.S.
4. Records maintained by an Association are not subject to inspection and copying, and must be withheld, to the extent that they are or concern:
- (a) personnel, salary, or medical records relating to specific individuals; or
  - (b) personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.