

## THIRD

### RE-STATED BY-LAWS OF THE

### FRIENDS OF THE CUMBRES & TOLTEC SCENIC RAILROAD, INC.

#### ARTICLE ONE

#### NAME AND PRINCIPAL OFFICE

**SECTION 1.1 NAME.** The name of the Corporation is the Friends of the Cumbres & Toltec Scenic Railroad, Inc. [hereinafter referred to as the "Corporation"], a non-profit corporation, organized in accordance with the laws of the State of New Mexico.

**SECTION 1.2 PRINCIPAL OFFICE.** The principal office of the Corporation shall be located in Albuquerque, County of Bernalillo, State of New Mexico, but meetings may be held at such place within or without the State of New Mexico as may be designated. The location of the principal office of the Corporation may be changed at any time by the Board of Directors.

**SECTION 1.3 REGISTERED OFFICE AND REGISTERED AGENT.** The registered office of the Corporation required by the New Mexico Non-Profit Corporation Act to be maintained in the State of New Mexico shall be located in Albuquerque, County of Bernalillo, State of New Mexico. Such office shall be identical with the business office of the Registered Agent. The Board of Directors may change such Agent or such office at any time.

#### ARTICLE TWO

#### PURPOSES AND POWERS

**SECTION 2.1 PURPOSES.** The purposes for which this Corporation formed are:

- A. To preserve, improve, and interpret the Cumbres & Toltec Scenic Railroad.
- B. To support the operation of the Cumbres & Toltec Scenic Railroad as a historic, living museum.
- C. To restore, reconstruct, and preserve historic materials consistent with the best principles of historic preservation and the needs of the continued operations of the railroad by its operator.
- D. To encourage the use of volunteer workers to accomplish the objects of this Corporation.
- E. To promote and encourage historical research; to acquire, by purchase, gift, devise, or otherwise, the title to or the custody and control of, historic sites and things; to preserve and protect equipment and sites of historic interest, to collect and preserve records, relics, and other things of historic interest; to mark places of historic interest with suitable monuments and markers; to foster and promote public knowledge of and interest in local and national history, as it particularly relates to the Cumbres & Toltec Scenic Railroad.

F. To appoint or fill vacancies on any board of directors of any subsidiary or other corporation or entity giving this Board such power or authority.

G. This Corporation is organized exclusively for charitable and educational purposes; including, for such purposes, making distributions to and receiving contributions from organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law.)

H. In furtherance and not in limitation of the objects and purposes hereinbefore stated, it is expressly provided that the Corporation is organized for the purposes and objects of engaging in any lawful act or activity for which non-profit corporations may be organized under the New Mexico Non-Profit Corporation Act.

**SECTION 2.2 POWERS.** The powers of the Corporation are:

- A. To receive and disburse funds in accordance with its stated purposes.
- B. To receive, hold and display real and personal properties.
- C. To organize volunteers in its work.
- D. To appoint or fill vacancies on any board of directors of any affiliated corporation or entity giving this Board such power or authority.
- E. To do each and every act consistent with the carrying out of its purposes as set forth above.

**ARTICLE THREE  
MEMBERSHIP**

**SECTION 3.1 CLASSES OF MEMBERSHIP.** Membership shall be open to all persons and shall consist of the following categories:

A. Individual membership is open to any person interested in the purposes of this Corporation. Any such person making the "minimum annual contribution" as set forth in Section 3.3 shall be considered a member.

B. Institutional membership is open to any organization interested in the purposes of the Corporation. Any such entity making the "minimum annual contribution" as set forth in Section 3.3 shall be considered a member.

C. Honorary membership may be conferred on a yearly basis upon any person whose activities have contributed to the purposes of the Corporation as approved by vote of the Board of Directors.

D. Complimentary membership may be conferred on a yearly basis upon any person or organization whom the President determines should be kept informed about the Friends.

**SECTION 3.2 VOTING PRIVILEGES.** Each Individual member who has made the "minimum annual contribution" and each Honorary member shall have one vote on all matters of business requiring the action of the Corporate membership. Where multiple family members are included under one "minimum annual contribution," the whole family unit shall be counted as one Individual member for voting purposes.

**SECTION 3.3 MINIMUM ANNUAL CONTRIBUTION.** Each year the Board of Directors shall establish a "minimum annual contribution" which will entitle a contributor

to the Corporation to be a member as defined hereinabove and have the privileges as established in these By-laws. Such "minimum annual contribution" will cover a 12 month period beginning with January 1 of each calendar year. Members who have not made their "minimum annual contribution" by March 31 of each year shall be dropped from membership.

**SECTION 3.4 EXPULSION OF MEMBERS.** Should the manner of conduct of any member be unbecoming to the principles and welfare for which the Corporation is organized, his or her membership shall be forfeited upon vote of two-thirds of an absolute number of the members of the Board of Directors.

#### **ARTICLE FOUR MEETINGS OF MEMBERS**

**SECTION 4.1 ANNUAL MEETING.** The annual meeting of the membership of the Corporation shall be held in May, June, July or August of each year at a time and place to be determined by the Board of Directors.

**SECTION 4.2 OTHER MEETINGS.** Regular and special meetings of the membership may be called at any time by the Board of Directors or by two percent (2%) of the voting membership.

**SECTION 4.3 NOTICE.** Written notice of regular or special meetings of the membership shall be sent at least seven (7) days in advance if by first class mail or twenty (20) days in advance if by non-profit bulk mail, to all members at the address then current with the Corporation. Notice shall include the date, place and time of the meeting and the nature of the business to be transacted.

**SECTION 4.4 QUORUM.** Four percent (4%) of the total number of voting members or twenty (20) voting members, whichever is larger, shall constitute a quorum for the transaction of business by the members of the Corporation. Voting members are defined hereinabove in Section 3.2.

#### **ARTICLE FIVE BOARD OF DIRECTORS**

**SECTION 5.1 GENERAL POWERS.** The business and affairs of the Corporation shall be conducted and managed by its Board of Directors. The Directors shall act only as a Board and individual Directors shall have no power as such. Notwithstanding, the Board of Directors may delegate such responsibilities and functions as it may determine.

**SECTION 5.2 NUMBER AND TENURE.** The Board of Directors shall consist of not fewer than fourteen (14) nor more than twenty (20) elected members whose term of office shall be two years. Each year, upon the report and recommendation of the Nominating Committee, the Board of Directors shall establish the number of Directors

to be elected that year, within the range permitted by this Section. Terms of office shall be staggered so that one-half of the Directors stand for election each year. Directors shall be elected by the voting members as provided in Article Six. Any Director may be re-elected. Cumulative voting shall not be permitted. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be elected.

**SECTION 5.3 EX OFFICIO BOARD MEMBERS.** If the Board elects a person who is not a Director to be either the Secretary or the Treasurer of the Corporation, that person shall become an ex officio nonvoting member of the Board. The position of President shall be an ex officio nonvoting member of the Board.

**SECTION 5.4 DUTIES OF DIRECTORS.** The Board of Directors may:

- A. Hold meetings at such times and places as is deemed proper;
- B. Suspend or expel members;
- C. Appoint committees on particular subjects from the members of the Board or from other members of the Corporation;
- D. Audit bills and disburse funds of the Corporation;
- E. Print and circulate documents and publish articles;
- F. Carry on correspondence and communicate with other associations and organizations interested in the purposes and objects of this Corporation;
- G. Appoint and remove, employ and discharge, and, except as otherwise provided in these By-laws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- H. Devise and carry into execution such other measures as it deems proper and expedient to promote the objects and purposes of the Corporation.
- I. Supervise all officers, committee members, agents and employees of the Corporation to assure that their duties are performed properly.

**SECTION 5.5 MEETINGS OF THE BOARD.** The Annual Meeting of the Board of Directors shall be held in May, June, July, or August of each year. In addition, regular or special meetings of the Board of Directors may be held at any time and may be called at any time at the request of four or more Directors, the Chairman, or the President. The Annual Meeting of the Board shall be held at the place specified in the Notice of Meeting. Any person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of New Mexico, as a place for holding any special or regular meetings of the Board.

**SECTION 5.6 NOTICE.** Written or electronic notice of regular meetings of the Board of Directors shall be given at least ten (10) days in advance to all members of the Board, and at least five (5) days in advance for special meetings. No written notice, but at least one (1) day's electronic notice shall be required for telephone conference call meetings.

**SECTION 5.7 QUORUM.** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The

Chairman or Vice-Chairman of the Corporation shall act as Chair of the meeting. In the absence of the Chairman or Vice-Chairman of the Corporation, the quorum present may choose a Chair for the meeting. If less than a quorum is present, a majority of the Directors present may adjourn the meeting from time to time without further notice.

**SECTION 5.8 ABSENCE.** Should any member of the Board of Directors absent him/herself unreasonably from two (2) consecutive meetings of the Board without sending a communication to the President, Chairman, or Secretary stating his/her reason for so doing, and if his/her excuse should not be accepted by the members of the Board, his/her seat on the Board may be declared vacant, and the position may be filled as provided hereinafter.

**SECTION 5.9 VACANCY.** Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any Director, and (2) whenever the number of authorized Directors is increased. Any vacancy occurring in the position of Director may be filled by the affirmative vote of a majority of the remaining members of the Board of Directors at any regular or special meeting of the Board or with the written consent of all Directors pursuant to Section 5.11. Candidates to fill any such vacancy may be proposed by the Executive Committee or the Nominating Committee. A Director thus elected to fill a vacancy shall serve for the unexpired term of his/her predecessor. Should an elected member of the board be hired as an employee of the corporation, that seat shall be declared vacant as of the date of hire.

**SECTION 5.10 REMOVAL.** Any Director may be removed at any time, with or without cause, by the affirmative vote of two-thirds of the absolute number of the members of the Board of Directors.

**SECTION 5.11 INFORMAL ACTION BY DIRECTORS.** Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the actions so taken, is signed by all members of the Board of Directors. Such a consent shall have the same force and effect as the unanimous vote by the Board of Directors.

**SECTION 5.12 COMPENSATION.** Directors shall not receive any stated salaries for their services, but by resolution of the Board of Directors their actual expenses or a fixed sum for their expenses of attendance, if any, may be allowed for attendance at such regular or special meetings of the Board; but nothing contained herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefore.

**SECTION 5.13 CONSULTING DIRECTORS.** The Board of Directors may elect Consulting Directors at any time for a term to expire on the date of the next Annual Meeting of the Board of Directors. Consulting Directors may be re-elected. Consulting Directors shall not have voting rights but will be entitled to participate and be heard at all Board Meetings and functions and shall receive copies of all communications directed to the Board.

**SECTION 5.14 HIRE.** The Board of Directors shall have the power to hire a chief executive officer who shall serve as President and who shall report to the Board of Directors through the Chairman of the Board.

**SECTION 5.15 EMPLOYMENT AGREEMENT.** Any other officer or employee may be employed by the Board at will or pursuant to a written employment agreement if adopted, containing such terms as the employee and the Board agree upon.

## **ARTICLE SIX ELECTION OF DIRECTORS**

**SECTION 6.1 DIRECTORS.** Directors shall be elected by the voting members of the Corporation as provided in this Article Six.

**SECTION 6.2 NOMINATION.** Nominations for election to the vacant terms on the Board of Directors shall be made by the Nominating Committee or by petition. All persons nominated by the Nominating Committee shall have consented to serve and shall have provided a brief biography and a statement of candidacy to be communicated to the membership. A petition for nomination shall contain the name of the nominee, the nominee's consent to serve, the seconding signatures of three (3) voting members, brief biographical information about the nominee, and the nominee's statement of candidacy. Such petition must be received by the Nominating Committee no later than 90 days prior to the Annual Meeting of the Members. A description of this nominating procedure shall be published each year no later than January 15<sup>th</sup> of the year of the election.

**SECTION 6.3 MANNER OF ELECTION.** The election of directors shall take place by written ballots mailed to the voting members not fewer than forty-five (45) days prior to the date of the next Annual Meeting of Members. Mailing may be by non-profit bulk mail permit. Marked ballots must be received no later than fifteen (15) days prior to the date of the next Annual Meeting of Members in order to be counted. If there are more nominees than directorships to be filled, those nominees receiving the highest number of votes shall be elected.

**SECTION 6.4 RULES AND PROCEDURES GOVERNING ELECTIONS.** The Nominating Committee may, from time to time, make and amend rules and/or procedures pursuant to which the nomination and/or election of Board of Director candidates shall occur, including, without limitation, matters relating to the selection of Board nominees, voting procedures, ballot design and other matters. Such rules and/or procedures shall be consistent with the Corporation's Articles of Incorporation and By-laws and shall be approved or ratified by the Board of Directors or Executive Committee. A description of any such rules and procedures shall be published in the organization newsletter, or otherwise, no later than January 15<sup>th</sup> of the year of the election.

**SECTION 6.5 QUORUM FOR ELECTIONS.** Four percent (4%) of the total number of voting members or twenty (20) voting members, whichever is larger, shall constitute a quorum for the election of Directors pursuant to this Article. Voting members are defined hereinabove in Section 3.2.

## **ARTICLE SEVEN OFFICERS**

**SECTION 7.1 OFFICERS.** The elected officers of the Corporation shall consist of a Chairman, a Vice-Chairman, President, Secretary, Treasurer, and such other assistant officers as may be approved by the Board. No individual may hold more than one office at the same time, and the Chairman and Vice-Chairman must be elected from members of the Board of Directors.

**7.1.1 HONORARY OFFICERS.** The following position for honorary officers is created:

A. Founder – The honorary office of Founder is conferred on William J. Lock.

**SECTION 7.2 ELECTION.** Officers shall be elected by the members of the Board of Directors at the Annual Meeting of the Board as provided hereinabove in Section 5.5.

**SECTION 7.3 TERM.** All officers shall be elected for a one year term or until their successors have been elected and qualified, or until their earlier death, resignation, removal, or replacement. Any officer may be re-elected.

**SECTION 7.4 DUTIES AND POWERS.** The officers shall have such powers and shall perform such duties as from time to time be specified by the Board of Directors. In addition, the officers shall specifically have the following powers and duties:

A. Chairman - the Chairman of the Board shall:

- (1) Preside at all meetings of the Board of Directors;
- (2) Appoint (with Board approval) all standing and special committees and the members and chairs thereof;
- (3) Serve as the representative of the Board in its relations with the President;
- (4) Perform such other duties and responsibilities as the Board shall designate.

B. President - the President shall:

- (1) Be the chief executive officer of the Corporation;
- (2) Have general supervision of the officers and general active management of the business of the Corporation;
- (3) Sign all official documents and instruments on behalf of the Corporation pursuant to policy established by the Board of Directors;

- (4) Plan, initiate, and execute policies approved by the Board;
- (5) Pursuant to policy established by the Board of Directors have the power to hire such subordinate employees or agents as may be judged necessary for the conduct of the business of the corporation and designate their titles and compensations subject to approval by the Board of Directors;
- (6) Perform such other duties prescribed by the most current position description approved by the Board of Directors or as otherwise designated.

C. Vice-Chairman - the Vice-Chairman shall generally assist the Chairman. During the absence or incapacity of the Chairman, the Vice-Chairman shall perform the duties of the Chairman.

D. Secretary - the Secretary shall:

- (1) Be responsible for the preparation and submission of notices of all meetings and other activities to the members;
- (2) Be responsible for keeping minutes of all meetings of the membership and meetings of the Board of Directors;
- (3) Maintain a file of corporate correspondence and other records;
- (4) Certify and keep at the principal office of the Corporation the original, or a copy, of these By-laws as amended or otherwise altered to date;
- (5) Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors and of members;
- (6) Be custodian of the records and of the seal of the Corporation;
- (7) Keep at the principal office of the Corporation or such other place as the Board may determine, the membership records containing the name and address of members, and, in the case where any membership has been terminated, a record of such fact together with the date on which such membership ceased.

In the absence of the Secretary or the Secretary's inability to perform the Secretary's duties, such duties may be performed by an Assistant Secretary or by a Secretary pro-tem appointed at any meeting.

E. Treasurer - the Treasurer shall:

- (1) Have custody of the Corporation's funds;
- (2) Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (3) Be responsible for the preparation of an annual budget for approval by the Board of Directors and shall maintain such records as will accurately account for all the monies received and paid out by the Corporation;
- (4) Deposit all monies and other valuable effects of the Corporation in such banks and depositories as the Board may direct;
- (5) Prepare and present a complete financial report following the close of his term in office, which shall be reviewed and approved by the Board of Directors;
- (6) Disburse or cause to be disbursed the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements;



(7) Render to the Chairman, President, and Directors, whenever requested, an account of any or all of his/her transactions as Treasurer and of the financial condition of the Corporation.

(8) Prepare or cause to be prepared and certify or cause to be certified, the financial statements to be included in any required reports;

(9) Act as chair of a Finance Committee to be appointed by the Board of Directors;

(10) Delegate duties as appropriate.

**SECTION 7.5 VACANCY.** In the event of a vacancy in the office of Chairman or during his/her inability to serve for any reason, the powers and duties of that office shall be exercised by the Vice-Chairman. Any other vacancies shall be filled by the affirmative vote of a majority of the remaining Board of Directors.

**SECTION 7.6 REMOVAL.** Any officer may be removed at any time, with or without cause, by the affirmative vote of two-thirds of an absolute number of members of the Board of Directors.

**SECTION 7.7 RESIGNATION.** Any officer may resign effective upon giving written notice to the Chairman, President, or Secretary, unless the notice specifies a later time for the effectiveness of such resignation.

## **ARTICLE EIGHT DUTIES AND LIABILITIES OF OFFICERS AND DIRECTORS**

**SECTION 8.1 DUTIES OF DIRECTORS.** A Director shall perform his duties as director including his duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner the Director believes to be in or not opposed to the best interests of the Corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a Director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. One or more Officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;

B. Counsel, public accountants other persons as to matters which the Director reasonably believes to be within such persons' professional or expert competence; or

C. A committee of the Board upon which the Director does not serve, duly designated in accordance with a provision of the Articles of Incorporation or the By-laws as to matters within its designated authority, which committee the Director reasonably believes to merit confidence, but the Director shall not be considered to be acting in good faith if the Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

A Director may waive any immunity provided under New Mexico law if such Director shall vote to allow the Corporation to transfer assets in order to avoid claims against corporate assets resulting from a Judgment against the Corporation.

**SECTION 8.2 LIABILITY OF DIRECTORS.** No Director of the Corporation shall be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Director unless the Director has breached or failed to perform the duties of the Director's office in compliance with Section 8.1 hereinabove, and the breach or failure to perform such duties constitutes willful misconduct or recklessness.

**SECTION 8.3 INDEMNIFICATION OF OFFICERS AND DIRECTORS.** The Corporation shall indemnify any Director or Officer or former Director or Officer of the Corporation against reasonable expenses, costs, and attorney fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a Director or Officer of the Corporation. This indemnification shall include any amounts paid to satisfy a judgment or to compromise or settle a claim. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Officer or Director did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Provided, however, the Officer or Director shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform such duties constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a Director or Officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the Director or Officer must reimburse the Corporation if it is subsequently determined that the Director or Officer was not entitled to indemnification.

**SECTION 8.4 OTHER RIGHTS.** The indemnification provided hereinabove in Section 8.3 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled. In addition, the Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or Officer of the Corporation against any liability asserted against him and arising out of his status as such, whether or not the Corporation should have the power to indemnify him against such liability under the provision of the New Mexico Non-Profit Corporation Act.

## **ARTICLE NINE COMMITTEES**

**SECTION 9.1 EXECUTIVE COMMITTEE.** The Board of Directors shall create an Executive Committee, consisting of either 5 or 7 voting members. The Committee shall consist of the Chairman, Vice-Chairman, and one Director each from Colorado and New Mexico and such other Directors appointed by the Board of Directors. The Founder of the Corporation, if serving as an elected member of the Board of Directors, shall be an ex officio voting member of the Executive Committee. If the President of the

Corporation is a paid employee, he shall be a nonvoting member of the Executive Committee. The Executive Committee may act on behalf of the Corporation when the Board of Directors is not in session. The Executive Committee may not amend, adopt or repeal By-laws, fill vacancies on the Board, or amend or repeal any resolution previously adopted by the Board, but may fill board vacancies in any organization affiliated with the Friends as is provided in the By-laws of the affiliated organization.

**SECTION 9.2 NOMINATING COMMITTEE.** The Board of Directors shall create a Nominating Committee, consisting of five (5) members, at least three (3) of whom shall be members of the Board. The Chairman shall appoint such members with the approval of the Board. It shall be the duty of this committee to nominate candidates pursuant to the nomination process established in Article Six for the positions of Directors whose terms will expire at the next Annual Meeting. The committee shall nominate as many candidates as there are Directors whose terms expire in the year of the election and report these nominations together with any candidates nominated by petition as provided in Section 6.2 to the voting members. If a vacancy occurs on the Board prior to the expiration of a Director's term of office, this committee may, upon the request of the Executive Committee, recommend as many candidates as it deems appropriate to the Board to fill such vacancy. The committee shall also nominate either 5 or 7 candidates for the RGRPC board.

**SECTION 9.3 FINANCE COMMITTEE.** The Chairman shall appoint with approval of the Board of Directors a Finance Committee consisting of not fewer than three (3) Directors, the Treasurer, and the President. Its number may be changed from time to time by the Board. The Committee shall advise the Board concerning the Corporation's income, the investment of its funds and other financial matters. The recommendations of the Finance Committee shall be submitted to the Board at its next meeting.

**SECTION 9.4 STANDING COMMITTEES.** The Chairman, with the approval of the Board, shall appoint standing committees. The Chairman shall appoint the members of such committees and the Board shall prescribe the functions, powers and duties of such committees. These standing committees shall include:

- A. Projects Committee
- B. Development Committee
- C. Publication Committee
- D. Membership Committee

**SECTION 9.5 OTHER COMMITTEES.** The Chairman, with the approval of the Board, may designate other committees as deemed appropriate. The Chairman shall appoint the members of such committees and the Board shall prescribe the functions, powers and duties of such other committees at that time.

**SECTION 9.6 CHAIR.** One member of each committee shall be appointed Chair by the Chairman. The Chairman may also appoint two members of a committee to serve as Co-Chairs in cases deemed appropriate.

**SECTION 9.7 TERM OF OFFICE.** Each member of a committee shall continue as such until the next Annual Meeting of the Board of Directors and until the successor is appointed, unless the committee shall be sooner terminated.

**SECTION 9.8 VACANCIES.** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

## **ARTICLE TEN CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**SECTION 10.1 CONTRACTS.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**SECTION 10.2 LOANS.** No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may also be general or confined to specific instances.

**SECTION 10.3 CHECKS, DRAFTS, ETC.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**SECTION 10.4 DEPOSITS.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

## **ARTICLE ELEVEN MISCELLANEOUS**

**SECTION 11.1 WAIVER OF NOTICE.** Whenever notice is required by law, by the Articles of Incorporation or by these By-laws, a waiver thereof in writing signed by the Director, or other person entitled to said notice, whether before, or after the time stated therein, or his appearance at such meeting in person, shall be the equivalent of such notice.

**SECTION 11.2 SEAL OR LOGO.** The corporate seal or logo of the Corporation shall be in such form as the Board of Directors shall prescribe. The seal or logo may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**SECTION 11.3 GIFTS.** The Board of Directors may accept on behalf of the Corporation any contributions, gifts, bequests, or devises for any purpose of the Corporation.

**SECTION 11.4 PARLIAMENTARY PROCEDURE.** Roberts Rules of Order shall be the governing rules for meetings of the Board of Directors. To foster orderly and timely conduct of the business of the Board, the Chairman shall appoint a parliamentarian to assure that problems of procedure may be solved consistent with these Rules. In particular, all decisions to be taken by the Board shall be introduced in the form of a motion, which may be contained in the Agenda for the meeting. In no case, however, shall failure to follow these Rules constitute grounds for finding fault, after the fact, with any proceeding of any meeting. The Rules may also be suspended by majority vote of those in attendance.

**SECTION 11.5 FISCAL YEAR.** The fiscal year of the Corporation shall be a calendar year fiscal year, beginning on the first day of January and ending on the last day of December of each year.

**SECTION 11.6 AMENDMENTS TO BY-LAWS.** These By-laws may be amended or repealed at any regular or special meeting of the Board of Directors called for that purpose, by vote of a majority of the absolute number of the Directors. Notice of proposed changes shall be given no less than fifteen (15) days before the meeting.

**SECTION 11.7 DISTRIBUTION OF ASSETS ON DISSOLUTION OR FINAL LIQUIDATION.**

In the event that the Corporation is ever dissolved or liquidated, the assets of the Corporation shall be distributed in the following manner pursuant to Section 53-8-48, N.M.S.A., 1978 Comp.:

- A. Payment of all liabilities and obligations of the Corporation.
- B. Return, transfer or convey all assets held by the Corporation on the condition of return upon dissolution or liquidation.
- C. All remaining assets shall be distributed to the Cumbres & Toltec Scenic Railroad Commission, created and existing by virtue of the Cumbres & Toltec Scenic Railroad Compact, or its successor, provided the same is an institution described in Section 170(c)(1) of the Internal Revenue Code or any successor provision, or if said Commission or its successor is no longer in existence, then such property shall be distributed among any one (1) or more Corporations, historical societies, trusts, community chests, funds or foundations described in Section 501(c)(3) of the Internal Revenue Code, or any successor provision, as determined by the Board of Directors of the Corporation.
- D. Under no circumstances shall any assets be distributed to any Director, former Director, officer, former officer, member, former member, trustee, former trustee or employee or former employee of the Corporation.

**SECTION 11.8 MAINTENANCE OF CORPORATE RECORDS.** The Corporation shall keep at its principal office or in such other location as the Board may designate:

A. Minutes of all meetings of Directors, committees of the Board, and meetings of members;

B. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;

C. A record of its members, indicating their names and addresses, and if applicable, the class of membership held by each and the termination date of any membership;

D. A copy of the Corporation's Articles of Incorporation and By-laws as amended to date, which shall be open to inspection by members at all reasonable times during regular office hours.

**SECTION 11.9 DIRECTOR'S INSPECTION RIGHTS.** Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

**SECTION 11.10 WORDS.** All pronouns used in these By-laws shall include the masculine, feminine, and neuter gender and shall include the singular and plural, and the context of these By-laws shall be read accordingly as the facts require.

STATE OF NEW MEXICO            )  
COUNTY OF BERNALILLO        ) ss.

I hereby certify that the above and foregoing Third Restated By-laws of the Friends of the Cumbres & Toltec Scenic Railroad, Inc., a New Mexico non-profit corporation, consisting of 15 pages, this page included, are the By-laws of said Corporation, duly adopted at a meeting of the Board of Directors held on June 16, 2002.

\_\_\_\_\_  
President – Theresa Shaw

SUBSCRIBED AND SWORN TO BEFORE ME on December 27, 2002, by Theresa Shaw, President of the Friends of the Cumbres and Toltec Scenic Railroad, Inc.

\_\_\_\_\_  
Notary Public

My commission expires: February 6, 2003  
[Seal]

STATE OF NEW MEXICO        )  
COUNTY OF BERNALILLO    ) ss.

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\_\_\_\_\_  
Assistant Secretary – Howard Bunté

SUBSCRIBED AND SWORN TO BEFORE ME on December 27, 2002, by Howard Bunté, Assistant Secretary of the Friends of the Cumbres and Toltec Scenic Railroad, Inc.

\_\_\_\_\_  
Notary Public

My commission expires: February 6, 2003  
[Seal]