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AMENDED AND RESTATED
BY-LAWS OF
MT. ELBERT WATER ASSOCIATION, INC.

ARTICLE 1. INTRODUCTION AND PURPOSE

These are the Amended and Restated Bylaws of the Mt. Elbert Water Association, Inc., which Association operates under the Colorado Revised Nonprofit Corporation Act, as amended.

The purposes for which the Association is formed are to operate and govern the water system serving certain Lots within the Pan-Ark subdivision through a non-profit corporation known as Mt. Elbert Water Association; and to provide for the operation, administration, maintenance, preservation and improvement of the water system for the benefit of the Members.

ARTICLE 2. DEFINITIONS

"Association" shall mean the Mt. Elbert Water Association, a Colorado non-profit corporation whose address is 312 Mt. Elbert Dr., Twin Lakes, Colorado 81251.

"Board of Directors" shall mean those Lot Owners elected by the Membership of the Association to serve the Association as provided in a Associations Bylaws.

"Certificate" shall mean a Water Tap Certificate, Water Tap/Hydrant Certificate and/or a Water Tap/Stub Certificate. Certificates shall be appurtenant to the Lot and shall be conveyed with the sale of a Lot, regardless of mention in the deed, unless a valid Transfer of Water Tap Certificate has been recorded in the real property records of Lake County, Colorado.

"Certificate Holder" shall mean the Owner(s) of a Lot to which a Certificate has been issued.

"Lot" shall mean any Lot within the Subdivision.

"Lot Owner" "Owner" shall mean any Owner of a Lot in the Subdivision,

"Main Water Line" shall mean the primary water line running through a road within the Subdivision which is a part of the Mt. Elbert Water System to which Water Taps may be connected to provide water service to an individual Lot. Main Water Lines have not been fully extended on all roads within the Subdivision and may also need to be extended in order for water service to be provided to a particular Lot.

"Membership Fees" shall mean an annual fee, including any sums necessary to repay the existing USDA loan, special assessments (if any), interest, late fees, costs, attorneys fees, penalties, and other fees incurred by Association in the operation, maintenance, repair, and improvement of the components of the Mt. Elbert Water System.

"Mt. Elbert Water System" shall mean all water lines, pumps, components, operating stations, water rights, real property, and other items comprising or necessary or proper for the operation, maintenance, repair and replacement of the water system which serves the Lots within the Pan Ark Estates Subdivision, Lake County, Colorado.

"Service Lines" shall mean any water line extending from the Main Water Line to an individual Lot. Service Lines shall be excluded from the Mt. Elbert Water System and shall be owned and maintained by the Certificate Holder and/or Lot Owner.

"Subdivision" shall mean Pan-Ark Estates, which consists of the Twin Lakes Addition No. 1-A, No. 1-B and No. 1-C which are more particularly described on the attached Exhibit A.

"Transfer of Water Tap Certificate" shall mean a document, acknowledged by the Association, and recorded in the real property records of Lake County, Colorado which memorializes the transfer of a Certificate from one Lot to another Lot.

"Transfer Fee" shall mean the fee, as determined by the Board of Directors of the Association, charged by the Association to cover the administrative costs of transferring a Certificate.

"Water Tap" shall mean the connection purchased for each Lot to allow that Lot to connect with the Association's Main Water Line.

"Water Tap Certificate" shall mean the certificate issued upon payment of the Water Tap Fee which demonstrates ownership of a Water Tap and the right to connect to the Association's Main Water Line.

"Water Tap Fee" shall mean the fee to be paid to the Association, as determined by the Board of Directors of the Association, from time to time, for the right to connect to the Association's Main Water Line

"Water Usage Fee" shall mean the fee charged to each Certificate Holder and/or Lot Owner from the time a physical connection is made of Service Line to an improvement upon a Lot and/or a water hydrant which is located on a Lot is utilized to provide water for more than seven (7) days during any calendar year. The Board of Directors shall set all rates for water usage in its sole discretion. Water Usage Fees may be levied monthly, quarterly, bi-annually, annually, as determined by the Board of Directors.

"Water User" shall mean the Certificate Holder and/or Lot Owner from the time a physical connection of an improvement upon a Lot is made to the Main Water Line and/or a water hydrant which is located on a Lot is utilized to provide water for more than seven (7) days during any calendar year.

ARTICLE 3. MEMBERSHIP

Section 3.1 Membership

Every person who is the a record owner of a Water Tap Certificate subject to the Water Tap Commitment and is current in the payment of all dues, fees, and assessments of the Association shall be a Member of the Association. When more than one (1) person holds an interest in a Lot, 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. Each Certificate Holder shall be entitled to cast one (1) vote, regardless of the number of Water Tap Certificates held. Fractional and cumulative voting are prohibited.

Section 3.2 Suspension of Voting Rights

During any period in which a member shall be in default in the payment of any dues, fees, or assessments, including interest, late fees, attorney fees and costs, levied by the Association, the voting rights of such member shall be deemed suspended by the Board of Directors, without notice or hearing, until such assessment has been paid. The Association shall have the express right to terminate the Water Tap Certificate, membership and water service for nonpayment of dues, fees and assessments for a period of greater than two (2) years

Section 3.3 Transfer of Membership

Transfers of Membership shall be made on the books of the Association pursuant to Water Tap Commitment and the policies, procedures, rules and regulations of the Association. Unless a Transfer of Water Tap Certificate is recorded in the real property records of Lake County, Colorado, membership shall be presumed to remain with the Water Tap Certificate holder of record. Prior to proper transfer of a Water Tap Certificate, 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 shall be held in Lake County, at such place and time as the Board of Directors may designate on the second Saturday of July. At these meetings, the Directors shall be elected by the Members, in accordance with the provisions of these Bylaws 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 Association may be called by the President, by a majority of the members of the Board of Directors or by a petition signed by Owners comprising at least five percent (5%) of the votes in the Association.

Section 4.3 Notice of Meetings

Written notice of each meeting of Members 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. 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 4.4 Place of Meetings

Meetings of the Members shall be held in the Pan-Ark Estates Community, or in any other location in the Lake County area, and may be adjourned to a suitable place convenient to the Members, as may be designated by the Board or the President.

Section 4.5 Quorum of Members

The presence of ten percent (10%) of the Members eligible to vote at any meeting, in person, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Water Tap Commitment, 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 4.6 Voting

At all meetings of Members, each Member eligible to vote may vote in person. If only one of several Owners of a Lot is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Lot. If more than one of the Owners is present, the vote allocated to the Lot 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 Lot without protest being made promptly to the person presiding over the meeting by another Owner of the Lot. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Board of Directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The 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 Lots owned by the Association may not be cast.

Section 4.7 Majority Vote

The vote of more than fifty percent (50%) of Members, eligible to vote, 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 Water Tap Commitment, these Bylaws, the Articles of Incorporation, as amended, or by law.

Section 4.8 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 4.9 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 4.10 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 Members present at the meeting.

Section 4.11 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 Water Tap Commitment, 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 Water Tap Commitment, Articles or these Bylaws requiring the vote of Members at a meeting.

The Board of Directors 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 members of the opportunity to run for a vacant position and/or nominate any member of the Association for a vacant position, subject to the nominated Member's consent.

ARTICLE 5. BOARD

Section 5.1 Number and Qualification

The affairs of the Mt. Elbert Water Association shall be governed by a Board of Directors which shall consist of five (5) Members, elected or appointed as provided below (the "Board"). Only Members, 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 five (5), the Board will be considered properly constituted until such vacancies are filled. The number of members of the Board may be increased or decreased by amendment of these Bylaws. If any Lot is owned by a partnership or corporation, any officer, partner or employee of that Member shall be eligible to serve as a Director and shall be deemed to be a Member for the purposes of these Bylaws.

Section 5.2 Election

Election to the Board of Directors shall be by mail or secret, written ballot, unless another procedure is agreed upon by the Members 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 Members. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. Fractional voting is not permitted.

Section 5.3 Term of Office for Directors

The term of office of Directors shall be two (2) years or until such time as a successor is elected. The terms of the Directors shall be staggered.

Section 5.4 Removal of Directors

One or more Directors or the entire Board of Directors may be removed at a Special Meeting of Members called pursuant to these Bylaws, with or without cause, by a vote of a majority of the Members present in person at a meeting at which a quorum is present or by a vote by mail. Notice of a Special Meeting of the Members to remove Directors shall be provided to every member 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 Members 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 Members 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 Members present in person or by a vote by mail. Directors so elected shall serve the unexpired term of his or her predecessor.

Section 5.5 Vacancies/Resignations

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. Vacancies on the Board caused by any reason (other than removal) may be filled by appointment by a majority vote of the Board at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. Each person so appointed shall be a Director who shall serve until the next annual meeting, at which time a Director shall be elected by the Members to serve the remainder of the unexpired term.

Section 5.6 Compensation

Directors may receive compensation for any service they may render as a Director to the Association, as determined appropriate by resolution of the Members. However, any Director may be reimbursed for actual expenses incurred in the performance of Association duties.

ARTICLE 6. MEETINGS OF DIRECTORS

Section 6.1 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 Community or the Lake County area unless all Directors consent in writing to another location.

Section 6.2 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 to each Director. The notice shall be delivered by mail, by telephone, or, by any electronic means whereby confirmation of receipt of the notice is received, and shall state the time, place and purpose of the meeting.

Section 6.3 Location of Meetings and Open Meetings

All meetings of the Board of Directors shall be open to attendance by members, as provided by applicable Colorado law. All meetings of the Board of Directors shall be held in the Community, by conference call, or in the Lake County area, unless all Directors consent in writing to another location.

Section 6.4 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 6.5 Quorum

At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business. If there are fewer than three (3) Directors, 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. If there are fewer than three (3) Directors, 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 6.6 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 6.7 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.

ARTICLE 7. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers and Duties

The Board may act in all instances on behalf of the Association, except as provided in the Water Tap Commitment and these Bylaws. The Board shall have, subject to the limitations contained in the Water Tap Commitment, the powers and duties necessary for the administration of the affairs of the Association, and for the operation and maintenance of the water system, including the following powers and duties:

- (a) Exercise any other powers conferred by the Water Tap Commitment, Bylaws or Articles of Incorporation;

- (b) Adopt and amend policies, procedures, rules and regulations, including penalties for infraction thereof;
- (c) Adopt and amend budgets 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 dues, fees, and assessments as provided by the Water Tap Commitment, these Bylaws, or pursuant to rules and regulations adopted by the Board of Directors;
- (f) contractor, or such Employ a managing agent, an independent 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 Water Tap Commitment, Bylaws or rules, and, in the Association's name, on behalf of the Association or two or more Owners, on matters affecting the Association;
- (h) Make contracts and open bank accounts, 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, and to incur liabilities, subject to approval of a majority of the Members, present in person at a meeting at which a quorum is present or by mail;
- (j) Borrow funds and secure such loans with Association property or an interest in future assessments, upon approval of a majority of the votes of the Members, present at meeting at which a quorum is present, or voting by mail, if at votes equaling at least a quorum are returned, 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) 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 adequate liability and hazard insurance on property owned by the Association.
- (o) Cause all Officers or employees having fiscal responsibilities to be insured and/or bonded, as it may deem appropriate;
- (p) 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, and the Water Tap Commitment.

Section 7.2 No Waiver

The omission or failure of the Association or Owner to enforce the conditions, easements, uses, limitations, obligations, or other provisions of the Water Tap Commitment, 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 8 OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Offices

The Officers of this Association shall be a President, Vice-President, Secretary and Treasurer who shall at all times be members of the Board of Directors, and such other Officers as the Board may from time to time create by resolution, who shall also be Directors. Any special offices created by resolution of the Board may be held by the same person.

Section 8.2 Election of Officers

The Officers shall be elected for a one (1) year term at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 8.3 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 8.4 Resignation and Removal

Any Officer may be removed from office with or cause by a majority of the Board of Directors. Any Officer may resign at any time by giving written notice to the Board without, 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 8.4 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 8.5 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 replaces.

Section 8.6 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; co-sign promissory notes; 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 imposed 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 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 8.7 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 9. COMMITTEES

Section 9.1 Designated Committees

The Association may appoint such committees as deemed appropriate in carrying out its purposes. Committees shall have authority to act only to the extent designated in the governing documents or delegated by the Board.

ARTICLE 10. BOOKS AND RECORDS

Section 10.1 Records

The Association or its managing agent, if any, shall keep the following records:

- (a) An account for each Lot, which shall designate the name and address of each Owner, the amount of dues, fees, and assessments, 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) Copies of at least the three most recent years' correspondence between the Association and Owners; and
- (h) A copy of the most current versions of the Water Tap Commitment, Articles of Incorporation, Bylaws, policies and procedures, rules and resolutions of the Board, along with their exhibits and schedules.

Section 10.2 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 or applicable law. The Board of Directors or the managing agent shall determine reasonable fees for copying.

ARTICLE 11. AMENDMENTS

Section 11.1 By-law Amendments

These Bylaws may be amended by a majority of the Members present at a meeting, 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 a quorum are returned, of which votes at least a majority of the votes approve the proposed amendments.

ARTICLE 12. INDEMNIFICATION

Section 12.1 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, Officer 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 *no/o 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 12.2 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, Officer 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 12.3 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 12.4 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, Officer 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 12.5 Payment in Advance of Final Disposition

The Association shall pay for or reimburse the reasonable expenses incurred by a former or current Director, Officer or committee member who is a party to a proceeding in advance of final disposition of the proceeding if the Director, Officer 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, Officer or committee member but need not be selected and may be accepted without reference to financial ability to make repayment.

Section 12.6 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 12.7 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, an Officer of the Association, the manager, 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 13. MISCELLANEOUS

Section 13.1 Fiscal Year

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

Section 13.2 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 13.3 Conflicts

In the case of any conflicts between the Articles of Incorporation and these By-laws, the terms of the Articles of Incorporation shall control.

Section 13.4 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.

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of Mt. Elbert Water Association, Inc., a Colorado nonprofit corporation, and that these Amended and Restated Bylaws for the Mt. Elbert Water Association, Inc. have been adopted by at least two-thirds of the Members voting at a meeting at which at least a quorum is present.

MT. ELBERT WATER ASSOCIATION, INC., a Colorado nonprofit corporation

By: _____
Secretary