

BYLAWS  
OF  
AVON TOWN SQUARE COMMERCIAL CONDOMINIUM  
ASSOCIATION, INC.

**ARTICLE 1 - INTRODUCTION**

These are the Bylaws of AVON TOWN SQUARE CONDOMINIUM ASSOCIATION, INC. (the "Association") which shall operate under the Colorado Nonprofit Corporation Act, as amended, the Colorado Common Interest Ownership Act, as amended (the "Act"), the recorded Condominium Declaration for Avon Town Square Commercial Condominiums, as amended (the "Declaration"), and the Articles of Incorporation of this Association.

**ARTICLE 2 - BOARD**

Section 2.1 - Number and Qualification - Termination of Declarant Control.

(a) The affairs of the Condominium Project (the "Project") and the Association shall be governed by a Board of Directors which, until the termination of the period of Declarant control, shall consist of three persons, and following such date shall consist of five persons, the majority of whom, excepting the Directors appointed by the Declarant, shall be Unit Owners. If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by the Unit Owners, except for those appointed by the Declarant, or those appointed by the Board to fill vacancies. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Colorado Nonprofit Corporation Act for conducting the elections.

(b) The terms of at least one-third of the Directors not appointed by the Declarant shall expire annually. Directors shall be elected for two year terms, with the terms of at least one Director expiring in each year. At such time as the number of Directors is increased to five, as provided in (a) above, the terms of at least two directors shall expire in each year.

(c) During any period of Declarant control, the Declarant may appoint Directors as authorized in the Articles of Incorporation.

(d) The Board shall elect a president, secretary and treasurer and such other officers as may be authorized herein. The Directors and officers shall take office upon election.

(e) At any time after Unit Owners, other than the Declarant, are entitled to elect a Director, the Association shall call a meeting and give not less than 10 nor more than 60 days notice to the Unit Owners for this purpose. This meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Section 2.2 - Powers and Duties. The Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Project, including the following powers and duties:

(a) Adopt and amend Bylaws and Rules and regulations;

- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses and other authorized charges or amounts from Unit Owners.
- (d) Hire and discharge managers or managing agents;
- (e) Hire and discharge employees, independent contractors and agents other than managers or managing agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association's Declaration, Bylaws, Rules or Regulations in the Association's name, on behalf of the Association or two or more Unit Owners on matters affecting the Project.
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (i) Cause additional improvements to be made as part of the Common Elements;
- (j) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to Section 312 of the Act;
- (k) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements;
- (l) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections 202(1)(b) and (d) of the Act;
- (m) Impose and collect a reasonable charge for late payment of assessments and, after notice and hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association.
- (n) Impose and collect a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and the Board and maintain Directors' and officers' liability insurance;
- (p) Exercise any other powers conferred by the Act, Declaration or Bylaws;
- (q) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;
- (r) Exercise any other power necessary and proper for the governance and operation of the Association; and

- (s) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to the Unit Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Unit Owner within 45 days of publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

Section 2.3 - Manager or Managing Agent. The Board may employ a Manager or Managing Agent for the Project, at a compensation established by the Board, to perform duties and services authorized by the Board. The Board may delegate to the Manager only the powers granted to the Board by these Bylaws under Section 2.2., Subdivisions (c), (e), (g) and (h). Licenses, concessions and contracts may be executed by the Manager or Managing Agent pursuant to specific resolutions of the Board and to fulfill the requirements of the budget.

Section 2.3.1. - Requirements of Manager or Managing Agent. If the Board delegates to the Manager or Managing Agent any duties or responsibilities for the collection, deposit, transfer or disbursement of Association funds, the Manager or Managing Agent shall:

- (a) Maintain fidelity insurance or a bond in an amount not less than Fifty Thousand Dollars (\$50,000.00), or such higher amount as the Board may designate;
- (b) Maintain all funds and accounts of the Association separate from the funds and accounts of other associations or entities managed by such manager or managing agent, and maintain all reserve accounts of the Association separate and apart from operational accounts of the Association;
- (c) Prepare and submit, at least annually, (or more frequently if specified by the Board) a full accounting and financial statement. Such accounting and financial statement may be prepared by the manager or managing agent or by a public or certified public accountant.

Section 2.4 - Removal of Directors. The Unit Owners, by a vote of sixty-seven percent (67%) of all persons present and entitled to vote, at any meeting of the Unit Owners in which a quorum is present, may remove any Director other than a Director appointed by the Declarant, with or without cause. In the event of removal of a Directors by the Unit Owners, the Unit Owners shall, at the same meeting, elect a new Director to fill the unexpired term of the Director so removed.

Section 2.5 - Vacancies. Vacancies in the Board, caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made in the following manner.

- (a) As to vacancies of Directors whom Unit Owners other than the Declarant elected, by a majority of the remaining elected Directors constituting the Board; and
- (b) As to vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced, unless removed by the Unit Owners or the Declarant, as provided above.

Section 2.6 - Regular Meetings. The first regular meeting of the Board following each annual meeting of the Unit Owners shall be held within 10 days after the annual meeting at a time and place to be set by the Board at the meeting at which the Board shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the Directors are present. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings. Nothing herein shall preclude the first regular meeting from being scheduled or held immediately after the annual meeting.

Section 2.7 - Special Meetings. Special meetings of the Board may be called by the President or by a majority of the Directors on at least three business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

Section 2.8 - Location of Meetings. All meetings of the Board shall be held within the Town of Avon, unless all Directors consent in writing to another location.

Section 2.9 - Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any lawful business may be transacted at such meeting.

Section 2.10 - Quorum of Directors. At a meeting of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 2.11 - Consent to Corporation Action. If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Board or the committee, as the case may be. The secretary shall file these consents with the minutes of the meetings of the Board.

Section 2.12 - Telephone Communications in Lieu of Attendance. A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

### ARTICLE 3 - UNIT OWNERS

Section 3.1 - Annual Meeting. Annual meetings of Unit Owners shall be held in May of each year beginning in 1995 in Eagle County, Colorado, on the date set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Unit Owners, in accordance with the provisions of Article 2 of the Bylaws. The Unit Owners may transact other business as may properly come before them at these meetings.

Section 3.2 - Budget Meeting. Meetings of Unit Owners to consider proposed budgets shall be called in accordance with the Act, and as provided for in Articles V and VIII of the Declaration. The budget may be considered at Annual or Special Meetings called for other purposes as well.

Section 3.3 - Special Meetings. Special meetings of the Association may be called by the president, by a majority of the members of the Board or by Unit Owners comprising 20 percent of the votes in the Association.

Section 3.4 - Place of Meetings. Meetings of the Unit Owners shall be held at the Project or may be adjourned to a suitable place convenient to the Unit Owners, as may be designed by the Board or the president; provided that all meetings of Unit Owners shall be held within Eagle County, Colorado.

Section 3.5 - Notice of Meetings. The secretary or other officer specified in the Bylaws shall cause notice of meetings of the Unit Owners to be hand-delivered or sent prepaid by the United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit Owners, not less than 10 nor more than 60 days in advance of a meeting. No action shall be adopted at a special meeting unless the subject of the action is stated in the notice. If an Owner has failed to designate a mailing address, notice sent or delivered to the Owner's Unit.

Section 3.6 - Waiver of Notice. Any Unit Owners may, at any time, waive notice of any meeting of the Unit Owners in writing, and the waiver shall be deemed equivalent to the receipt of notice.

Section 3.7 - Adjournment of Meeting. At any meeting of Unit Owners, a majority of the Unit Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.8 - Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call (or check-in procedure) and establishment of quorum;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Board (if required and noticed);
- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Board (when required);
- (h) Ratification of budget (if required and noticed);
- (i) New business.

Section 3.9 - Voting

- (a) If a Unit is owned by more than one person or entity, one of the owners shall be designated as the voting member for the Unit, in a written instrument delivered to the secretary. In the absence of such written designation, the Board may, in its discretion, disallow the vote of the Unit; provided, however, that if more than one of multiple owners are present at a meeting, they may, by agreement of a majority of them, cast the requisite vote of the Unit. Nothing herein shall preclude the owners of a Unit or the designated voting member of the Unit from granting a proxy.
- (b) Votes allocated to a Unit may be cast under a proxy duly executed by a Unit Owner or designated voting member. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only 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 terminates eleven (11) months after its date, unless it specifies otherwise.

- (c) The vote of an Owner other than a natural person may be cast by any officer or other designated representative, which designation shall be in writing and delivered to the Board prior to any such vote. In the absence of such designation the Board, in its discretion, may disallow the vote. Nothing herein shall preclude granting of a proxy by the Owner or its designated representative.
- (d) Votes allocated to a Unit owned by the Association may not be cast, or considered in establishing a quorum.

Section 3.10 - Quorum. Except as otherwise provided in these Bylaws, the Unit Owners entitled to cast twenty percent (20%) of the votes for Directors present in person or by proxy at any meeting of Unit Owners shall constitute a quorum at that meeting. So long as a quorum is present at the beginning of the meeting, all lawful business may be transacted at such meeting.

Section 3.11 - Majority Vote. A majority of the votes entitled to be cast by Unit Owners present in person or by proxy at a meeting at which a quorum shall be present at the commencement of the meeting, shall be binding upon all Unit Owners for all purposes, except where a higher percentage vote is required in the Declaration, these Bylaws or by law.

#### **ARTICLE 4 - OFFICERS**

Section 4.1 - Designation. The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Board. The Board may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. The president and vice president, but no other officers, need to be Directors. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant.

Section 4.2 - Election of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board. They shall hold office at the pleasure of the Board.

Section 4.3 - Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for that purpose.

Section 4.4 - President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Unit Owners and of the Board. The president shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to, the power to appoint committees from among the Unit Owners from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.5 - Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Board shall appoint some other Director to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Board or by the president.

Section 4.6 - Secretary. The secretary shall keep the minutes of all meetings of the Unit Owners and the Board. The secretary shall have charge of the Association's books and papers as the Board may

- (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

**Section 5.2 - Fine for Violation.** By resolution, following notice and hearing, the Board may levy a fine of up to Fifty Dollars (\$50.00) per day for each day that a violation of the documents or Rules persists after notice and hearing, but this amount shall not exceed that amount reasonably necessary to insure compliance with the rule or order of the Board.

**Section 5.3 - Collection of Assessments and Financial Obligations of Owners.** The Association, through the Board or its designee, shall have the power to fully enforce, by all lawful and equitable means, the collection of assets and other charges, fines or financial obligations imposed on Unit Owners pursuant to the Act, Declaration, Articles of Incorporation, these Bylaws or Rules and Regulations adopted by the Association. Such collection or enforcement may, but need not, include foreclosure of the Association's lien as provided by the Declaration and the Act.

**Section 5.4 - Attorneys Fees and Costs.** As part of its right to enforce collection of amounts due to the Association, and in addition to all principal and interest due to the Association, the Association shall recover all of its costs, expenses and reasonable attorneys fees incurred by it in the course of its collection efforts. The recovery of costs, expenses and reasonable attorneys fees shall not be limited to an award in litigation or arbitration, but such costs, expenses and reasonable attorneys fees may be added to and become part of any negotiated settlement of the Association's claims.

## **ARTICLE 6 - INDEMNIFICATION**

The Directors and officers of the Association shall have the liabilities and be entitled to indemnification, as provided in the Colorado Non Profit Corporation Act, the Act and/or the Declaration, the provisions of which are incorporated by reference and made a part of this document.

## **ARTICLE 7 - RECORDS**

**Section 7.1 - Records and Audits.** The Association shall maintain full and complete financial records. The cost of any audit shall be a Common Expense unless otherwise provided in the Act, the Declaration or these Bylaws.

**Section 7.2 - Examination.** All records maintained by the Association or the Manager or Managing Agent shall be available for examination and copying by any Unit Owner, any holder of a Security Interest in a Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

**Section 7.3 - Records.** The Association shall keep the following records:

- (a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each annual or other assessment or charge, the dates on which each assessment or charge comes due, the amounts paid on the account and the balance due;
- (b) An account for each Unit Owner showing any other fee or charge payable by the Unit Owner;
- (c) A record of any capital expenditures in excess of Ten Thousand Dollars (\$10,000.00) approved by the Board for the current and next two succeeding fiscal years;

- (d) A record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;
- (e) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;
- (f) The current operating budget adopted pursuant to Section 315(1) of the Act and ratified pursuant to the procedures of Section 303(4) of the Act;
- (g) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;
- (h) A record of insurance coverage provided for the benefit of Unit Owners and the Association;
- (i) A record of any alternations or improvements to Units or Limited Common Elements which violate any provisions of the Declaration of which the Board has knowledge;
- (j) A record of any violations, with respect to any portion of the Project, of health, safety, fire or building cods or laws, ordinances, or regulations of which the Board has knowledge;
- (k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;
- (l) Balance sheets and other records required by local corporate law;
- (m) Tax returns for state and federal income taxation;
- (n) Minutes of proceedings of incorporation, Unit Owners, Directors, committees of Directors, waivers of notice, voting designations and current proxies; and
- (o) A copy of the most current versions of the Declaration, Bylaws, Rules and Regulations of the Board, along with their exhibits and schedules.

## **ARTICLE 8 - MISCELLANEOUS**

Section 8.1 - Notices. All notices to the Association or the Board shall be delivered to the office of the Manager or Managing Agent, or, if there is no Manager or Managing Agent, to the office of the Association, or to such other address as the Board may designate by written notice to all Unit Owners and to all holders of Security Interests in the Units who have notified the Association that they hold a Security Interest in a Unit. Except as otherwise provided, all notices to any Unit Owner shall be sent to the Unit Owner's address as it appears in the records of the Association or to the Unit. All notices to holders of Security Interests in the Units shall be sent, except where a different manner of notice is specified elsewhere in the documents, by registered or certified mail, to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 8.2 - Fiscal Year. The fiscal year of the Association shall be from January 1 through December 31 of each year.

Section 8.3 - Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.4 - Office. The principal office of the Association shall be on the Property or at such other place as the Board may from time to time designate.

Section 8.5 - Working Capital. A working capital fund is to be established in the amount of two months' regularly budgeted initial Common Elements assessments, measured as of the date of the first assessment on the first phase, for all Units as they are created in proportion to their respective Allocated Interests in Common Elements. Any amounts paid into this fund shall not be considered as advance payment of assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of Declarant control. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment, with a lien on the Declarant's unsold Units pursuant to the Act. Until termination of Declarant control of the Board, the working capital shall be deposited without interest in a segregated fund. While the Declarant is in control of the Executive Board, the Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions or construction costs or to make up budget deficits.

Section 8.6 - Reserves. As a part of the adoption of the regular budget, the Board shall include an amount which, in its reasonable business judgment will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the Project's age, remaining life and the quantity and replacement cost of major Common Element improvements.

## ARTICLE 9 - AMENDMENTS TO BYLAWS

Section 9.1 - The Bylaws may be amended only by vote of two-thirds of the members of the Board, following notice and comment to all Unit Owners, at any meeting duly called for such purpose.

Section 9.2 - No amendment of the Bylaws of this Association shall be adopted which would affect or impair the validity or propriety of any mortgage covering any Unit or which would change the provisions of the Bylaws with respect to institutional mortgages of record.

ATTEST: Certified to be the Bylaws adopted by consent of the Directors of Avon Town Square Commercial Condominium Association, Inc., dated August 15, 1994.

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Alfred H. Williams, President  
Secretary V. P.