

**BYLAWS  
COLORADO FALLEN FIREFIGHTERS FOUNDATION**

The Board of Directors of this Corporation shall have the exclusively vested power to alter, amend or repeal the adopted initial Bylaws from time to time as it deems proper for the management of the affairs of the Corporation.

**ARTICLE 1**

**Offices and Agents**

**1.01 Principal Office.** The principle office of the Corporation may be located within or without the State of Colorado, as from time to time designated by the Board of Directors. The Corporation may have other offices and places of business at such places as shall be determined by the Directors.

**1.02 Registered Office.** The registered office of the Corporation shall be maintained in the State of Colorado as required by Colorado Revised Statutes (C.R.S.) Title 7, Corporations Not For Profit, and it may be, but need not be, identical with the principal office if located within the State of Colorado. The address of the registered office of the Corporation may be changed from time to time as provided by the Act.

**1.03 Registered Agent.** The Corporation shall maintain a registered agent in the State of Colorado as required by the Act. Such registered agent may be changed from time to time as provided by the Act.

**ARTICLE II**

**Statement of Purpose**

**2.01** The purposes for which the Corporation is formed are exclusively charitable and educational, within the meaning and intendment of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, or any corresponding provisions of any subsequent United States internal revenue law, together with the Treasury regulations promulgated hereunder (collectively, the "Code").

**2.02** The aforementioned enumeration of specific purposes shall not limit or restrict in any manner the general powers of the Corporation and the enjoyment and exercise thereof as now or hereafter conferred by the laws of Colorado.

**2.03** No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or other wise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

**2.04** Notwithstanding any provision of these Articles to the contrary, the Corporation shall not have the power to perform any act not permitted to be carried on (1) by a corporation exempt from Federal income taxation under Code Section 501(c)(3), or (2) by a corporation, contributions to which are deductible under Code Section 170(c)(2).

### **ARTICLE III**

#### **Mission Statement**

**3.01** The Corporation is organized for the specific purpose of: providing awareness, counseling and support group services to the surviving spouses and dependents of firefighters who have lost their lives, or have suffered a total, permanent disability in the line of duty in Colorado; erecting a memorial dedicated to honor fallen firefighters; and maintaining Foundation oversight of educational and charitable grant programs to provide educational assistance to the surviving spouses and dependents.

### **ARTICLE IV**

#### **Shareholders; Members**

**4.01 No Shareholders.** This Corporation shall not have shareholders, nor shall it issue shares of stock.

**4.02 No voting members.** The Corporation shall not have voting members.

### **ARTICLE V**

#### **Board of Directors**

**5.01 Authority.** Except as otherwise provided in the Articles of Incorporation or the provisions of C.R.S. Title 7, the business affairs, activities, and property of the Corporation shall be managed, directed, governed and controlled, and the powers of the Corporation shall be vested in and exercised by a Board of Directors. The Board of Directors shall have all the powers and duties necessary, appropriate, or convenient for the administration of the affairs of the Corporation and for the management and operation of the Corporation's property and activities, and may do and perform all acts and functions as are not prohibited by law, the Articles of Incorporation, or these Bylaws.

**5.02 Number.** The Board of Directors shall consist of no less than five (5) members. The number of Directors may be increased or decreased from time to time by action of the Board of Directors. No decrease shall have the effect of shortening the term of any incumbent member.

**5.03 Qualifications.** Each Director shall be a natural person of the age of eighteen years or older, but need not be a resident of the State of Colorado. Directors shall also satisfy such other qualifications as may be stated in the Corporation's Articles of

Incorporation. A Director must demonstrate an interest in the purposes and activities of the Corporation and must be interested in donating his or her time, advice, skill, energy, and support in furtherance of the Corporation and its purposes and activities. One director shall represent West Metro Fire /Rescue or the City of Lakewood.

**5.04 Elections; Term.** Except as otherwise provided in these Bylaws, each Director shall be elected at each annual meeting of the Directors, or at a regular meeting as deemed necessary and presented by the President of the Corporation, and shall hold such office until the next annual meeting of Directors, or until his/her successor shall be elected and shall qualify, unless he/she is sooner removed, dies, resigns, or no longer meets the qualifications described in Section 5.03.

**5.05 Performance of Duties.** A Director shall perform his duties as a Director, including his duties as a member of any committee of the Board of Directors upon which he/she may serve, in good faith, in a manner he reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

In the performance of these duties, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in paragraph (a), (b), and (c); but he/she shall not be considered to be acting in good faith if he/she has knowledge concerning the matter in question that would cause such reliance to be unwarranted. Those persons and groups on whose information, opinions, reports, and statements a Director is entitled to rely are:

(a) One or more officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional or expert competence; or

(c) A committee of the Board upon which he/she does not serve, duly designated in accordance with a provision of the Corporation's Articles of Incorporation or these Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

A person who so performs his/her duties shall not have any liability by reason of being or having been a Director of the Corporation.

**5.06 Resignations.** Any Director may resign at any time by giving written notice to the Board of Directors, or the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein; the acceptance of such resignation shall not be necessary to make it effective.

- 5.07 Removal.** At a meeting of the Directors called expressly for that purpose, any individual member of the Board of Directors may be removed, with or without cause, by the vote of a majority of the Directors entitled to vote on the question, excluding the Director proposed to be removed.
- 5.08 Vacancies; Increase in Directors.** Any vacancy occurring on the Board of Directors, and any directorship to be filled by reason of an increase in the number of Directors, may be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum, unless otherwise provided in the Corporation's Articles of Incorporation. A Director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A Director elected to fill a position resulting from an increase in the number of Directors shall hold office only until the next election of Directors.
- 5.09 Compensation.** By resolution of the Board of Directors, any Director may be paid for any one or more of the following: the reasonable expenses of attendance at meetings; the reasonable expenses incurred for providing counseling and group services to surviving spouses and dependents of firefighters who have lost their lives in the line of duty; the reasonable expenses for attendance at a memorial event.

## ARTICLE VI

### MEETINGS OF THE BOARD OF DIRECTORS

- 6.01 Place of Meetings.** The annual, regular or special meetings of the Board of Directors or any committee designated by the Board shall be held at the principle office of the Corporation or at any other place within the State of Colorado that a majority of the Board of Directors or any such committee, as the case may be, may designate from time to time by resolution.
- 6.02 Annual Meeting.** The Board of Directors shall meet annually for the purpose of electing Directors and officers and transacting such other business as may come before the Board of Directors. The annual meeting of the Board shall be held during the month of October of each year.
- 6.03 Regular Meetings.** In addition to the annual meeting, regular meetings of the Board of Directors or any committee designated by the Board of Directors shall be held on the third Monday of each month, or on such time and place as the Board of Directors or any such committee, as the case may be, may designate from time to time, by resolution.
- 6.04 Special Meetings.** Special meetings of the Board of Directors or any committee designated by the Board may be called at any time by the President, or by a

majority of the members of the Board of Directors or any such committee, as the case may be.

**6.05 Notice of Meetings.** Except as otherwise provided by these Bylaws or the laws of the State of Colorado, notice of each meeting of the Board of Directors or any committee setting forth the time and place of each meeting shall be given to each Director not less than five (5) days prior to the time fixed for the meeting. Notice of meetings may be either given personally by mail, telephone, facsimile, or email, to the address of each Director appearing on the books of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid thereon. If notice be given by facsimile or email, such notice shall be deemed to be delivered when the same is transmitted. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or any waiver of notice of such meeting, unless otherwise required by these Bylaws or the Act.

**6.06 Waiver of Notice.** The attendance of a Director at any meeting of the Board of Directors or any committee shall be deemed the equivalent of giving notice of waiver.

**6.07 Presumption of Assent.** A Director who is present at a meeting of the Board or a committee of the Board when corporate action is taken is deemed to have assented to the action taken unless:

- (a) The Director objects at the beginning of such meeting to the holding of the meeting or the transaction of business at the meeting;
- (b) The Director contemporaneously requests that the dissent from the action taken be entered in the minutes of such meeting; or
- (c) The Director gives written notice of dissent to the presiding officer of such meeting before its adjournment or to the secretary of the Corporation immediately after adjournment of such meeting.

The right of dissent as to a specific action taken in a meeting of a Board or a committee is not available to a Director who votes in favor of such action.

**6.08 Quorum and Action.** At meetings of the Board of Directors or any committee designated by the Board, a majority of the number of Directors fixed pursuant to these Bylaws or a majority of the members of any such committee, as the case may be, shall be necessary to constitute a quorum for the transaction of business, unless otherwise provided in the Corporation Articles of Incorporation.

If a quorum is present, the act of the majority of Directors in attendance shall be the act of the Board of Directors or any such committee, as the case may be, unless the

act of a greater number is required by the Corporation's Articles of Incorporation or the Act.

**6.09 Committees.** Standing Committees of the Corporation shall consist of a Memorial Committee, Golf Committee, and the Scholarship Committee. Each of these committees will have no less than three members of which at least one will be an Officer of the Corporation.

**6.10 Special or Other Committees.** The Board of Directors by resolution adopted by a majority of the Directors in office may designate and appoint one or more committees, each of which shall consist of two or more Directors, which committees, to the extent provided in the resolution, shall be appointed for the purposes of:

- (a)** amending, altering, or repealing these Bylaws;
- (b)** electing, appointing, or removing any member of any such committee or any officer or Director of the Corporation;
- (c)** amending the Articles of Incorporation
- (d)** restating the Articles of Incorporation
- (e)** adopting a plan of merger or adopting a plan of consolidation with another corporation
- (f)** authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Corporation;
- (g)** authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore;
- (h)** adopting a plan for the distribution of the assets of the Corporation;
- (i)** amending, altering, or repealing any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

Neither the designation nor appointment of any such committee nor the delegation thereto of authority shall operate to relieve the Board of Directors or any individual Director of any responsibility upon him/her by law.

**6.11 Telephonic Meetings.** Members of the Board of Directors or any committee designated by the Board may participate in any regular or special meeting of the Board or committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

**6.12 Meeting Format.** The Roberts Rules of Order shall be used as the format for all Board of Directors meetings.

## ARTICLE VII

### Officers and Agents

- 7.01 Election.** The positions of Vice-President, Secretary and Treasurer of the Corporation shall be elected bi-annually by the Board of Directors at the annual meeting of the Board in even numbered years held pursuant to Section 6.02 hereof. If the election of offices shall not be held at such meeting, such election shall take place as soon as thereafter as a meeting may conveniently be held. The first Vice-President elected to this position at the previous bi-annual election shall ascend to the position of President in even numbered years. The term of the President and officers shall begin in January of the odd numbered years.
- 7.02 Postponement of ascension to the Position of President.** For the good of the organization, the Board of Directors may postpone the ascension of the first vice president to the position of President at the even year annual meeting by a proper motion and proper second for a white ballot of the current officers. This decision may be necessary to carry the organization through critical periods, if it is deemed by the Board of Directors that the First Vice-President lacks experience to ascend to the Office of President, or for other just and good reasons. The motion for a white ballot must be approved by a two-thirds majority of the Directors present. The term of the officers elected with the white ballot motion will be two years.
- 7.03 Officers.** The officers of the Corporation shall consist of
- (a)** a President,
  - (b)** one or more Vice-Presidents. In the case of more than one Vice-President, the positions shall be identified as the first Vice-President, second Vice-President, etc.
  - (c)** a Secretary, and
  - (d)** a Treasurer
- In addition, one or more other officers, assistant officers, agents and employees that the Board of Directors may from time to time deem necessary, may be elected by the Board of Directors or be appointed in a manner prescribed by the Board.
- Two or more offices may be held by the same person, except that one person shall not at the same time hold the offices of President and Secretary.
- 7.04 Term.** Each officer shall hold office for two years until the next even numbered annual meeting of the Board and until her successor is chosen and has qualified, unless he is sooner removed from office, dies, or resigns. The first Vice-President shall automatically ascend to the position of President at the conclusion of the two year Vice-President term. The term of office shall begin in January of odd numbered years.

- 7.05 Qualifications.** All officers of the Corporation shall be natural persons of the age of eighteen years or older. Officers of the Corporation must be residents of Colorado and Director of the Corporation.
- 7.06 General Duties.** All officers, employees and agents of the Corporation, as between themselves and the Corporation, shall have such authority and shall perform such duties in the management of the Corporation as may be provided in these Bylaws or as may be determined by resolution of the Board of Directors not inconsistent with these Bylaws. In all cases where the duties of any officer, agent, or employee are not prescribed by the Bylaws or by the Board of Directors, such officer, employee or agent shall follow the orders and instructions of the President.
- 7.07 Salaries.** The Board of Directors shall fix the salaries of agents and employees of the Corporation.
- 7.08 Resignations.** Any executive officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect at the time specified therein; and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 7.09 Removal.** Any officer or agent of this Corporation may be removed by majority vote of the Board of Directors whenever in its judgment the best interests of the Corporation may be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or an agent shall not of itself create contract rights.
- 7.10 Vacancies.** When a vacancy occurs in one of the executive offices by reason of death, resignation or other wise, it shall be filled by a resolution of the Board of Directors. The officer so selected shall hold office for the term described in Section 7.05 above.

## ARTICLE VIII

### Duties and Powers of Officers

- 8.01 President.** The President shall be the chief executive officer and general manager of the Corporation and, subject to the control of the Board of Directors, shall have general supervision and control of the business and affairs of the Corporation.

The President shall preside at meetings of the members and Directors and shall discharge the duties of the presiding officer. At each annual meeting of the members, the President shall give a report of the business of the Corporation for the preceding fiscal year and shall perform whatever other duties the Board of Directors may from time to time prescribe.

The President may sign, with the Secretary or any other officer of the Corporation thereunto authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments necessary or appropriate in the ordinary course of business or which the Board of Directors has otherwise authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or a committee thereof by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

The President shall have custody of the Treasurer's bond, if any.

The President shall have such additional authority, powers and duties as are appropriate and customary for the office of President, general manager and chief executive officer and as the Board of Directors may prescribe from time to time.

**8.02 Vice Presidents.** Each Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe or as the President may from time to time delegate to him. At the request of the President, in the case of the President's absence or inability to act, any Vice President may temporarily act in her place. In the case of the death of the President, or in the case of his absence or inability to act without having designated a Vice President or Vice Presidents to act temporarily in his place, the Board of Directors, by resolution, may designate a Vice President or Vice Presidents, to perform the duties of the President. If no such designation shall be made, the Board of Directors shall exercise such powers and perform such duties, as provided in Section 8.01 hereof.

**8.03 Secretary.** The Secretary shall: (a) keep or cause to be kept in books provided for that purpose the minutes of the meetings of the members, if any, executive committee, if any, and any other committees, and of the Board of Directors; (b) see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; (c) be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized and in accordance with the provisions of these Bylaws; (d) keep a roster of the name and address of each member, if any, which shall be furnished to the Secretary by such member; and (e) in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the President.

Notwithstanding anything to the contrary expressed or implied herein, the Secretary (acting in such capacity) shall have no power or authority whatsoever to account for or determine the manner, amount or timing of payments made or to be made to the Internal Revenue Service with respect to amounts collected by the Corporation and required to be accounted for and paid over to Internal Revenue Service pursuant to the current Internal Revenue Code, notwithstanding that the Secretary may from time to time be named as an authorized signatory for checks or drafts drawn on the

Corporation's banking account(s); and the Secretary (acting in such capacity) shall in no event be considered as a "responsible person" within the meaning of Code Section 6672, as amended.

In the absence of the Secretary or his inability to act, the President of the Board of Directors shall assign such duties to any member of the Board of Directors, who then shall act with the same powers and shall be subject to the same restrictions as are applicable to the Secretary.

**8.04 Treasurer.** The Treasurer shall be the principal financial officer of the Corporation and have custody of corporate funds and securities. He shall keep full and accurate accounts of receipts and disbursements and shall deposit all corporate moneys and other valuable effects in the name and to the credit of the Corporation in the depository or depositories of the Corporation selected by the Board of Directors, and shall render an account or report of his transactions as the Treasurer and of the financial condition of the Corporation to the President and/or the Board of Directors upon request. Such power given to the Treasurer to deposit and disburse funds shall not, however, preclude any other officer or employee of the Corporation from also depositing and disbursing funds when authorized to do so by the Board of Directors.

The Treasurer shall be responsible for the preparation and timely filing of all federal and state tax returns, applications and other documents from time to time required to be filed, including but not limited to such documents required to be filed in order to maintain the tax-exempt status of the Corporation.

The Treasurer shall, if required by the Board of Directors, give the Corporation a bond in such amount and with such surety or sureties as may be ordered by the Board of Directors for the faithful performance of duties of his office, the premium on which shall be paid by the Corporation.

The treasurer shall have such other powers and perform such other duties as may be from time to time prescribed by the Board of Directors or the President.

In the absence of the Treasurer or his inability to act, the President shall assign such duties to any member of the Board of Directors, who then shall act with the same powers and shall be subject to the same restrictions as are applicable to the Treasurer.

**8.05 Delegation of Duties.** Whenever an officer is absent, or whenever, for any reason, the President may deem it desirable, the President may delegate the powers and duties of an officer to any other officer or officers or to any Director or Directors.

## ARTICLE IX

### **Certain Financial and Related Matters**

- 9.01 Seal.** The Corporation shall have a seal in the form impressed to the left of this paragraph of the Bylaws.
- 9.02 Fiscal Year.** The fiscal year of the Corporation shall be the calendar year. Said fiscal year may be changed from time to time by the Board of Directors at its discretion.
- 9.03 Bank Accounts.** The monies of the Corporation shall be deposited in the name of the Corporation in such bank or banks or trust company or trust companies as the Board of Directors shall designate, and may be drawn out only on checks signed in the name of the Corporation by such person or persons as the Board of Directors, by appropriate resolution, may direct. Notes and commercial paper, when authorized by the Board of Directors, shall be signed in the name of the Corporation by such officer or officers or agent or agents as shall thereunto be authorized from time to time.
- 9.04 Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.
- 9.05 Debts.** Notwithstanding anything to the contrary expressed or implied herein, no loan or other monetary liability in excess of \$100 in any single transaction or related transactions shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name therefore, whether or not in the Corporation's ordinary course of business, unless authorized by a resolution of the Board of Directors. Such authority may be general or defined to a specific instance.
- 9.06 Books and Records.** The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members and Board of Directors, and the Corporation shall keep, at its registered office or principal place of business, a record of its members entitled to vote, if any. Any books, records, or minutes may be in written form or in any form capable of being converted into written form within a reasonable time. All books and records may be inspected by any Director or his agent or attorney for any proper purpose at any reasonable time.
- 9.07 No Shares of Stock.** This Corporation shall not have or issue shares of stock.

- 9.08 No Dividends.** No dividends shall be paid by the Corporation, and no part of the net income or profit of the Corporation shall be distributed to its Directors or officers.
- 9.09 Certain Loans Prohibited.** No loans shall be made by the Corporation to its Directors or officers.
- 9.10 No Private Benefit.** No officer and Directors of this Corporation shall, as such, receive or become entitled to receive at any time any part of the net earnings or other net income of the Corporation, nor shall any part of the net earnings of the Corporation inure to the benefit of any person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.
- 9.11 Distributions; Dissoluton.** The property of this Corporation is irrevocably dedicated to the purposes stated in Article II hereof. No distribution of the property of the Corporation shall be made upon dissolution of the Corporation until all of its debts are fully paid. Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of the Corporation from the funds of the Corporation distribute the remaining assets of the Corporation to institution(s) having objectives similar to the Corporation as shall at the time qualify as an exempt organization or organizations under Code Section 501(c) (3), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the District Court of the county within which the registered office of the Corporation is located per C.R.S. Title 7, Article 40.

## ARTICLE X

### Amendments

- 10.01 General.** The Board of Directors, in a regular or annual meeting, may amend, supplement, restate, or repeal these Bylaws or adopt new Bylaws, unless otherwise provided in the Corporation's Articles of Incorporation.

These Bylaws are intended to be consistent with, and in many cases reflect the exact wording of C.R.S. Title 7, Article 40, Corporations Not For Profit, as in effect on the date these Bylaws have been adopted. To the extent C.R.S. Title 7, Article 40 or portions thereof are subsequently modified, amended, repealed or expanded, these Bylaws shall likewise be deemed automatically modified, amended, repealed or expanded, without need of further Corporate action.

## ARTICLE XI

### Miscellaneous

- 11.01 Gender.** Whenever required by the context, the singular shall include the plural, the plural the singular, and one gender shall include all genders.
- 11.02 Invalid Provision.** The invalidity or unenforceability of any particular provision of these Bylaws shall not affect the other provisions herein, and these Bylaws shall be construed in all respect as if such invalid or unenforceable provision was omitted.
- 11.03 Governing Law.** These Bylaws shall be governed by and construed in accordance with the laws of the State of Colorado.
- 11.04 Conflicts of Interest.** No contract or transaction between the Corporation and one or more of its Directors, or between the Corporation and any other corporation, partnership, joint venture, association, trust or other entity in which one or more of its Directors or officers are directors or officers or have a financial interest, shall be void or avoidable solely for the reason or solely because such Director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes, approves, or ratifies such contract or transactions or solely because his or their votes are counted for such purpose, if:
- (a)** the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or committee, and the Board or committee in good faith authorizes, approves or ratifies the contract or transaction by the affirmative vote of the disinterested directors sufficient for the purpose, even though the disinterested Directors are less than a quorum; or
  - (b)** the contract or transaction was fair to the Corporation; or
  - (c)** the laws of the State of Colorado in effect from time to time other wise provide that the contract or transaction shall not be void or avoidable because of such relationship, interest or other factor.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes, approves or ratifies such contract or transaction.

- 11.05 Indemnification. Insurance.** This Corporation shall indemnify and advance expenses to its Directors, officers, employees, fiduciaries, and agents to the fullest extent permitted by Section 7-22-101.5, C.R.S., or any corresponding provision of subsequent law, as the same may be amended from time to time; and each director, officer, employee, fiduciary, and agent of the Corporation shall be entitled to be indemnified and have expenses advanced by the Corporation to the fullest extent possible permitted by Section 7-22-101.5, C.R.S., or any corresponding provision

of subsequent law, as the same may be amended from time to time. Provided, however, that if any amendment to the Statute shall operate to limit, reduce or eliminate any person's rights of indemnification under this paragraph, then each of such persons shall be indemnified by the Corporation to the fullest extent permitted by the Statute immediately prior to the effectiveness of such amendment. Any such indemnification shall be in addition to any other indemnification allowed or provided by law, by these Articles of Incorporation, by the Bylaws of the Corporation, by any resolution of the Corporation, or pursuant to any insurance policy owned by the corporation pertaining thereto. The provisions hereof shall continue to apply to any person who has ceased to be a Director, officer, employee, fiduciary, or agent of the Corporation, and shall inure to the benefit of the heirs, executors, administrators and personal representative of any such person.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, fiduciary, or agent of the Corporation or who, while a Director, officer, employee, fiduciary, or agent of the Corporation, is or was serving at the request of the corporation as a director, officer, trustee, employee, or fiduciary, or of any partnership, joint venture, trust, or other enterprise, or employee benefit plan against any liability asserted against or incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability, as provided in Section 7-3-101.5 (9), C.R.S.

## ARTICLE XII

### Certain Limitations on Liability

**12.01 Breach of Fiduciary Duty.** No Director of the Corporation shall be personally liable to the Corporation for any monetary damages for breach of fiduciary duty as a Director, and any and all such liability is hereby eliminated; except that the foregoing shall not eliminate or limit the liability of a Director to the Corporation for monetary damages for;

- (a) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (b) acts specified as being prohibited under Section 7-24-111, C.R. S., as amended; or
- (c) any transaction from which the Director derived an improper personal benefit.

**12.02 Torts.** No officer or Director of the Corporation shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such officer or Director was personally involved in the situation giving rise to the litigation or unless such officer or Director committed a criminal offense. The protection afforded by the foregoing shall not restrict the common law protections and rights that such officer or Director may have.