

**BYLAWS  
OF  
VENTANA PROPERTY OWNERS' ASSOCIATION**

**ARTICLE I. NAME**

The name of the Association is VENTANA PROPERTY OWNERS' ASSOCIATION, hereinafter referred to as the "Association."

**ARTICLE II. PURPOSE AND DEFINITIONS**

2.1 The Association is formed for the purpose of constituting an association pursuant to the Declaration of Covenants, Conditions, Restrictions, and Easements for Ventana recorded in the Office of the Clerk and Recorder of Weld County, Colorado (the "Declaration").

2.2 All present or future Owners or tenants or other Persons that might use in any manner the Property subject to the Declaration are subject to the provisions of these Bylaws. Acquisition, rental or occupancy of any of the Property subject to the Declaration shall constitute acceptance and ratification of these Bylaws and shall be an agreement to comply with the Declaration and these Bylaws.

2.3 The terms used in these Bylaws are defined by the definition of terms in the Declaration, and any modifications thereto, and in the Colorado Common Interest Ownership Act, as amended, C.R.S. §38-33.3-101, *et seq.*

**ARTICLE III. MEMBERSHIP, VOTING AND QUORUM**

3.1 Membership. Every Owner of a Lot subject to the Declaration by virtue of being an Owner and for so long as the Person is an Owner, shall be a Member of the Association and shall be subject to the Declaration and the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned, but all of the Persons owning each Lot shall be entitled to the rights of membership and of use and enjoyment appurtenant to such ownership. The Declarant shall be a Member as provided by the Declaration.

3.2 Restrictions. An Owner shall not transfer, pledge or alienate his membership in the Association in any way except upon the sale or encumbrance of a Lot, and then only to the purchaser or Mortgagee of the Lot.

3.3 Classes of Members. The Association shall have one (1) class of voting membership comprising of all Owners, including Declarant.

3.4 Voting Rights. Each Owner shall have one (1) vote for each Lot owned. When more than one (1) Person holds a beneficial interest in a Lot as joint tenant, tenant in common, or otherwise, all such Persons shall be Members of the Association. If only one (1) of the multiple Owners of a Lot is present at a meeting of the Association, such Owner shall be entitled to cast the vote allocated to that Lot. If more than one (1) of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is a majority agreement if any one (1) of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The vote of a limited liability company may be cast by any manager (if a manager-managed limited liability company) or by any member (if a member-managed limited liability company) in the absence of express notice of the designation of a specific person by the owning limited liability company. The person presiding over the meeting may require reasonable evidence that a person voting on behalf of a corporation, business trust, partnership or limited liability company owner is qualified to vote. Votes allocated to a Lot owned by the Association may not be cast.

#### **ARTICLE IV. MEETINGS OF MEMBERS**

4.1 Annual Meeting. Annual meetings of the Association's Members shall be held each year on such date as shall be selected by the Board of Directors. The purpose of the annual meeting shall include the election of the Board of Directors and for the transaction of any other business that may come before the meeting subject to and in accordance with the Declaration and these Bylaws.

4.2 Special Meetings. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Lot Owners having twenty percent (20%) of the votes in the Association. Any such meeting shall be held at such place and time as the President determines within sixty (60) days after receipt of the written request.

4.3 Place of Meetings. The meetings of the Association shall be held at such place within or without the State of Colorado as the Board of Directors may determine.

4.4 Notice of Meetings. The Secretary shall cause to be mailed or delivered written notice of each annual or special meeting stating the meeting's purpose, as well as the time and place it is to be held, to each Member of record, at the registered address of each Member, at least ten (10) days but not more than fifty (50) days prior to such meeting. The mailing of the notice in the manner

provided by this section or the delivery of such notice shall be considered notice served, and the certificate of the Secretary that such notice was duly given shall be prima facie evidence of notice.

4.5 Quorum. Except as otherwise provided in these Bylaws or as provided by law, at any meeting of the Members, the presence in person or by proxy of Owners entitled to cast twenty percent (20%) of all votes entitled to be cast on the matter to be voted upon shall constitute a quorum. If the required quorum is not present at a duly called meeting, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. An affirmative vote of a majority of the total number of votes entitled to be cast by the Members present in person or by proxy at a meeting at which a quorum of Members is present shall be necessary to pass or adopt any motion or resolution presented to the Members unless a greater portion is required by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws.

4.6 Proxies. Any Owner of a Lot may assign his voting right by proxy duly executed by the Member. Any Owner of a Lot 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 one (1) year after its date unless the proxy specifies a shorter term.

4.7 Appointment of Officers and Directors by Declarant. As provided by the Declaration, until the expiration of the Period of Declarant Control and subject to the provisions of the Act, Declarant shall retain the exclusive powers to appoint and remove the Board of Directors and the officers of the Association.

4.8 Action by Consent. Any action which may 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, is signed by all of the Members entitled to vote on such action.

4.9 Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be 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 written ballot. All solicitations for votes by written ballot shall indicate the number of responses to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of directors, specify the time by which a ballot must be received by the Association in order to be counted, and be accompanied by written information sufficient to permit each Member casting such ballot to reach

an informed decision on the matter. A written ballot may not be revoked. Action taken under this Section has the same effect as action taken at a meeting of Members and may be described as such in any document.

4.10 Meetings by Telecommunication. Any or all of the Members may participate in an annual or special meeting of the Members by, or the meeting may be conducted through the use of, any 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.

## **ARTICLE V. BOARD OF DIRECTORS**

5.1 Number and Qualifications. Consistent with the provisions of the Declaration, until the expiration of the Period of Declarant Control and subject to the limitations of the Act, the Declarant shall retain exclusive powers to appoint and remove the Board of Directors (the "Board"). Until the expiration of the Period of Declarant Control, the initial Board of Directors shall consist of three (3) persons and, following such date, shall consist of a minimum of five (5) persons. Directors shall be Members.

5.2 Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association, for the operation and maintenance of the Common Area of the Association, and for maintenance of the landscaping within the publically dedicated portions of Tracts B and C as set forth in Section 4.3 of the Declaration. The powers and duties of the Board shall include, but not be limited to, the following, all of which shall be done for and on behalf of the Owners:

(a) To administer and to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration and the Articles and Bylaws of the Association, and any amendments.

(b) To establish, make and enforce compliance with such Ventana Rules that may be necessary for the operation, use and occupancy of the Common Areas with a right to amend such Ventana Rules from time to time.

(c) To designate and remove personnel necessary for the operation, maintenance, repair and replacement of the Common Areas, and to incur such costs and expenses that may be necessary to keep in good order, condition and repair all of the Common Areas. In particular, the Board shall hire a professional irrigation management firm to manage the Association's raw water irrigation system.

(d) To insure and keep insured all insurable Common Area and Improvements in a reasonable amount for the benefit of the Owners.

(e) To obtain and maintain insurance and fidelity bonds as required by the Act or the Declaration or other insurance against such other risks as the Board deems appropriate with respect to the Association's responsibilities and duties.

(f) To prepare annually a budget for the Association pursuant to the requirements of the Act, the Declaration, and to the extent necessary, to carry out the obligations and duties of the Association, including, but not limited to, the establishment of a reserve account and a working capital account.

(g) To establish, assess, levy and collect (1) Annual Assessments or charges as provided in the Declaration to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in the Declaration; and (3) Default Assessments which may be assessed against the Lot pursuant to the Declaration, which Assessments are to be fixed, established and collected from time to time as provided by the Declaration and the Bylaws.

(h) To institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws or Ventana Rules of the Association in the name and on behalf of the Association.

(i) To hire and discharge employees, agents, independent contractors and managing agents.

(j) To employ a Manager for the Association at compensation established by the Board of Directors, which Manager shall perform duties and services that are authorized by the Board of Directors.

(k) To enter into contracts to carry out the duties, obligations and powers of the Association.

(l) To establish bank accounts for the common treasury and for all separate funds which may be required or may be deemed advisable.

(m) To make repairs, additions, alterations and improvements to the Common Area and Improvements consistent with managing the Property in a first-class manner and consistent with the best interests of the Owners.

(n) To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at reasonable times by each of the Members under the conditions established by the Board and to prepare or have prepared annually unaudited financial statements.

(o) To prepare and deliver annually to each Member a consolidated statement showing receipts, expenses or disbursements since the last such statements.

(p) To control and manage the use of all Common Areas and Improvements.

(q) To exercise any other powers conferred by the Declaration, Articles of Incorporation, Bylaws, the Act, and the Colorado Revised Nonprofit Corporation Act.

(r) To exercise any other powers reasonable and proper for the performance of the obligations and duties of the Association.

5.3 No Waiver of Rights. The omission or failure of the Association or any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Declaration or Bylaws, or the rules adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release, and the Association shall have the right to enforce the same.

5.4 Term of Office. Except for Directors appointed by the Declarant during the Period of Declarant Control, the Directors shall be elected by the Members. The terms of office of the initial Directors named in the Articles of Incorporation or any other Directors appointed by the Declarant shall be for the Period until their successors are elected by the Members. The terms of any Directors elected by the Members shall be for one year until termination of the Period of Declarant Control. Thereafter, at the next annual meeting of Members following such termination of the Period of Declarant Control, the Members shall elect at least one-third of the Board for a term of one year, at least one-third of the Board of a term of two years, and the remaining members of the Board for a term of three years. At each annual meeting thereafter, the Members shall elect the appropriate number of persons serving on the Board, depending on the group of such persons whose term has expired, for a term of three years. At annual meetings of the Members, candidates for Directors may be nominated from the floor.

5.5 Vacancies. During the Period of Declarant Control, the Declarant may appoint the Directors of the Association as provided by the Declaration and to the extent permitted by the Act. After the Period of Declarant Control, vacancies on the Board shall be filled by the majority of the remaining elected Directors constituting the Board of Directors. Each person so appointed shall serve on the Board of Directors for the remainder of the term of the Director that was replaced.

5.6 Removal of Directors. The Members, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any Director serving on the Board of Directors, other than a Director appointed by the Declarant, with or without cause. At the meeting where any Director has been removed, or at any subsequent properly called meeting of the Members, the Members shall elect a new Director to fill the unexpired term of the removed Director.

5.7 Compensation. Directors shall not receive compensation for service on the Board of Directors. However, any Director may be reimbursed for the actual expenses incurred by the Director in the performance of his duties.

5.8 Regular Meetings. The regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least one (1) meeting shall be held each year immediately after and at the same place as the annual meeting of the Members. Notice of regular meetings for the Board of Directors shall be given to each Director personally or by mail, telephone or facsimile at least ten (10) days prior to the day named for such meeting.

5.9 Special Meetings. Special meetings of the Board of Directors may be called by the President or by any two (2) Directors on three (3) days' notice to each Director, given personally or by mail, telephone or facsimile, which notice shall state the date, time, place and purpose of the meeting.

5.10 Action Without a Meeting. The Board of Directors shall have the right to take any action without a meeting which may have been taken in a meeting by obtaining the unanimous written approval of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

5.11 Waiver of Notice. Before or at any meeting of the Board of Directors, the Directors may, in writing, waive notice of the meeting and such waiver shall be deemed equivalent to the giving of the notice.

5.12 Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business of the Board of Directors.

5.13 Voting. The affirmative vote of a majority of the members of the Board of Directors shall govern its actions and be the act of the Board of Directors, unless the act of a greater number is required by law, the Declaration, or these Bylaws.

5.14 Proxy. For purposes of determining a quorum at any meeting of the Board, and for purposes of casting a vote for or against a particular proposal, a Director may be deemed to be

present at a meeting and to vote if the Director has granted a signed written proxy to another Director who is present at the meeting, authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in these Bylaws and as otherwise permitted by the Colorado Revised Nonprofit Corporation Act, Directors may not vote or otherwise act by proxy.

5.15 Meetings by Telecommunication. The Board may permit any Director to participate in a regular or special meeting by, or conduct the meeting through the use of any means of, communication by which all Directors participating may hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

## **ARTICLE VI.        OFFICERS**

6.1 Designation. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors and such assistant officers as the Board shall, from time to time, elect. The office of Vice-President need not be filled. Any two offices may be held by the same person, except the offices of President and Secretary. The officers shall also be Directors.

6.2 Election of Officers. During the Period of Declarant Control, the officers of the Association shall be appointed by the Declarant. After the Period of Declarant Control, the officers shall be elected annually by the Board of Directors at the annual meeting of the Board and shall hold office at the pleasure of the Board.

6.3 Removal of Officers. During the Period of Declarant Control, any officer may be removed by the Declarant and a successor appointed by the Declarant. After the Period of Declarant Control, upon affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor shall be elected at any regular meeting of the Board or any special meeting of the Board called for that purpose.

6.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, during the Period of Declarant Control, may be filled by the Declarant for the unexpired portion of the term. After the Period of Declarant Control, any vacancy in any office because of death, resignation, removal, disqualification or otherwise, shall be filled by the Board of Directors for the unexpired portion of the term.

6.5 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have the general powers and duties that are usually vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from and among the Members from

time to time as the President may determine to be appropriate to assist in the conduct of the affairs of the Association, or as may be established by the Board or by the Members of the Association at any regular or special meetings.

6.6 Vice-President. The Vice-President shall have all the powers and authority and perform all functions and duties of the President, in the absence of the President or the President's inability for any reason to exercise such powers and functions or to perform such duties.

6.7 Secretary. The Secretary shall keep all minutes of the meetings of the Board of Directors and the minutes of all meetings of the Association. The Secretary shall have charge of all books and papers that the Board may direct and shall, in general, perform all the duties incident to the office of the Secretary.

The Secretary shall compile and keep up to date at the principal office of the Association a complete list of the Members and their registered addresses as shown on the record of the Association.

6.8 Treasurer. The Treasurer shall have the responsibility for the Association funds and shall be responsible for keeping a full and accurate account of all receipts and disbursements in the books belonging to the Association; provided, however, that when a Manager has been delegated the responsibility of collecting and disbursing funds, the Treasurer's responsibility shall be to review the accounts of the Manager not less often than quarterly. The Treasurer shall perform such other duties as from time to time may be assigned by the Board of Directors or provided for by the Declaration.

## **ARTICLE VII. LIMITS OF CERTAIN LIABILITIES OF DIRECTORS**

7.1 There shall be no personal liability, either direct or indirect, of any Director or officer to the Association or to its Members for monetary damages for any breach or breaches of fiduciary duty as Director or officer, except that this provision shall not eliminate the liability of a Director or officer to the Association or its Members for monetary damages for any breach, act, omission or transaction to which the Colorado Revised Nonprofit Corporation Act prohibits expressly the elimination of liability.

7.2 This provision shall not limit the rights of Directors or officers for the Association for indemnification or other assistance from the Association. This provision shall not modify, restrict or otherwise diminish the provisions of C.R.S. §13-21-116(2)(b) (concerning elimination of liability of Directors, except for willful and wanton acts or omissions), any amendment or successor provision thereto, or any law limiting or eliminating liabilities.

7.3 Any repeal or modification of the foregoing provisions of this Article by the Members of the Association or any repeal or modification of the provisions of the Colorado Revised Nonprofit

Corporation Act which permits the elimination of liability of Directors by this Article shall not affect adversely any elimination of liability, right or protection of a Director or officer of the Association with respect to any breach, act, omission or transaction of such Director or officer occurring prior to the time of such repeal or modification.

#### **ARTICLE VIII. AMENDMENTS**

8.1 Amendments. These Bylaws may be amended only by vote of at least two-thirds (2/3) of the members of the Board of Directors or by a majority of the votes entitled to be cast by the Members present in person or by proxy at any annual, regular or special meeting at which a quorum is present. In the event the Board of Directors proposes to amend these Bylaws, it may do so only following notice and comment to all Members at any meeting duly called for such purpose.

8.2 Conflict Between Documents. In the event of any conflict between the terms and provisions of the Articles of Incorporation of the Association and these Bylaws, the Articles shall control. In the event of any conflict between the terms and provisions of the Declaration and these Bylaws or the Articles of Incorporation, the Declaration shall control.

#### **ARTICLE IX. OBLIGATIONS OF OWNERS**

9.1 Assessments. Except as otherwise provided in the Declaration, all Owners shall be obligated to pay the Assessments imposed by the Association pursuant to the Declaration. Unless otherwise determined by the Association, the Annual Assessments and any Special Assessments which are to be paid in periodic installments, shall be paid periodically in advance and shall be due and payable to the Association at its principal office or as the Association may otherwise direct in writing. A Member shall be deemed to be in good standing and entitled to vote at any annual meeting or special meeting of the Members within the meanings of these Bylaws if, and only if the Member shall have fully paid all Assessments made or levied against the Property owned by the Member.

9.2 Evidence of Ownership. Any Person becoming an Owner of a Lot shall furnish to the Association a copy of the recorded instrument vesting that Person with an interest or ownership in the Lot, which copy shall remain in the files of the Association.

9.3 Registration of Mailing Address. The Owner or several Owners of one (1) Lot shall have one (1) and the same registered mailing address to be used by the Association for the mailing of statements, notices and demands, and all communications and such registered address shall be the only mailing address of a Person or Persons. The registered address of a Member shall be furnished by such Member to the Association within fifteen (15) days after the transfer of title, or any change of address, and such registration shall be in written form and signed by the Owner or Owners of each Lot. If no address is registered or if all Owners cannot agree, then the address of the Lot shall be

deemed the registered address for the purposes of these Bylaws until another registered address is furnished as required by this section. If the Lot is the registered address of the Owners, then any notice shall have been deemed to be duly given if delivered to any Person occupying that Lot, or if such Lot is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

**ARTICLE X.           INSPECTION OF RECORDS AND STATEMENT OF ACCOUNT**

10.1 Inspection. All Owners, Mortgagees, and other Persons lawfully entitled to inspect the same shall have the right to inspect the business records of the Association at reasonable times during business hours.

10.2 Statement of Account. Upon ten (10) days' notice to the Manager, if one is employed, and payment of a reasonable fee, any Owner (or such Owner's authorized agent) or Mortgagee of a Lot shall be furnished a statement of the Owner's account setting forth the amount of any unpaid Assessments or other charges due and owing from such Owner.

**ARTICLE XI.           CORPORATE SEAL**

The corporate seal shall be in such form as shall be approved by resolution of the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The impression of a seal may be made and attested to by either the Secretary or an Assistant Secretary for authentication of contracts or other documents requiring a seal.


**ARTICLE XII.         FISCAL YEAR**

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE XIII.        WAIVER OF NOTICE**

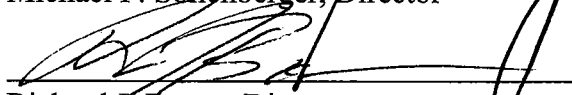
When any notice is required to be given under the provisions of the Colorado Revised Nonprofit Corporation Act, the Articles of Incorporation or the Bylaws of the Association, a waiver in writing signed by the Person or Persons entitled to the notice, whether before or after the time stated, shall be deemed equivalent to the giving of the notice.

The undersigned being all of the Directors of Ventana Property Owners' Association have adopted these Bylaws this 29<sup>th</sup> day of December, 2000.



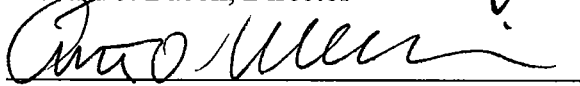
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Michael F. Sollenberger, Director



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Richard J. Bacon, Director




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Arthur O. Wilkonson, Director

**CERTIFICATION**

I certify that I am the duly elected and acting secretary of Ventana Property Owners' Association, and the foregoing Bylaws constitute the original Bylaws of the Association as adopted by unanimous consent of the Executive Board on the 29<sup>th</sup> day of December 2000.



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Richard J. Bacon, Secretary