

5. The Association may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of Association records. The charge may not exceed the estimated cost of production and reproduction of the records.
6. A right to copy records under this Article includes the right to receive copies by photocopying or other means, including the receipt of copies through an electronic transmission if available, upon request by the Owner.
7. The Association is not obligated to compile or synthesize information.
8. Association records and the information contained within those records shall not be used for commercial purposes.
9. In the event CCIOA is amended to remove, modify, or otherwise revise the provisions of C.R.S. 38-33.3-317, this Article shall be deemed amended to include such changes as are provided for in the referenced section of CCIOA.

#### **ARTICLE VIII. Authenticated Electronic Representation**

Notwithstanding anything to the contrary contained in the governing documents, to the extent not prohibited by applicable law, the association may use technology or electronic means in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit authenticated electronic activity

#### **ARTICLE IX. Indemnification of Officers and Directors**

1. **Indemnification.** The Association shall indemnify every board member, officer and employee and their respective successors, personal representatives and heirs to the maximum extent permitted under the Colorado Revised Nonprofit Corporations Act and under the Association's governing documents against all loss, costs and expenses, including attorney fees, reasonably incurred by any of them in connection with any action, suit or proceeding to which any of them may be made a party by reason of being or having been a board member, officer or employee, except as to matters as to which such person shall be finally adjudged in such action, suit or proceeding to be liable of negligence or misconduct. In circumstances where any claim of this nature is settled, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of negligence or misconduct in the performance of his or her duty as such board member, officer or employee in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such board member, officer or employee may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection

with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in these Bylaws shall be deemed to obligate the Association to indemnify any Owner of a unit who is or has been a board member, officer or employee with respect to any duties or obligations assumed or liabilities incurred by him or her under and by virtue of the Association Declaration.

2. **Other.** Contracts or other commitments made by a board member, officer or employee of the Association shall be made in the capacity as an agent for the Association, and such persons shall have no personal liability with respect to such contract or commitment.
3. **Insurance.** By action of the board of directors, notwithstanding any interest of the directors in such action, the Association may purchase and maintain insurance, in such amounts as the board of directors may deem appropriate, on behalf of any indemnified party against any liability asserted against him or her and incurred by him or her in his or her capacity of or arising out of his or her status as an indemnified party, whether or not the Association would have the power to indemnify him or her against such liability under applicable provisions of law.
4. **Right to Impose Conditions to Indemnification.** The board of directors has the right to impose, as conditions to any indemnification provided or permitted in this Article VI, such reasonable requirements and conditions as to the board of directors may appear appropriate in each specific case and circumstance including, without limitation, any one or more of the following: (a) that any counsel representing the indemnified party in connection with the defense or settlement of any proceeding shall be mutually agreeable to the indemnified party and to the board of directors; (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the indemnified party; and (c) that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the indemnified party shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

#### **ARTICLE X. Exculpatory Provisions**

1. The Association shall not be liable for any failure of utility services to be obtained by the Association or paid for as a Common Expense. The Association shall also not be liable for injury or damage to person or property caused by the elements or by any Owner or any other person, or which results from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements.

2. No diminution or abatement of any assessments, as provided in the Association governing documents, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental or quasi-governmental authority.

#### **ARTICLE XI. Obligations of the Owners**

1. **Assessments.** Each Owner shall pay his share of all assessments imposed by the Association to meet the common expenses (as defined in the Declaration). Each assessment shall be allocated among the Owners on the basis of their sharing ratios, or as otherwise set out in the Declaration. If a Unit is owned by two or more Owners, each of such co-Owners shall be jointly and severally liable for that portion of the assessment attributable to such Unit. Assessments shall be made monthly and shall be due and payable on the date specified in the assessment notice. All unpaid assessments shall bear interest at a rate determined by the board of directors and shall be secured by a lien on the Unit owned by the defaulting Owner, in accordance with the provisions of the Declaration.
2. **Maintenance and Repair.** Every Owner shall perform or cause to be performed at his own expense all maintenance and repair work within their own Unit necessary to maintain the Unit in a good and habitable state of repair. All repairs of internal installations in a Unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, electrical fixtures and all other accessories, equipment and fixtures belonging to a Unit shall be at the Owner's expense. Each Owner shall reimburse the Association promptly upon receipt of its statement for any expenditure incurred by it in repairing or replacing any general or limited common element damaged by the negligence or unintentional acts of such Owner or his guests.
3. **Compliance with Declaration, Articles, Bylaws and Rules.** Each Owner shall comply with all of the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association and any rules and regulations issued by the board of directors. If an Owner fails to comply, the Association shall have the power, during the period of such delinquency, (a) to revoke a delinquent member's right to use general common elements, (b) to cause utility service to a delinquent member's Unit to be suspended and (C) to suspend an Owner's voting privileges.
4. **Reimbursement Obligations.** Each Owner and his or her guests, tenants, occupants, employees and invitees shall be obligated to reimburse the Association for any legal and other expenses (including, without limitation, attorney fees and court costs) incurred by the Association in responding to a violation by any of them of the Association's governing documents and its rules and regulations. This reimbursement obligation shall extend to costs and expenses incurred by the Association for any remedial steps or enforcement actions which it may take in connection with a violation.

## **ARTICLE XII. Enforcement**

1. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, may be by any proceeding at law or in equity against any person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. For each claim, including counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of CCIOA or any of the Governing Documents, the prevailing party shall be awarded its collection costs and reasonable attorney fees. Failure by the Association or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event be deemed a waiver of any right to do so thereafter.
2. Subject to the following sentence, the Association shall have the right to levy and collect fines for the violation of any provision of any of the Governing Documents. Prior to collection of any fines, the Association, the board of directors, or the manager shall mail a notice of violation to the person(s) alleged to be in violation of any such provision and such notified person(s) has a right to a hearing upon submission to the board of directors of a written request for hearing, which is properly signed by such person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the board of directors may decide; failure of a notified person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

## **ARTICLE XIII. Insurance and Fidelity Bonds**

1. **General Insurance Provisions.** The Association shall maintain, to the extent reasonably available:
  - (a) Property insurance on the limited and general common elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property in its present state of condition and improvement based upon current construction costs and applicable building codes less the amount of any deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and
  - (b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the limited and general common elements and the Association, in an amount, if any, deemed sufficient in the judgment of the board of directors, insuring the board of directors, the Association, the manager, and their respective employees, agents, and all

persons acting as agents. Owners of units shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the limited and general common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

- (c) The Association may carry such other and further insurance that the board of directors considers appropriate, including insurance on property that the Association is not obligated to insure to protect the Association or the Owners. In addition, the Association may require the Owner to obtain and keep in force liability and other insurance coverage as the board of directors may reasonably deem appropriate.
2. **Cancellation.** If the insurance described above is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly notify the Owners of this.
3. **Policy Provisions.** Insurance policies carried pursuant to Subsection 1 above must provide that:
- (a) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the limited and general common elements or membership in the Association;
  - (b) The insurer waives its rights to subrogation under the policy against any Owner;
  - (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, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
4. **Insurance Proceeds.** Any loss covered by the property insurance policy described 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 Owners and mortgagees holding a first security interest in a Unit as their interests may appear. Subject to the provisions below, the proceeds must be disbursed first for the repair or restoration of the damaged property. the Association, Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by the Declaration is terminated.

5. **Association Policies.** 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 any insured property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration an amount equal to all or any equitable portion of the deductibles paid by the Association.
6. **Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Subsection 1 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.
7. **Repair and Replacement.**
- (a) Any portion of the limited and general common elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:
    - (i) The condominium regime created by the Declaration is terminated;
    - (ii) Repair or replacement would be illegal under Colorado law or under any local statute or ordinance governing health or safety;
    - (iii) Sixty-seven percent of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or
    - (iv) Prior to the conveyance of any Unit, the mortgagee holding a deed of trust or mortgage on the damaged portion of the limited and general common elements rightfully demands all or a substantial part of the insurance proceeds.
  - (b) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all are not repaired or replaced, the insurance proceeds attributable to the damaged limited and general common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium regime, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or mortgagees, as their interests may appear in proportion to their respective ownership interests in the limited and general common elements.

8. **Common Expenses.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are common expenses.
9. **Fidelity Insurance.** Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than (1) \$50,000, or (2) two months' current assessments plus reserves as calculated from the current budget of the Association, whichever is greater. In addition, if responsibility for handling funds is delegated to the manager, such bond may be obtained for the manager and its officers, employees and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee, and such bonds shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.
10. **Workmen's Compensation Insurance.** The board of directors shall obtain workmen's compensation or similar insurance with respect to the Association employees, in the amounts and forms as may now or hereafter be required by Colorado law.
11. **Directors' and Officers' Liability Insurance.** The board of directors shall obtain a policy of directors' and officers' liability insurance which shall provide protection to officers of the Association and Owners of the board of directors in the performance of their duties and obligations on behalf of the Association. The terms of the policy shall be determined by the board of directors with the advice of the Association's counsel.
12. **Other Insurance.** The board of directors may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties as required by the Act and other applicable laws and as the board may deem appropriate.
13. **Insurance Obtained by Owners.** Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation; and provided further that the liability of the carriers issuing insurance obtained by the board of directors shall not be affected or diminished by reason of any such additional insurance carried by any Owner. All Owners are required to file copies of any such policies with the Association. Insurance coverage on furnishings, and other items of personal or other property, improvements or betterments belonging to an Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the board of directors, the Association and the manager shall have no responsibility therefore. In addition, liability insurance shall be maintained by the Owner of the Unit in coverage amounts which the board of directors reasonably deems to be necessary.

#### **ARTICLE XIV. Evidence of Ownership, Registration of Mailing Address and Lien Holders**

1. **Proof of Ownership.** Except for those Owners who initially contracted to purchase a Unit from the Declarant, any person on becoming an Owner shall furnish to the Association a photo copy of a certified copy of the recorded instrument vesting that person with an interest or ownership. Such copy shall remain in the files of the Association. A member shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of the members unless this requirement is first satisfied. The Association may issue membership certificates to its members; however, such certificates shall not be deemed to be shares of stock in the Association.
2. **Registration of Mailing Address.** If a Unit is owned by two or more Owners, such co-Owners shall designate one address as the registered address required by the Declaration. The registered address of an Owner or Owners shall be furnished to the secretary within five (5) days after transfer of title, or after a change of address, and such registration shall be in written form and signed by all of the Owners or by such persons as are authorized by law to represent the interest of the Owners thereof
3. **Liens.** Any Owner who mortgages or grants a deed of trust covering his Unit shall notify the board of directors of the name and address of the mortgagee or beneficiary of the deed of trust and shall file conformed copies of the note and security instrument with the board of directors. The board of directors shall maintain such information in a book entitled "Liens on Units." The board of directors, when giving notice to an Owner of default in paying an assessment or other default, shall send a copy of such notice to each mortgagee or beneficiary of a deed of trust covering such Owner's Unit whose name and address has theretofore been furnished to the board of directors.

Each Owner may mortgage his Unit and the mortgage may cover such Owner's interest in general and limited common elements. However, except for mechanics' liens, assessment liens, or tax liens, no other liens may be obtained against the general or limited common elements.

4. **Address of the Association.** The address of the Association shall be as shown in Article I of these Bylaws. Such address may be changed from time to time upon written notice to all members and all mortgagees or beneficiaries of deeds of trust listed in Liens on Units.

#### **ARTICLE XV. Security Interest in Membership**

Owners shall have the right irrevocably to constitute and appoint the mortgagee or the beneficiary of a trust deed their true and lawful attorney-in-fact to vote their Unit membership in the Association at any and all meetings of the Association and to vest in the mortgagee or the beneficiary any and all rights, privileges and powers that they have as Owners under the Articles of Incorporation and these Bylaws or by the virtue of the Declaration. Such proxy shall become effective upon the filing of notice by the mortgagee or the beneficiary with the secretary



of the Association at such time or times as the mortgagee or the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the board of directors or the Owners to carry out their duties as set forth in the Declaration. A release of the mortgage or the beneficiary's deed of trust shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the mortgagee or the beneficiary of the deed of trust the duties and obligations of an Owner.

#### **ARTICLE XVI. Amendments**

1. **By Directors.** Except as otherwise restricted by law or by the Association's governing documents, the board of directors shall have power to make, amend and repeal these bylaws at any regular meeting of the board or at any special meeting called for that purpose at which a quorum is represented. However, if the Owners shall make, amend or repeal any portion of these bylaws, the directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action.
2. **Owners.** The Owners may, by the vote of the holders of at least fifty percent (50%) of the votes of the Owners, unless expressly made subject to a higher voting requirement by law, the Articles of Incorporation, the Declaration or these Bylaws make, alter, amend and repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

#### **ARTICLE XVII. Conflicts**

In the case of any conflict between the Declaration, the Articles of Incorporation, these Bylaws, and any Governing Document, the Declaration shall control. In the case of any conflict between the Articles of Incorporation, these Bylaws, and any Governing Document, the Articles of Incorporation shall control. In case of any conflict between these Bylaws and any Governing Document, other than the Declaration or the Articles of Incorporation, these Bylaws shall control.

#### **ARTICLE XVIII. Miscellaneous**

1. **Seal.** The corporate seal of the Association shall be circular in form and shall contain the name of the corporation, the year of its organization and the words "Seal, Colorado".
2. **Right of Entry.** The manager and any person authorized by the board of directors shall have the right to enter each Unit in case of any emergency originating in or threatening such Unit whether or not the Owner is present at the time.
3. **Fiscal Year.** The fiscal year of the Association shall be such as may from time to time be established by the board of directors.
4. **Assessments, Debts, Obligations.** Attached hereto as Schedule A is a statement indicating what assessments, debts, or other obligations are assumed by an Owner on his Unit.

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of **THE AVON TOWN SQUARE, LOT 2, CONDOMINIUM ASSOCIATION**, a Colorado non-profit corporation; and

That the foregoing Amended and Restated Bylaws constitute the Bylaws of said Association as duly adopted at a meeting of the Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4<sup>th</sup> day of January, 2017.

  
Secretary