

Bylaws of the Minturn Fitness Center

These Bylaws are based in part on provisions of the Colorado Revised Nonprofit Corporation Act (the “Act”) and provisions of the Articles of Incorporation of the Minturn Fitness Center, a Colorado nonprofit corporation (the “Nonprofit”), which were in effect when these Bylaws were adopted. If and to the extent that any conflict exists between these Bylaws and the Act, the Act will control. If and to the extent that there is any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation will control. In interpreting and following these Bylaws, reference also should be made to the then-current provisions of the Act and the Articles of Incorporation.

Article One Introduction

Section 1.01 Purpose

The purpose of the Nonprofit is to fund, construct, maintain, and participate in the management of a fitness center for the benefit of the residents of the Town of Minturn, a Colorado municipal corporation (the “Town”) and the Vail Valley, and a training center for the Ski and Snowboard Club Vail, a Colorado nonprofit corporation. The fitness and training center will be referred to in these Bylaws as the “Center.” The Center may provide programming, training, rehabilitation services, and sell concessions for a fee.

The Nonprofit has no capital stock. The Nonprofit has no members. The Town of Minturn, through its Town Council (the “Council”) and the Ski and Snowboard Club Vail (the “Club”), as Incorporators, have certain rights to appoint Directors under these Bylaws.

Section 1.02 Name

The name of the Nonprofit is the **Minturn Fitness Center**.

Section 1.03 Seal

The Nonprofit may, but is not required to, adopt a corporate seal. A seal used to be required in Colorado to transfer real estate owned by a corporation, but a seal is no longer required for any purpose under Colorado law.

Section 1.04 Fiscal Year

The fiscal year of the Nonprofit will end December 31 each year.

Article Two

Board of Directors

The Nonprofit's business will be managed by a Board of Directors (the "Board"), as provided in this Article.

Section 2.01 Number and Qualifications

The Board will be comprised of six Directors. The initial Directors, or their successors, have been appointed and are serving as of the date of the adoption of these Bylaws. To qualify as a Director, each Director must review and agree to adhere to the Bylaws and its addenda and the other policies and procedures established by the Board. Voting Directors must be natural persons, eighteen years of age or older. Honorary Directors appointed pursuant to Section 2.12 may be of any age.

Section 2.02 Appointment of Voting Directors

The number of directors will be six. Three of these Directors (the "Council Directors") will be appointed by the Council in accordance with its rules of procedure and three of these Directors (the "Club Directors") will be appointed by the Club in accordance with its rules of procedure.

Beginning July 2015, the Directors will be appointed by the Council and the Club to serve in staggered three-year terms. At the time of the Director's appointment, each Director will be assigned to one of three classes of Directors, namely, Class "A," Class "B," or Class "C." Each Class will consist of two Directors, one of which will be a Council Director and one of which will be a Club Director. Each Director will hold office for a term of three years, except that, for the classes of Directors appointed in 2015, the term of the Directors in Class A will expire on July 1, 2016 and every three years thereafter, the term of the Directors in Class B will expire on July 1, 2017 and every three years thereafter, and the term of the Director in Class C will expire on July 1, 2018 and every three years thereafter. Notwithstanding the foregoing, each Director will hold office until his or her successor is appointed and qualified. Directors may serve an unlimited number of Terms in succession.

Neither the Council nor the Club may assign its right to appoint Directors without the unanimous approval of the entire Board.

If the Town is incorporated into another municipality or governmental or public authority, its right to appoint Directors will succeed to whichever authority has jurisdiction over the premises of the Center.

If the Club dissolves, merges with another entity whereby the non-party entity is the surviving entity, or converts to a for-profit form of organization, or if the Club, as a nonprofit corporation, otherwise ceases to exist, the Town or its successor will thereafter have the exclusive right to appoint all Directors.

Section 2.03 Removal and Resignation

Any Director appointed by the Council may be removed by the Council and any director appointed by the Club may be removed by the club for cause. Cause shall include: (a) a director

who is a member of the Council no longer being on Council, (b) a director appointed by Council or the Club no longer being employed by Council or the Club, or (c) a director appointed by Council or the Club having their duties and responsibilities reassigned by either Council or the Club. Any Director may resign at any time, effective upon delivery of, or upon the terms stated in, a written letter or notice of resignation.

Section 2.04 Vacancies

A vacancy on the Board will be filled by the organization that appointed the Director, namely, the Council or the Club, as the case may be. A Director appointed to fill a vacancy will be appointed for the unexpired term of his or her predecessor.

Section 2.05 Place of Meetings

Meetings of the Board, whether annual, regular or special, will be held within 25 miles of the Town of Minturn at an ADA compliant facility. Any Director meeting, including special meetings, may also take place, in whole or in part, in person or by virtual meeting technology, including by telephone, Skype, or other such technology that permits each participant in the meeting to monitor and fully participate in all deliberations and proceedings.

Section 2.06 Annual Meeting

The Board will meet on the second Tuesday of June of each year, or another date and time in the month of June, as determined by the Board, to elect officers, consider and approve the annual budget for the Nonprofit's operations, to consider and approve the annual appropriations for capital improvements and investments, and to consider any other matters properly before the Board. Failure to hold the annual meeting will not cause the Nonprofit to be dissolved. Notice of the annual meeting must be given to the members of the Board, but no less than five and no more than 30 days prior to the annual meeting.

Section 2.07 Meeting Notice

Notice of regular meetings will be deemed to be given when the Board adopts a regular meeting schedule (such as the second Tuesday of each month at 12:00 pm at the Nonprofit's primary place of business). Notice of other meetings may be given by regular mail, fax, or email and will be deemed given if received at least five days before the date of the meeting. The business to be transacted at and the purpose of any special meeting of the Board should be specified in the notice in general terms. No lawful act of the Board, appropriately adopted, will be invalid if the matter acted upon at a special meeting reasonably relates to the contents of the notice.

Section 2.08 Waiver of Notice

Notice of any meeting may be waived either orally or in writing by any Director at any time.

Section 2.09 Quorum and Voting

Subject to the provisions below concerning action with respect to certain extraordinary matters, the presence of no less than two Council Directors and two Club Directors will constitute a quorum for the transaction of business. Except as otherwise provided in these Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present will be the act of

the Board. If there is a tie vote, the matter voted upon will be deemed to have failed. A Director may appoint another Voting Director as his or her proxy for purposes of determining a quorum and for purposes of voting on a particular proposal, but the appointment must be in writing, must describe the particular proposal to be voted upon, must direct the vote to be cast by the proxy, and must be subscribed by the Director giving such proxy.

Section 2.10 Action without a Meeting

Any action that may be taken at a meeting of the Directors may be taken by unanimous written consent of all of the Directors.

Section 2.11 Unanimous Decision on Certain Extraordinary Matters

The unanimous vote or consent of all of the Directors will be required to encumber or dispose of any real property owned by the Company, to incur over \$15,000 in debt, or to amend or repeal these Bylaws.

Section 2.12 Honorary Directors

The Board may appoint honorary Directors, who may not vote as Directors, but may attend and otherwise participate in all meetings of the Board. The term of office of an honorary Director will be as specified by the Board.

**Article Three
Budgeting and Operations**

Section 3.01 Annual Budget, Maintenance Reserves, and Insurance

The Board of Directors will, at its annual meeting, adopt a budget (“Budget”) for the operation of the Center. The Budget will include an amount to be placed in a separate capital reserve account dedicated exclusively to the repair of the Center and maintenance, upgrade, and replacement of its equipment. A capital reserve account schedule (2014 – 2024) will be adopted by the Board and a line item for contributions to the capital reserve account will be included in every Budget approved by the Board. The Budget will include provisions for the center to maintain adequate insurance. The Budget will include amounts for audits, tax counseling, and other professional fees that may be required to comply with regulations imposed by the IRS, the Colorado Department of Revenue, or other regulators or authorities with jurisdiction over the Nonprofit, the Center, its finances, and its operations.

Section 3.02 Insurance

The Nonprofit will maintain adequate insurance for the Center, including as follows:

| Insurance Item | Amount |
|-----------------------------|--|
| Building and Equipment | \$2.5 Million |
| General Liability | \$1 Million/Occurrence/\$2 Million Overall |
| D&O | As determined by the Board |
| Workers Comp & Unemployment | As legally required |

The Board shall, on an annual basis evaluate the insurance policies and amounts and adjust as needed to account for inflation, changes in operations or activities undertaken by the Center, for any other reasonable purpose. The provision of this insurance is not a waiver of any governmental immunity that may otherwise apply.

Section 3.03 Revenue from Membership Dues, Use Fees, and Sales

Income to the Nonprofit from Membership Dues, use fees, and sales will be used exclusively to fund operations of and maintenance, repair, replacement, or enhancements to the Center, its equipment, its offerings, and its facilities. Remittance of these funds for any other otherwise-lawful, tax exempt and nonprofit purposes may only be made upon the unanimous consent or resolution of the Board. The Board, upon unanimous vote, may authorize a distribution of income to Club and Town in equal amounts, so long as said distribution complies with applicable tax laws and does not violate the tax exempt status of the Nonprofit.

Section 3.04 Recovery of Costs

At such time that the annual Budget foresees revenues in excess of expenses (including making contributions to the capital reserve account), the Board shall budget payments to Club and/or Town for purposes of reimbursing operating capital contributions to the Nonprofit and out-of-pocket costs previously absorbed by the Club and the Town. Reimbursements shall be made in the following order:

1. Club shall be reimbursed for advances of operational capital made to the Nonprofit during periods when expenses were in excess of revenues. Operational capital advances shall directly relate to operation of the Center and its programs that are equally available to Club participants and Minturn residents. Operational capital advances shall not relate to programs or personnel that are exclusively for the benefit of Club participants. The Club shall maintain records of operational capital contributions made to Nonprofit and shall submit such records for Board review and approval on an annual basis as part of the Board's adoption of the Budget.
2. Club and Town shall be reimbursed for out-of-pocket costs absorbed by those entities related to land acquisition, design and construction of the Center. Club shall be reimbursed \$161,500 and Town shall be reimbursed \$45,000 of out-of-pocket costs related to the Center. Reimbursements of out-of-pocket costs shall be made pro-rata (78% to Club and 22% to Town).

Reimbursement payments shall only be made at the end of the Nonprofit's fiscal year when actual revenue in excess of expenses is available. No reimbursement item described herein shall bear or accrue interest. No reimbursement item shall be deemed a debt entitled to be repaid by any date certain.

Section 3.05 Programming Plan

The Board will prepare and approve an annual programming plan for the Center. The Plan will include hours of operation, target for number of hours of group programming available to the public and the type of group programming, and times when portions of the Center will be closed to the members or the public for Club-related purposes.

Section 3.06 Membership Rates; Town Residents

The Center will offer membership rates at a fee reasonably calculated to facilitate use and membership of the Center by the general public. Town residency will apply to any person residing within the Minturn Zip Code, 81645, as well as any business owners whose business is located in Minturn, any police and fire department employees assigned to the Town and their families. Residents will receive access to the Center and certain programming at the Center at reduced rates. The Nonprofit will offer to the public use or membership plans on a daily, monthly, and annual basis. Family memberships will be offered. There will be no initiation fee for residents of the Town. Residency may be established with a driver's license or utility bill in the name of the applicant. The Town may designate persons who are entitled to use basic Center facilities and programming without charge: (i) full-time Town employees, and (ii) police and fire department employees who are primarily assigned to work in Minturn.

Section 3.07 Non-Discrimination

The Nonprofit will prohibit discrimination against and harassment of any employee, member, or any applicant for employment or membership because of race, color, national or ethnic origin, age, religion, disability, sex, sexual orientation, gender identity and expression, veteran status (special disabled veterans, disabled veterans and Vietnam-era veterans), or any other characteristic protected under applicable federal or state law. All personnel who are responsible for hiring and promoting employees and for the development and implementation of Center programs or activities are charged to support this effort and to respond promptly and appropriately to any concerns that are brought to their attention.

Article Four Center Property

Section 4.01 Property.

Unless otherwise specifically agreed to, the real property, improvements, and personal property inside the Center are the property of the Nonprofit. The Board may authorize, in writing, the Club or the Town to locate personal property or equipment for the exclusive use of its or their members or constituents. Such "individual" property shall be noted in the minutes of the Board

Section 4.02 Dissolution.

(a) Personal Property

Upon dissolution of the Nonprofit, the personal property within the Center will be (i) sold in whole or in part with the proceeds distributed in equal portions to the Town and to the Club, or (ii) distributed in kind, in whole or in part, in equal proportions to the Town and to the Club. To receive distribution of property upon dissolution, the Town and the Club must be tax-exempt, nonprofit entities. If one does not qualify as a tax exempt, nonprofit entity, the undistributed property will be distributed to the other.

(b) Real Property

Upon dissolution of the Nonprofit, the real property and fixtures of the Nonprofit will be distributed to the Town.

Article Five Officers

Section 5.01 Officers

The officers of the Nonprofit will consist of a president, secretary, and treasurer, and other officers and agents deemed necessary by the Board, including any vice president, each of whom will be elected by the Board at its annual meeting. The offices of treasurer and secretary may be held by the same person. The President and the Treasurer may not both be Council Directors or both be Club Directors. The offices of President and Vice-President shall alternate between a Council Director and a Club Director every two calendar years. Upon unanimous vote of the Board, a Council Director or a Club Director may continue serving as President or Vice-President for a period in excess of two years.

Officer vacancies will be filled by the Board, and the new officer will hold office until a successor is chosen and qualified. If there is a deadlock with respect to the appointment of the president, then there will be no president, so long as there is a deadlock, and the Council Directors and the Club Directors will each appoint a senior vice president, who, together, will jointly serve as executive officers of the Nonprofit. The officers must undertake their duties at all times in conformance with the directives of the Board, as expressed in its duly enacted resolutions and consents and in accordance with the annual budgets and appropriations approved by the Board at its annual meeting.

Section 5.02 President

The president will be the chief executive and manager of the Nonprofit and will in general oversee the day-to-day business and affairs of the Nonprofit, subject to the direction and control of the Board. The president will carry out the directives of the Board, as expressed in its duly enacted resolutions and consents and in accordance with the annual budgets and appropriations approved by the Board at its annual meeting. The President may be a voting Director, if so appointed by the Council or the Club. Otherwise, the President will serve as an *ex officio*, non-voting member of the Board, facilitate all meetings of the Board, and, as necessary and appropriate, facilitate Committee meetings. The President is responsible for keeping the Board apprised of material information concerning the performance of the Nonprofit in general.

The President will manage and implement any agreements entered into by the Nonprofit with respect to the management of the Nonprofit's facilities, subject to his or her duty of loyalty to the Nonprofit.

Section 5.03 Vice-Presidents

Vice-presidents, if any, will perform the duties set forth by the president or by the Board. If the Nonprofit has more than one vice-president, the senior vice-president will perform all the duties incumbent upon the President during the absence or disability of the President.

Section 5.04 Secretary

The secretary will keep, or will cause to be kept, a true and complete record of the proceedings of the Board. The secretary will be custodian of the records (and of the seal of the Nonprofit and will see that the seal is placed on documents whenever required, if the Nonprofit has obtained a seal). The secretary will give all notices and perform other duties as the Bylaws or the Board require.

Section 5.05 Treasurer

The treasurer will keep correct and complete records of account, showing accurately at all times the financial condition of the Nonprofit. The treasurer will be the legal custodian of all monies, notes, securities and other valuables that may from time to time come into the possession of the Nonprofit. If there is no treasurer, the secretary will assume these duties.

Section 5.06 Absent Officer

In case of the absence of any officer of the Nonprofit or for any other reason that the Board may deem sufficient, the Board may transfer the powers or duties of that officer to any other officer or to any Director or employee of the Nonprofit, provided that the majority of the full Board concurs.

Section 5.07 Compensation

Officers will receive no compensation unless otherwise authorized by the Board.

Article Six Committees

Section 6.01 Director Committees

The Board may designate and appoint one or more committees, each of which will have at least one Director. Committees will have the authority of the Board to manage the Nonprofit as may be authorized by the Board, except that no committee can amend the Bylaws; change the committee membership or the Directors of the Nonprofit; amend the Articles of Incorporation; adopt a plan to merge or consolidate with another corporation, or adopt a plan to convert to another type of entity; authorize the sale, lease, exchange or mortgage of all or substantially all of the Nonprofit's assets outside the ordinary course of business; distribute the assets of the Nonprofit; or amend any resolution of the Board.

Section 6.02 Other Committees

The Board may appoint committees that lack authority to manage the Nonprofit. The Board may also remove committee members if, in their judgment, removal is in the best interests of the Nonprofit.

Article Seven
Nonprofit Policies and Procedures.

The Board may adopt certain policies and procedures (“Policies and Procedures”) as standard operating practices of the Company, including those policies and procedures set forth on the attached Exhibits A through E, which are incorporated in these Bylaws as if set out in full.

Article Eight
Negotiable Instruments, Deeds and Contracts.

The President and Treasurer may jointly sign checks, instruments, and other written contracts that bind the Nonprofit, provided however, that the following transactions may only be entered into by these officers with the express authorization of the requisite number of Directors:

- (a) Conveyance or encumbrance of any (i) real property or (ii) personal property in excess of \$15,000;
- (b) Any single expenditure or series of related expenditures that is in excess of \$15,000 that is not expressly authorized in an annual budget of the Nonprofit approved by the Board;
- (c) Any agreement or written contract that purportedly binds the Nonprofit to a term in excess of one year;
- (d) Any employment, compensation, rental, independent contractor, or other agreement in excess of \$15,000 that is not expressly authorized in an annual budget of the company approved by the Board.

Article Nine
General Provisions

Section 9.01 No Private Inurement

No part of the net earnings of the Nonprofit may inure to the benefit of, or be distributable to, its Directors, officers or other private persons, except that the Nonprofit may be authorized to pay reasonable compensation for services rendered and to make payments and distributions for the Nonprofit's charitable purposes to the extent consistent with law, the Articles of Incorporation and these Bylaws. The Nonprofit may not carry on any other activities not permitted to corporations exempt from federal income tax under IRC § 501(c)(3).

Section 9.02 Indemnification

The Nonprofit waives all personal liability of its Directors, officers, employees, and volunteers for any breach of fiduciary duty owed to the nonprofit, and the Nonprofit must pay their legal

defense costs in advance arising from all acts within the scope of their official functions for the Nonprofit, except for the following: breach of loyalty, acts or omissions in bad faith, intentional misconduct, known violations of law, loans to any officer or Director, or any transaction when the Director obtained an improper financial benefit. The nonprofit also waives all personal liability of its Directors or officers for any injury to persons or property arising out of a tort committed by an employee unless the Director or officer was personally involved in this tort, or committed a criminal offense, pursuant to CRS § 7-128-402. The Nonprofit hereby adopts the provisions regarding Director liability and indemnification in the Colorado Business Nonprofit Act at CRS §§ 7-108-401 through 7-108-501, and CRS §§ 7-109-101 through 7-109-110, and incorporating CRS §§ 13-21-115.7 and 13-21-116, which generally provide that any Director who is not compensated by a nonprofit will be immune from civil liability for any act or omission which results in damage or injury if the Director was acting within the scope of his or her official functions.

*End of Bylaws
Execution and Certification Page Follows Immediately*