

AMENDED AND RESTATED
BYLAWS
OF
BATTLEMENT MESA SERVICE ASSOCIATION

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AMENDED AND RESTATED
BYLAWS
OF
BATTLEMENT MESA SERVICE ASSOCIATION

ARTICLE 1.
INTRODUCTION AND PURPOSE

These are the Amended and Restated Bylaws of the Battlement Mesa Service Association, which Association operates under the Colorado Revised Nonprofit Corporation Act, as amended, and applicable portions of the Colorado Common Interest Ownership Act, as amended (the "Act").

The purposes for which the Association is formed are to operate and govern the community known as Battlement Mesa; to provide for the administration, maintenance, preservation, covenant enforcement and architectural review of the Assessment Units and the Service Association Property within the Battlement Mesa Community; and to promote the health, safety, welfare and recreation of the Owners within the Battlement Mesa Community.

ARTICLE 2.
DEFINITIONS

The definitions set forth in the Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, as amended, shall apply to all capitalized terms set forth herein, unless otherwise defined herein.

"Act" shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended, to the extent it applies to common interest communities established prior to July 1, 1992, or as otherwise adopted herein by reference to either specific provisions or specific topics.

"Association" or "Service Association" shall mean and refer to the Battlement Mesa Service Association, its successors and assigns.

"Community" or "Battlement Mesa Community" shall mean the Battlement Mesa Planned Unit Development, as further defined by the recorded P.U. D. Master Plan and the Declaration.

“Declaration” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Battlement Mesa, as amended, applicable to the Project Area recorded in the office of the Clerk and Recorder of Garfield County, Colorado.

“Governing Documents” shall mean the Articles of Incorporation, the Bylaws, the Declaration, and rules and regulations of the Battlement Mesa Service Association, as they may be amended.

“Property” or “Project Area” shall mean and refer to all of the real property described in or which is subject to the Governing Documents of the Battlement Mesa Service Association.

“Service Association Property” shall mean all real and personal property, including Improvements, now or hereafter owned by the Association, or in which the Association has a contractual right to use, or which the Association maintains, holds or uses for the common use and enjoyment of all or certain of the Members or for other purposes as may be permitted by the Declaration.

ARTICLE 3. MEMBERSHIP

Section 3.1 Membership. Every person who is a record Owner of a fee interest in any Assessment Unit subject to the Declaration shall be a Member of the Association. When more than one (1) person holds an interest in an Assessment Unit, all persons holding a fee interest shall be Members. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Assessment Unit which is subject to the Association’s Governing Documents. Ownership of an Assessment Unit shall be the sole qualification for membership. Each Assessment Unit shall be entitled to cast one (1) vote. Fractional and cumulative voting are prohibited.

Section 3.2 Voting Rights of Members. Each Member shall have the right to cast votes for the election of a Delegate to the Association to exercise the voting power of the Delegate Area in which the Member’s Privately Owned Site is located. There shall be one (1) class of voting membership in the Association, and all Members shall be Members of such class. However, voting rights shall be limited to one (1) vote per Assessment Unit, such that the Members who own each Private Owned Site shall collectively be entitled to one (1) vote for each Assessment Unit within such Privately Owned Site.

(a) The candidate for election to a Delegate position who received a majority of the votes validly cast by the Members in such Delegate’s Delegate Area shall be elected as the Delegate from such Delegate Area.

(b) Notwithstanding anything to the contrary contained herein, however, Delegates representing Owners of Privately Owned Sites other than Sites which are intended to be occupied by the Owner thereof, shall never elect a majority of the Members of the Board of Directors, and all other Members of the Board of Directors shall be elected by the Delegates representing Owners of Sites which are intended to be occupied by the Owner thereof.

Section 3.3 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting of a Delegate Area, the Board of Directors shall act as arbitrators, and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with the Colorado Uniform Arbitration Act of 1975, as the same may be amended.

Section 3.4 Suspension of Voting Rights. During any period in which a Member shall be in default in the payment of any Common Expense Assessment, including interest, late fees, attorney fees and costs, levied by the Association, the voting rights and right to use of the recreational facilities of such Member shall be deemed suspended by the Board of Directors, without notice or hearing, until such assessment has been paid. Such rights of a Member may also be suspended, after notice and the opportunity for a hearing, during any period of violation of any other provision of the Governing Documents.

Section 3.5 Transfer of Membership. Transfers of membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Assessment Unit to which the membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous Owner of the membership as the Owner of the membership entitled to all rights in connection with the membership.

ARTICLE 4. MEETINGS OF MEMBERS

Section 4.1 Annual Meetings. An annual meeting of the Members in a Delegate Area shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Board and set forth in the notice of the meeting. At these meetings, the Delegates for each Delegate Area shall be elected by the Members, in accordance with the provisions of these Bylaws, the Declaration and Articles of Incorporation, or as otherwise determined by the Members present in person at the meeting. The Members may transact other business as may properly come before them at these meetings. Failure to hold an annual meeting shall not be considered a forfeiture or dissolution of the Association.

Section 4.2 Special Meetings. Special meetings of the Members may be called by the Delegate representing the Delegate Area, the Board of Directors or by a petition signed by Owners comprising at least five percent (5%) of the total votes of all Members in the Delegate Area.

Section 4.3 Record Date. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of the Members in any Delegate Area, or in order to make a determination of such Members for any other proper purpose, the Board of Directors may fix, in advance, a date as the record date for any such determination of Members. The record date shall not be more than fifty (50) days prior to the meeting of Members or the event requiring a determination of Members.

Section 4.4 Notice of Meetings. Written notice of each meeting of Members in any Delegate Area shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before, but not more than fifty (50) days before such meeting, or by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. If such Member has not given the Association an address for mailing of notice, notice may be posted in a conspicuous place in the Service Association Area, such as on a notice board outside the Service Association's principal office, and such notice shall be deemed to be delivered to any such Member upon posting. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 4.5 Place of Meetings. Meetings of the Members shall be held in the Battlement Mesa Community and may be adjourned to a suitable place convenient to the Members, as may be designated by the Board or the President.

Section 4.6 Quorum of Members. The presence of fifteen percent (15%) of the votes of all Members in any Delegate Area, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, and these Bylaws. If the required quorum is not present, the Members who are present shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting to a later date until a quorum shall be present or represented.

Section 4.7 Voting. At all meetings of Members, each Member eligible to vote may vote in person or by proxy. If only one of several Owners of an Assessment Unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Assessment Unit. If more than one of the Owners is present, the vote allocated to the Assessment Unit may be cast only in accordance with the agreement of a majority of those Owners. Fractional voting is not permitted. Cumulative voting is also prohibited. Majority agreement exists if any one of the Owners casts the vote allocated to the Assessment Unit

without protest being made promptly to the person presiding over the meeting by another Owner of the Assessment Unit. 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 moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust Owner is qualified to vote. Votes allocated to Assessment Units owned by the Association may not be cast.

Section 4.8 Proxies for Members Meetings. The vote allocated to an Assessment Unit in any Delegate Area may be cast under a proxy duly executed by an Owner. All proxies shall be in writing and filed with the Secretary or designee of the Association. If an Assessment Unit is owned by more than one person, each Owner of the Assessment Unit may vote or register protest to the casting of the vote by the other Owners of the Assessment Unit through a duly executed proxy. An Owner may revoke a proxy given under this section by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term or a specific purpose, or upon sale of the Assessment Unit for which the proxy was issued.

Section 4.9 Majority Vote. The vote of more than fifty percent (50%) of Members represented at a meeting at which at least a quorum is present shall constitute a majority and shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Articles of Incorporation, as amended, or by law.

Section 4.10 Order of Business and Rules at Meeting. The Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board or Members.

Section 4.11 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice.

Section 4.12 Voting Procedures. Voting may be by voice, by show of hands, by consent by mail, by electronic means, by directed proxy, by written ballot, or as otherwise determined by the Board of Directors or the Members present at the meeting.

Section 4.13 Voting by Mail in Lieu of a Meeting. The Board of Directors may decide that voting of the Members on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by mail instead of at a meeting. In case of a vote by mail, the Secretary shall mail written notice to all Members at each Member's address as it appears in the records of the Association. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Members are entitled to vote by mail for or against such proposal, and (iii) a date at least thirty

(30) days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice. Voting by mail shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of Members at a meeting.

ARTICLE 5. DELEGATES

Section 5.1 Delegates. A Delegate is as defined in the Declaration. The Delegates constitute the Members of the Association, as that term is used in the Colorado Nonprofit Corporation Act, notwithstanding the fact that, in the Declaration, the Articles of Incorporation and these Bylaws, the Owners are referred to and designated as Members.

Section 5.2 Voting Rights of Delegates. Each Delegate shall have one vote for each Assessment Unit which is subject to the Declaration and is located in the Delegate Area represented by such Delegate. The Delegate may cast votes with respect to each Privately Owned Site in his Delegate Area except for any Privately Owned Site as to which the voting right of the Owner thereof has been suspended. Each Delegate may cast the votes which he or she represents in such manner as the Delegate may, in his or her sole discretion, deem appropriate, acting on behalf of all of the Members owning Privately Owned Sites in the Delegate Area; provided, however, that if at least a majority of the votes of the Members in any Delegate Area shall determine, at any duly constituted meeting of the Members of such Delegate Area, to instruct their Delegate as to the manner in which he or she is to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate Area shall cast all of the voting power in such Delegate Area in the same proportion, as nearly as possible without counting fractional votes, as the Members in such Delegate Area shall have cast their voting power "for" or "against" such issue in person or by proxy. When a Delegate is voting in his or her own discretion, without instruction from the Members whom the Delegate represents, then all of the votes may be cast a unit, or the Delegate may apportion some votes in favor of a given proposition and some votes in opposition to such proposition. It shall be conclusively presumed for all purposes that any Delegate casting votes will have acted with the authority and consent of all of the Members represented by such Delegate.

Section 5.3 Qualifications of Delegates. A Delegate must be a resident of a Privately Owned Site located in the Delegate Area from which such person is the Delegate, or an Owner of such a Site, or if any Owner is not a natural Person, must be an authorized agent of such Owner. If a Delegate conveys or transfers title to his or her Privately Owned Site or ceases to reside in the Delegate Area, or if a Delegate who is an authorized agent of an Owner which is not a natural Person ceases to be such authorized agent, or if the entity of which a Delegate is an agent transfers title to its Privately Owned Site, such Delegate's term as Delegate shall immediately terminate and a new Delegate shall be elected as promptly as possible to take such Delegate's place. A Delegate may be re-elected, and there shall be no limit on the number of terms a Delegate may serve. If any Assessment Unit is owned by a partnership or corporation, any officer, partner or employee of that Member shall be eligible to serve as a Delegate and shall be deemed to be a Member for the purposes of these Bylaws.

Section 5.4 Term of Office of Delegates. Each Delegate elected at an annual meeting of Members in a Delegate Area shall serve for a term of three (3) years, unless such Delegate resigns, is removed, or becomes disqualified to be a Delegate. The terms of the Delegates shall be staggered.

Section 5.5 Removal of Delegates. At any duly called meeting of Members of a Delegate Area, the notice of which indicates such purpose, the Delegates representing that Delegate Area may be removed, with or without cause, by a vote of the majority of the votes of Members present at such meeting in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created.

Section 5.6 Resignation of Delegates. Any Delegate may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors, stating the effective date of such resignation. *Repealed - see 1st admendment* Acceptance of such resignation shall not be necessary to make the resignation effective.

Section 5.7 Vacancies. Any vacancy occurring in the office of a Delegate shall, unless filled in accordance with Section 5.5, be filled at a special meeting, called for such purpose, of Members of the Delegate Area represented by such Delegate. A Delegate elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

ARTICLE 6. MEETINGS OF DELEGATES

Section 6.1 Annual Meetings of the Delegates. *Repealed - see 1st admendment* Annual meetings of the Delegates shall be held on such day and at such time as is fixed by the Board of Directors from time to time and specified in the notice of meeting. Annual meetings of Delegates shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting.

Section 6.2 Special Meetings of Delegates. Special meetings of Delegates may be called by the Board of Directors or by Delegates representing at least fifteen percent (15%) of the total voting power of the Delegates. No business shall be transacted at a special meeting of Delegates except as indicated in the notice thereof.

Section 6.3 Record Date. For the purpose of determining Delegates entitled to notice of, or to vote at, any meeting of the Delegates, or in order to make a determination of such Delegates for any other proper purpose, the Board of Directors may fix, in advance, a date as the record date for any such determination of Delegates. The record date shall not be more than fifty (50) days prior to the meeting of Members or the event requiring a determination of Members.

Section 6.4 Notice of Meetings. Written notice of each meeting of Delegates shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before, but not more than fifty (50) days before such meeting, or by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Delegate entitled to vote, addressed to the Delegate's address last appearing on the books of the Association, or supplied by such Delegate to the Association for the purpose of notice. If such Delegate has not given the Association an address for mailing of notice, notice may be posted in a conspicuous place in the Service Association Area, such as on a notice board outside the Service Association's principal office, and such notice shall be deemed to be delivered to any such Delegate upon posting. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated or allowed in the notice.

Section 6.5 Place of Delegate Meetings. Meetings of Delegates shall be held in the Battlement Mesa Community as may be fixed by the Board of Directors and specified in the notice of the meeting.

Section 6.6 Quorum of Delegates. The presence of fifty-one percent (51%) of the votes of all Delegates, in person, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, and these Bylaws. If the required quorum is not present, the Delegates who are present shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting to a later date until a quorum shall be present or represented.

Section 6.7 Proxies. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that proposal, a Delegate may execute, in writing, a proxy to be held by another Delegate. The proxy shall specify either a yes, no, or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no, or abstain vote shall not be counted for the purpose of having a quorum present nor as a vote on the particular proposal before the Delegates.

Section 6.8 Majority Vote. The vote of more than fifty percent (50%) of Delegates represented at a meeting at which at least a quorum is present shall constitute a majority and shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Articles of Incorporation, as amended, or by law. Cumulative and fractional voting are prohibited.

Section 6.9 Order of Business and Rules at Meeting. The Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board or Delegates.

Section 6.10 Waiver of Notice. Any Delegate may, at any time, waive notice of any meeting of the Delegates in writing, and the waiver shall be deemed equivalent to the receipt of notice. Attendance at the meeting shall constitute a waiver of notice unless attendance is for the express purpose of objecting to the sufficiency of the notice.

Section 6.11 Voting Procedures. Voting may be by voice, by show of hands, by consent by mail, by electronic means, by written ballot, or as otherwise determined by the Board of Directors or the Delegates present at the meeting.

Section 6.12 Voting by Mail in Lieu of a Meeting. The Board of Directors may decide that voting of the Delegates on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by mail instead of at a meeting. In case of a vote by mail, the Secretary shall mail written notice to all Delegates at each Delegate's address as it appears in the records of the Association. The notice shall include: (i) a proposed written resolution setting forth a description of the proposed action, (ii) a statement that Delegates are entitled to vote by mail for or against such proposal, and (iii) a date at least thirty (30) days after the date such notice shall have been given on or before which all votes must be received at the office of the Association at the address designated in the notice. Voting by mail shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of Delegates at a meeting.

The Delegates may conduct elections of Directors by mail, or electronic means, in its sole discretion and pursuant to procedures adopted by it; *provided however*, that any procedures adopted shall provide for notice to Delegates of the opportunity to run for a vacant position and/or nominate any Delegate for a vacant position, subject to the nominated person's consent.

Section 6.13 Officers at Meetings. The President of the Association shall act as the chairman, and the Secretary of the Association shall act as the secretary of any meeting of Delegates. In the absence of the President, then the Vice President, the Secretary or the Treasurer, in that order, shall act as chairman of the meeting. In the absence of the Secretary, then any Assistant Secretary, the Treasurer, or any Assistant Treasurer, in that order, shall act as secretary of the meeting.

Section 6.14 Members' Right to Attend. Any Owner shall be entitled to attend any meeting of the Delegates.

Repealed - see last Amendment

ARTICLE 7.
BOARD

Repealed - See 1st Amendment

Section 7.1 Number and Qualification. The affairs of the Battlement Mesa Service Association shall be governed by a Board of Directors which shall consist of seven (7) members, five of whom shall be elected by Delegates, and two of whom shall be appointed by the Declarant (the "Board"). Only Delegates, eligible to vote, current in the payment of assessments, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board. In the case where through removal or resignation, the total number of Board members is less than seven (7), the Board will be considered properly constituted until such vacancies are filled. The number of Directors shall not be less than three (3), and no decrease in number shall have the effect of shortening the term of any incumbent Director.

Section 7.2 Election. Election to the Board of Directors shall be by mail or secret written ballot, unless another procedure is agreed upon by the Delegates present in person at a meeting. If there is only one (1) candidate for each vacancy to be filled, voting may be by consent of the Delegates. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. Fractional voting is not permitted.

Section 7.3 Term of Office for Directors. The term of office of Directors shall be three (3) years or until such time as a successor is elected. The terms of the Directors shall be staggered. Directors may be reelected, and there shall be no limit on the number of terms a Director may serve.

Section 7.4 Removal/Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. One or more Directors or the entire Board of Directors may be removed at any meeting of Delegates, called pursuant to these Bylaws, with or without cause, by a vote of a majority of a quorum of the Delegates present in person. Notice of a Special Meeting of the Delegates to remove Directors shall be provided to each Delegate of the Association, including the Directors sought to be removed, as set forth in these Bylaws. Directors sought to be removed shall have the right to be present at such meeting and shall be given the opportunity to speak to the Delegates prior to a vote to remove being taken. In the event of removal of a Director, his or her successor shall be elected by the Delegates at this meeting and shall serve for the unexpired term of his or her predecessor. In the event of the removal of the entire Board, new Board members shall be elected by a vote of a majority of the Delegates present in person. Directors so elected shall serve the unexpired term of his or her predecessor.

Section 7.5 Vacancies. Vacancies on the Board caused by any reason (other than removal) may be filled by appointment by a majority vote of the Delegates at any time after the occurrence of the vacancy. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 7.6 Compensation. No Director shall receive compensation for any service they may render as a Director to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of Association duties.

ARTICLE 8. MEETINGS OF DIRECTORS

Section 8.1 Annual Meetings. Annual meetings of the Board of Directors shall be held at such times, place and hour as may be fixed by the Board. The business conducted at the annual meeting of Directors shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of the Delegates at which the Board of Directors is announced at the annual meeting of the Delegates.

Section 8.2 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times, place and hour as may be fixed by the Board. The Board may set a schedule of regular meetings by resolution, and no further notice is necessary to constitute regular meetings. All meetings of the Board shall be held within the Battlement Mesa Community.

Section 8.3 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice. The notice shall state the time, place and purpose of the meeting. All meetings of the Board shall be held within the Battlement Mesa Community or the Garfield County area unless all Directors consent in writing to another location.

Section 8.4 Notice of Directors' Meetings. In the case of all meetings of Directors for which notice is required, notice shall be delivered at least three (3) and not more than fifty (50) days before the date of the meeting to the Directors and Delegates. The notice shall state the time, place and purpose of the meeting. If mailed, notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Director or Delegate at the address for notices on the records of the Association, with postage thereon prepaid. If via facsimile, such notice shall be deemed delivered the date and time on the facsimile confirmation faxed to the Director or Delegate at such facsimile number for notices on the records of the Association, with all charges thereon prepaid. If by telephone, such notice shall be deemed to be delivered when given by telephone to the Director or Delegate or to any competent person answering the phone at the Director's or Delegate's home or business phone number as either appears on the records of the Association. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or Delegate or a competent person at the address for notices which appears on the records of the Association. If given electronically, notice shall be deemed delivered at 8:00 a.m. on the day following transmission of the notice to the electronic address for notice on the records of the Association.

Section 8.5 Open Meetings. All meetings of the Board of Directors shall be open to attendance by Members, as provided by applicable Colorado law.

Section 8.6 Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business, unless there are fewer than three (3) Directors, in which case all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are fewer than three (3) Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board. If at any meeting there shall be less than a quorum present, a majority of those present may adjourn the meeting.

Section 8.7 Proxies for Board Meetings. For the purposes of determining a quorum with respect to a particular proposal and for the purposes of casting a vote for or against that proposal, a Director may execute, in writing, a proxy to be held by another Director. The proxy shall specify either a yes, no, or abstain vote on each particular issue for which the proxy was executed. Proxies which do not specify a yes, no, or abstain vote shall not be counted for the purpose of having a quorum present nor as a vote on the particular proposal before the Board.

Section 8.8 Majority Vote. The vote of more than fifty percent (50%) of Directors, in person or by proxy, represented at a meeting at which at least a quorum is present shall constitute a majority and shall be binding for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, the Articles of Incorporation, as amended, or by law.

Section 8.9 Order of Business and Rules at Meeting. The Board may establish the order of business and prescribe reasonable rules for the conduct of all meetings of the Board or Members.

Section 8.10 Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

Section 8.11 Consent to Corporate Action. The Directors shall have the right to take any action in the absence of a meeting, which they could otherwise have taken at a meeting, by obtaining the written vote of all of the Directors, with at least a majority of the Directors approving the action, provided that those Directors who vote "no" or abstain from voting have waived notice of a meeting in writing. Any action so approved shall have the same effect as though taken at a meeting of the Directors. The Secretary shall file such consents with the minutes of the meetings of the Board of Directors.

Section 8.12 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other Members and may hear the deliberations of the other Members on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

Section 8.13 Officers at Meetings. The President shall act as the chairman, and the Secretary shall act as the secretary at all meetings of the Board of Directors.

ARTICLE 9.
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 9.1 Powers and Duties. The Board may act in all instances on behalf of the Association, except as provided in the Declaration and these Bylaws or the Act. The Board shall have, subject to the limitations contained in the Declaration, and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Battlement Mesa Community, including the following powers and duties:

- (a) Exercise any other powers conferred by the Declaration, Bylaws or Articles of Incorporation;
- (b) Adopt and amend rules and regulations, including penalties for infraction thereof;
- (c) Adopt and amend budgets (subject to any requirements of the Declaration) for revenues, expenditures and reserves.
- (d) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;
- (e) Collect assessments as provided by the Declaration, these Bylaws, or pursuant to rules and regulations adopted by the Board of Directors;
- (f) Employ a managing agent, an independent contractor, or such other employees as it deems necessary, and prescribe their duties;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws or Rules, and, in the Association's name, on behalf of the Association or two or more Owners, on matters affecting the Community;
- (h) Make contracts, open bank accounts and incur liabilities in the name of the Association;
- (i) Acquire, hold, encumber and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate or personal property, pursuant to the consent requirements set forth in the Declaration and Articles of Incorporation, if any, and upon approval of two-thirds (2/3) of the membership votes of the Association;
- (j) Borrow funds and secure such loans with an interest in future assessments, upon approval of two-thirds (2/3) of the membership votes of the Association;
- (k) Provide for the indemnification of the Association's Officers and Directors and maintain Directors' and Officers' liability insurance;

(l) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors, which absences have not been excused;

(m) Supervise all Officers, agents and employees of the Association, and see that their duties are properly performed;

(n) Procure and maintain liability and hazard insurance on property owned or maintained by the Association, pursuant to the Declaration for Battlement Mesa.

(o) Cause all Officers, Directors, Delegates or employees having fiscal responsibilities to be insured and/or bonded, as it may deem appropriate;

(p) Delegate its powers according to law;

(q) Grant easements where necessary for utilities and other facilities over the Service Association Area;

(r) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, the Declaration or the Act.

Section 9.2 Managing Agent. The Board may employ a managing agent for the Association, at a compensation established by the Board, to perform duties and services authorized by the Board. Licenses, concessions and contracts may be executed by the managing agent pursuant to specific resolutions of the Board and to fulfill the requirements of the budget. Regardless of any delegation to a managing agent, the members of the Board shall not be relieved of responsibilities under the Declaration, the Articles of Incorporation, these Bylaws or Colorado law. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a managing agent.

Section 9.3 No Waiver. The omission or failure of the Association or Owner to enforce the covenants, conditions, easements, uses, limitations, obligations, or other provisions of the Declaration, the Bylaws, or the rules and regulations shall not constitute or be deemed a waiver, modification, or release thereof, and the Board or the managing agent shall have the right to enforce the same at any time.

ARTICLE 10. OFFICERS AND THEIR DUTIES

Section 10.1 Enumeration of Offices. The Officers of this Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, assistant officers, employees and agents as the Board of Directors deems necessary or appropriate from time to time. Officers other than the President need not be Directors. No person shall simultaneously hold more than one office except the offices of Secretary and Treasurer or where one of the offices is an "assistant" office.

Section 10.2 Election of Officers. The Officers shall be elected for a one (1) year term at the annual meeting of the Board of Directors and shall hold office until the next annual meeting of the Board of Directors, or until their successors are appointed, whichever is later, unless an Officer resigns or is removed prior to that time.

Section 10.3 Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 10.4 Resignation and Removal. Any Officer may be removed from office with or without cause by a majority of the Board of Directors. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

Section 10.5 Vacancies. A vacancy in any office may be filled by appointment by the Board by majority vote of the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

Section 10.6 Duties. The duties of the Officers are as follows:

(a) President. The President shall have all of the general powers and duties which are incident to the office of president of a Colorado nonprofit corporation including, but not limited to the following: preside at all meetings of the Board of Directors; appoint committees; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds and other written instruments and documents as directed by the Board; and direct, supervise, coordinate and have general control over the day-to-day affairs of the Association.

(b) Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties assigned by the Board of Directors or by the President.

(c) Secretary. The Secretary shall record the votes and maintain the minutes of all meetings and proceedings of the Board, of the Delegates and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and perform such other duties incident to the office of Secretary or as required by the Board.

(d) Treasurer. The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate financial records. The Treasurer shall cause all monies of the Association to be received and deposited in appropriate bank accounts and shall cause to be disbursed such funds as directed by resolution of the Board of Directors; shall cause to be kept proper books of account; shall sign checks and promissory notes of the Association; shall cause to be prepared an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and cause to be delivered a copy of each to the Members present at such annual meeting. The Treasurer shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board of Directors.

Section 10.7 Delegation. The duties of any Officer may be delegated to the managing agent or another Board member; *provided, however*, the Officer shall not be relieved of any responsibility under this Section or under Colorado law.

ARTICLE 11. COMMITTEES

Section 11.1 Designated Committees. The Association may appoint such committees as deemed appropriate in carrying out its purposes, including an Executive Committee, Architectural Committee and a Covenant Protection Committee. Committees shall have authority to act only to the extent designated in the governing documents or delegated by the Board.

ARTICLE 12. BOOKS AND RECORDS

Section 12.1 Records. The Association or its managing agent, if any, shall keep the following records:

- (a) An account for each Assessment Unit, which shall designate the name and address of each Owner, the amount of each assessment, the dates on which each assessment comes due, any other fees payable by the Owner, the amounts paid on the account and the balance due;
- (b) An account for each Owner showing any other fees payable by the Owner;
- (c) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;
- (d) The current operating budget;
- (e) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;
- (f) A record of insurance coverage provided for the benefit of Owners and the Association;

- (g) Tax returns for state and federal income taxation;
- (h) Minutes of proceedings of meetings of the Directors, Delegates, Members and committees of Directors and waivers of notice; and
- (i) Copies of at least the three most recent years' correspondence between the Association and Owners; and
- (j) A copy of the most current versions of the Declaration, Articles of Incorporation, Bylaws, rules and resolutions of the Board, along with their exhibits and schedules.

Section 12.2 Examination: The books, records and papers of the Association shall at all times, during normal business hours and after reasonable notice, be subject to inspection and copying by any Member, at their expense, for any proper purpose, except documents determined by the Board to be confidential pursuant to a written policy or applicable law. The Board of Directors or the managing agent shall determine reasonable fees for copying.

Section 12.3 Audited Annual Report. The Association shall provide an audited financial statement for the immediately preceding fiscal year within a reasonable time after written request by, and free of charge to, any First Mortgagee, insurer or guarantor of a First Mortgagee.

ARTICLE 13. AMENDMENTS

Section 13.1 Bylaw Amendments. These Bylaws may be amended by at least fifty-one percent (51%) of the Member votes cast by Delegates who are voting in person at a meeting of the Delegates duly-called for this purpose at which a quorum is present. Further, an Amendment may also be made by mail, or electronic means, in lieu of a meeting so long as votes from Members eligible to vote equaling at least fifty-one percent (51%) of the Member votes cast by Delegates who are voting in person at a meeting of the Delegates duly called for this purpose at which a quorum is present are returned.

ARTICLE 14. INDEMNIFICATION

Section 14.1 Actions Other Than By or In the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that that person is or was a Director, Delegate, Officer, volunteer or committee member of the Association, or a member of a committee established by the Board of Directors, provided that the person is or was serving at the request of the Association in such capacity. The Association shall indemnify any such person against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably

incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his conduct was unlawful.

Section 14.2 Actions By Or In The Right of The Association. The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a Director, Delegate, Officer, volunteer or committee member of the Association, or a member of a committee established by the Board of Directors, provided that the person is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made with respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty in the Association unless, and to the extent that the court in which such action or suit was brought, determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

Section 14.3 Successful on the Merits. To the extent that a Director, Officer or committee member the Association has been wholly successful on the merits in defense of any action, suit or proceeding as above referred to and allowed, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred him or her in connection therewith.

Section 14.4 Determination Required. Any indemnification under the first two sections of this Article (unless ordered by a court) and as distinguished from the third section of this Article, shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the Director, Delegate, Officer, volunteer or committee member is proper in the circumstances because such individual has met the applicable standard of conduct set forth above. Such determination shall be made by the Board of Directors by majority vote of a quorum consisting of those members of the Board of Directors who were not parties to such action, suit or proceeding or, if a majority of disinterested members of the Board of Directors so directs, by independent legal counsel in a written opinion or by Members entitled to vote thereon.

Section 14.5 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current Director, Delegate, Officer, volunteer or committee member who is a party to a proceeding in advance of final disposition of the proceeding if the Director, Delegate, Officer, volunteer or committee member furnishes to the Association a written affirmation of that person's good faith belief that he or she has met the standard of conduct described in the first two sections of this Article, that person furnishes to the Association a written understanding, executed personally or on their behalf, to repay the advance if it is ultimately determined that they did not meet the standard of conduct and a determination is made that the facts then known to those making the determination would not preclude indemnification under this article. The undertaking required in this paragraph shall be an unlimited general obligation of the Director, Delegate, Officer, volunteer or committee member but need not be selected and may be accepted without reference to financial ability to make repayment.

Section 14.6 No Limitation of Rights. The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. § 38-33.3-101, *et seq.*, and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

Section 14.7 Directors and Officers Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, a Delegate of the Association, an Officer of the Association, the manager, volunteers, committee members, or anyone acting at the direction of the Board, against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article.

ARTICLE 15. NOTICE AND HEARING PROCEDURE

Section 15.1 Association's Enforcement Rights. In the event of an alleged violation by a Member ("Respondent") of the Declaration, these Bylaws or the Rules and Regulations, the Board of Directors shall have the right, after Notice and Hearing as hereinafter provided, except when a violation consists solely of failure to pay Common Assessments or Special Assessments, in which case, Notice and Hearing shall not be required and upon an affirmative vote of a majority of all of the Directors on the Board, to take any one or more of the following actions: (a) levy a Reimbursement Assessment as provided in the Declaration; (b) suspend the Respondent's voting privileges as a Member, as provided in the Declaration; (c) Record a Notice of Noncompliance against the Privately Owned Site of the Respondent; (d) take whatever actions may be permitted by the Declaration, these Bylaws or by the law. Any such suspension for non-payment of any Assessment after the same becomes delinquent may be imposed for as long as the violation continues. The failure of the Board, Architectural Review Committee, or any other committee within the Association to enforce the Rules and Regulations,

these Bylaws, or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided in the Declaration or these Bylaws shall be cumulative, and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws and the Rules and Regulations before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Declaration, these Bylaws or the Rules and Regulations; provided, however, that the foregoing limitation pertaining to exhausting internal remedies shall not apply when the Complaint alleges non-payment of Common Assessments, Special Assessments, or Reimbursement Assessments.

Section 15.2 Notice of Complaint. If the President of the Association concludes that any written Complaint sets forth a violation, then a copy of the Complaint shall be delivered by the Secretary to the Respondent in accordance with the notice provisions set forth in the Declaration, together with a statement notifying the Respondent of the date, time, place of a hearing. The date for the hearing shall be set not less than ten (10) days after the date the Notice is given.

Section 15.3 Hearing. If the Respondent appears in accordance with the Notice and responds to the Complaint, the Board of Directors shall conduct a hearing on the Complaint. The Board shall not be required to adhere to technical rules of evidence or procedure, but shall conduct the hearing in a fair and impartial manner, allowing both sides of the issue to be presented fully, but without undue repetition. Each party shall have the right to call and question witnesses and to introduce exhibits or other evidence. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The Board may, at its discretion, exclude irrelevant or duplicative evidence or testimony. The hearing shall be open to attendance by all Members to the extent of the permissible capacity of the hearing room. The Board may grant continuances on a showing of good cause.

Section 15.4 Disqualification. If a member of the Board of Directors is a witness, Respondent or complaining party in the matter being heard, that Board member shall not participate in the decision of the Board on the matter, and the remaining members of the Board shall appoint a disinterested third party to sit and vote in the place of the disqualified Board member.

Section 15.5 Decision. If the Respondent fails to appear at a hearing, the Board may, without notice to the Respondent, take action based upon the evidence presented to it, if any, and may treat the Complaint as having been admitted. The Board will prepare written findings of fact and shall adopt a remedy for any violation found in accordance with these Bylaws and the Declaration. After all testimony and documentary evidence have been presented to the Board, the Board shall vote by secret written ballot upon the matter, with a majority of the entire Board (including any disinterested third party appointed pursuant to the preceding Section) controlling. A copy of the findings and decision of the Board shall be delivered to each Person involved in the matter and each attorney, if any. Disciplinary action and levy of a Reimbursement Assessment under the Declaration, these Bylaws or the Rules and Regulations shall be imposed

by the Board of Directors only in accordance with the written findings. The decision of the Board shall become effective ten (10) days after it is delivered to the Respondent, unless otherwise ordered in writing by the Board of Directors. Delivery shall be accompanied by personal delivery or by depositing the same in the U.S. mail, postage prepaid, to the address for notices on the records of the Association and shall be deemed received on the second business day after the deposit of the notice in the U.S. mail, postage prepaid. The Board may order a reconsideration at any time within fifteen (15) days following the service of its decision on the involved Persons, on its own motion or on petition by any party. However, no action against the Respondent shall take effect prior to the expiration of the later of (a) fifteen (15) days after the Respondent's receipt of the Notice of Hearing; or (b) five (5) days after the hearing.

ARTICLE 16. MISCELLANEOUS

Section 16.1 Fiscal Year. The Board has the right to establish and, from time to time, change the fiscal year of the Association.

Section 16.2 Notices. All notices to the Association or the Board shall be delivered to the office of the managing agent, or, if there is no managing agent, to the office of the Association, or to such other address as the Board may designate by written notice to all Owners. Except as otherwise provided, all notices to any Owner shall be mailed to the Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 16.3 Conflicts. In the case of any conflicts between the Declaration and these Bylaws, the terms of the Declaration shall control. In the case of any conflicts between the Articles of Incorporation and these Bylaws, the terms of the Articles of Incorporation shall control.

Section 16.4 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

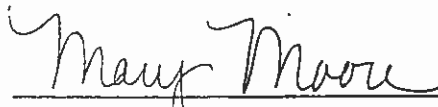
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CERTIFICATION

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of Battlement Mesa Service Association, a Colorado nonprofit corporation, and that this Amended and Restated Bylaws for the Battlement Mesa Service Association have been adopted by approval in writing by fifty-one percent (51%) of the Member votes cast by Delegates who are voting in person at a meeting of the Delegates duly called for this purpose at which quorum is present.

BATLEMENT MESA SERVICE ASSOCIATION,
a Colorado nonprofit corporation

By:


Secretary