

**BYLAWS**

**OF**

**THE CHILDREN’S KIVA , INC.  
(A Nonprofit Corporation)**

**ARTICLE I**

**NAME, LOCATION AND FISCAL YEAR**

Section 1. Name. The name of the organization shall be The Children’s Kiva.

Section 2. Location. The principle office of The Children’s Kiva shall be at:  
1204 East Empire St.  
Cortez, CO 81321

The Children’s Kiva may also have offices at such other places as the Board of Directors (Board) may, from time to time, appoint or as the business of The Children’s Kiva requires; provided, however, that the registered office be registered with the Secretary of the State of Colorado and the agent so registered be located at the same address, or otherwise as provided by the Board.

Section 3. Fiscal Year. The fiscal year of the school shall coincide with the fiscal year of Montezuma-County Re-1 School District (Charter Authorizer), beginning July 1st and ending June 30th of the following year.

**ARTICLE II**

**PURPOSE, OBJECTIVES AND RESPONSIBILITIES**

Section 1. Purpose. The Children’s Kiva aims to provide a vibrant and engaging preschool and kindergarten learning environment based on the teachings of Dr. Maria Montessori that supports all students’ academic excellence and their ability to become empowered, creative, lifelong learners responsible for themselves, their community, and their environment. The Children’s Kiva aims to provide a community service to the school children and their parents and legal guardians directing the operation to inspire children by helping them feel safe, cherished and empowered. The Children’s Kiva is a Section 501(c)(3) charitable corporation and is recognized by the State of Colorado as a charitable corporation, donations to which are tax-deductible.

Section 2. Objectives. The objectives of the Board are as follows:

A. To ensure that the Mission and Vision Statements are adhered to in activities and decisions of the Board, staff, students, parents and The Children’s Kiva advisory committees.

B. To serve as final authority in matters affecting staffing, budget, calendar decisions and The Children's Kiva concerns, and to ensure that these are consistent with and promote the goals of the Mission Statement and official The Children's Kiva policy.

C. To encourage faculty, parents and students to be aware of and responsive to the needs and concerns of The Children's Kiva as a whole, and of the unique learning styles, challenges and talents of individual students.

D. To act as the official voice of The Children's Kiva with regard to public information, media contacts, and public relations.

E. To adopt policies and procedures that will govern The Children's Kiva. These policies and procedures will remain consistent with the school's Mission Statement.

Section 3. Responsibilities. The Board shall adhere to the general duties and responsibilities of nonprofit Boards as outlined in Colorado Revised Statutes, including, but not limited to, Colorado's Sunshine Law and Open Meeting Laws.

### **ARTICLE III MEMBERSHIP**

The Children's Kiva shall not have Members. While persons who associate or attend programs of, participate in, contribute to, or benefit from The Children's Kiva may be at times referred to as "members," no rights, voting or other, shall inure to such persons as "Members" under the Colorado Revised Nonprofit Corporations Act.

### **ARTICLE IV BOARD OF DIRECTORS**

Section 1. General Powers. The Board shall have conferred upon it all powers set forth in the Colorado Revised Nonprofit Corporation Act, except as those powers may be limited in the Articles of Incorporation or these Bylaws. The Board may assign duties and responsibilities to its individual Directors as it deems necessary from time to time. If necessary, these duties and responsibilities may be reassigned at any time at the discretion of the Board.

#### Section 2. Number, Tenure and Qualifications.

A. Directors shall be natural persons at least eighteen years of age or older. The number of Directors shall be no less than five (5) and no more than nine (9). The number of Directors must always be an odd number so as to avoid tie votes. The Board shall consist of:

(i) Three (3) to five (5) Board Appointed Directors. Board Appointed Directors shall be nominated to the Board by the Nominations Committee (Article VI, Section 6) and appointed by the Board based on a simple majority vote of a quorum of sitting Directors. Board Appointed Directors may be The Children's Kiva parents or non-parents from the community, although non-parents who are part of the business community will be preferred. Board Appointed Directors shall serve two year terms; during each even-numbered calendar year, approximately half of the Board Appointed Director positions

will be appointed, during each odd-numbered calendar year, the other half of the Board Appointed Director positions will be appointed.

(ii) Two (2) Parent Elected Directors. "Parents" may be parents of children attending The Children's Kiva or our partner charter school, The Children's Kiva Montessori Charter School. Parent Elected Directors will be chosen by a majority vote of all eligible The Children's Kiva and The Children's Kiva Montessori Charter School families (as further described in Section 2.B., below). Only one person per household may serve on the Board at any one time. Parent Elected Directors shall serve two year terms; during each even-numbered calendar year, one (1) Parent Elected Director position shall be elected, during each odd-numbered calendar year, one (1) Parent Elected Director position will be elected.

(iii) For purposes of avoiding conflicts of interest or the appearance of impropriety, in no instance shall a The Children's Kiva teacher, a The Children's Kiva administrator, or other The Children's Kiva employee or member of a household of a The Children's Kiva employee be seated as a Board member in either the parent or non-parent member capacity.

B. Each The Children's Kiva and The Children's Kiva Montessori Charter School family will have two votes for each vacant Parent Elected Board seat. If there are two addresses listed for a child, one ballot will be sent to each address. Proxy voting is prohibited.

C. The Board elections shall occur annually in the second (2nd) week of May. Those candidates receiving the most votes will fill the available seats on the The Children's Kiva Board of Directors. In the event of a tie vote for a position, a second ballot will be cast for that position only, with only the tied candidates participating. Should a second tie occur, a result will be obtained by an act of chance, such as flipping a coin. Should not more individuals run for directorship than the number of open seats available, the Board may deem the candidates elected.

D. The first election and nomination cycle is held in the spring of 2014 in conjunction with the Parent Teacher Organization's annual officers election. The rules of Board composition described in Section 2.A(i) and (ii) are waived prior to this time, so as to grant The Children's Kiva Board necessary operational flexibility to maintain The Children's Kiva school activities.

F. The 2014 Directors shall serve staggered terms. Three (3) Directors shall each serve an initial three year term. Two (2) to four (4) Directors, depending on the number of the Governing Board of Directors, shall each serve an initial four year terms. Thereafter, all newly elected or appointed Directors shall each serve two year terms (preschool described 3-year terms). Directors are limited to serving two consecutive terms with the option of extending the number of terms with unanimous approval of the Board of Directors determined by anonymous vote.

G. Nomination Process. Board needs will be assessed by the Board, based upon a board matrix (Appendix C) and the recommendation of the Board Nominations Committee, or at the Board's discretion. The Nominations Committee will solicit potential BOD candidates throughout the year from the BOD, school community, and beyond. Directors will meet with the candidates to identify interest and make initial evaluations for these positions. After successful meetings with at least three Directors of the Nominations Committee (or with other Directors), the Nominations Committee will request BOD applications from potential candidates. The applications will be submitted to the Board each April for election/appointment of candidates in May.

Section 4. Resignations. Any Director may resign at any time by giving written notice to the Board or to the President or to the Secretary of The Children's Kiva. Such resignation shall take effect on the date of the receipt of such notice.

Section 5. Deemed Resignations. If a Director has three (3) unexcused absences in a fiscal year, that Director is deemed to have resigned, subject to confirmation by a majority of the Board. The resignation is effective at the time of such vote.

Section 6. Removal by Board of Directors. Any Director may be removed with or without cause at any time by the affirmative vote of the majority of remaining Directors, cast at a special meeting of such Directors called for that purpose, and the vacancy on the Board caused by such removal will be filled by special election or special nomination, dependent upon the classification of the Director, at the direction of the Board.

Section 7. Inactive Status. Any Director may submit a written request to the Board for said Director to be placed upon an inactive status for just cause. Said Director may also request the Board appoint an interim Director to fulfill the obligations of the inactive Director for a period not to exceed 6 months.

Section 8. Vacancies. Subject to Section 6, as it relates to removal of a Director, in the event any vacancy occurs on the Board because of death, resignation, disqualification, or other cause, the Board shall appoint a Director to fill the remainder of that Director's term. The Director so appointed shall hold office until his or her successor is duly qualified by election or appointment.

Section 9. Place of Meetings. The Board may hold its meetings, have one or more offices, and keep books and records of The Children's Kiva at such place or places within the State of Colorado, as the Board may, from time to time, determine.

Section 10. Regular Meetings. Regular meetings of the Board shall be held at least 10 times annually, and no less than one time a month during the school year. Board meetings shall be held on the second Monday of each month. The Board may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 11. Special Meetings. Special meetings of the Board may be held whenever called by the President or by two of the Directors, at such time and place, within the Montezuma-Cortez School District, as the person or persons calling the meeting shall designate. Notice of such meeting shall be given personally, emailed, or mailed to each Director, addressed to him or her at his or her residence or his or her usual place of business at least three (3) days before the day on which the meeting is to be held. If mailed, such notice shall be deemed to be delivered when deposited in the United States Postal Service mail so addressed, with postage thereon prepaid. Every such notice shall be published at least 24 hours in advance of the meeting; the notice will state time, place and purpose of the meeting in accordance with Colorado's open meetings law. A Director may waive notice by signing a waiver of notice.

Section 12. Quorum and Manner of Acting. Except as otherwise provided by statute or by these Bylaws, a majority of the Directors in office at the time of any regular or special meeting of the Board shall constitute a quorum for the transaction of business at such meetings and the act of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board. In place of this simple majority, a two-thirds (2/3) majority of the Directors present at a meeting at which a quorum is present shall be required to act for the following three topics: the hiring or termination of the Executive Director; to increase the number of Directors on the Board above nine (9) and the alteration, amendment or repeal of these bylaws. In the absence of a quorum, a majority of Directors present may, without notice other than announcement at the meeting, adjourn the meeting from time to time until a quorum becomes available. The Directors present at a duly organized meeting of the Board may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum. Directors shall be permitted to participate in meetings via electronic means including, but not limited to, telephone appearance.

Section 13. Executive Session. The Board may enter into executive session as specified in C.R.S. § 24-6-402. Matters discussed in executive session shall remain confidential among those attending.

Section 14. Committees. The Board, by resolution adopted by majority vote of the Directors, may designate and appoint one (1) or more committees of the Board. Such committees may exercise all authority as the resolution shall set forth or shall be granted by statute, and may be abolished by majority vote of the Directors. No such committee shall have the power or authority to elect, appoint or remove any Director; amend, restate, alter or repeal the Articles of Incorporation; amend, restate, alter, or repeal these or any bylaws of The Children's Kiva; approve a sale, lease, exchange or other disposition of all or substantially all of the property of The Children's Kiva, with or without goodwill, other than in the usual and regular course of business subject to approval by the full Board; or to take any other action prohibited by law. Committee actions are limited by the requirements of state law.

Section 15. Compensation and Expenses. Directors shall receive no compensation for their services as Directors except that reimbursement may be made for any reasonable expenses incurred on behalf of The Children's Kiva by any Director pursuant to and upon authorization of the Board. No part of the net revenue of The Children's Kiva shall inure to the benefit of, or be distributable to, its Directors, officers, or any private persons.

Section 16. Powers and Duties. The Board shall have and exercise all such general powers as are usually exercised by the Board and stated in Section 1, above; and particularly to have all of the powers conferred by the Articles of Incorporation, reference to which is hereby made, to elect, appoint or employ Officers, agents and other representatives; to determine their duties and salaries; to require security in such instances as the Board may determine; to determine who shall sign notes, checks, drafts, contracts, deeds, reports and other documents; to delegate the powers of the Board from time to time to an executive committee, or other standing or special committees. Anything in these Bylaws to the contrary notwithstanding, the Board is not empowered to perform any activity on behalf of The Children's Kiva not permitted to be

carried on by an organization exempt from federal income taxation under 501(c)(3) of the United States Internal Revenue Code.

Section 17. Standard of Conduct for Directors and Officers.

A. Each Director and Officer shall perform their duties as Director or Officer, including, without limitation, their duties as a member of any committee, in good faith, in a manner the Director or Officer reasonably believes to be in the best interest of The Children's Kiva, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In the performance of their duties, a Director or Officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented to the persons designated in subsection (b) below. However, a Director or Officer shall not be considered to be acting in good faith if the Director or Officer has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A Director or Officer shall not be liable to The Children's Kiva for any action in good faith the Director or Officer takes or omits to take as a Director or Officer if, in connection with such action or omission, the Director or Officer performs their duties in compliance with these Bylaws.

B. The designated persons on whom a Director or Officer are entitled to rely on are: (i) one or more Officers or employees of The Children's Kiva with whom the Director or Officer reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, a public accountant, or other person as to matters in which the Director or Officer reasonably believes to be within such person's profession or expert competence; (iii) a committee of the Board on which the Director or Officer does not serve if the Director reasonably believes the committee merits confidence.

Section 18. Director Conflict of Interest. Directors shall report any actual, potential or perceived conflict of interest as further defined in the Conflict of Interest policy, as adopted by the Board, in writing to the Board prior to the time set for voting on any such issue or transaction that is the subject of the conflict of interest. It will be expected that any Director reporting any said conflict of interest will abstain from discussions and voting on said matter. Written disclosure will be made a matter of record and attached to the minutes of the meeting.

## **ARTICLE V OFFICERS**

Section 1. Number. The Officers of The Children's Kiva shall be a President, a Vice President, a Secretary, a Treasurer and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V.

Section 2. Election, Term of Office and Qualifications. The Officers of The Children's Kiva shall be chosen annually by and from the Board of Directors at the first Board meeting following the spring elections and appointments. Each Officer, except such Officers as may be appointed in accordance with the provisions of Section 3 of this Article V, shall continue in office until his or her successor is duly elected or appointed and qualified in his or her stead, or until he or she resigns and his or her resignation becomes effective or until he or she is removed

in the manner hereinafter provided. The appointment of an Officer shall not, in itself, create a contractual right. The Secretary and Treasurer, and the Assistant Secretary and Assistant Treasurer, if there be such officers, may or may not be Directors, and shall hold their offices at the pleasure of the Board.

Section 3. Subordinate Officers, Committees and Agents. The Board may appoint such other officers, committees and agents as it may deem necessary, including one or more Assistant Treasurers and one or more Assistant Secretaries, 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. The Board may delegate to any Officer or committee the power to appoint, and to prescribe the authority and duties of any such subordinate Officers, committees or agents.

Section 4. Removal. Any Officer or agent may be removed either with or without cause, by the Board at any regular or special meeting thereof, or by any committee or superior Officer upon whom such power of removal may be conferred by the Board. Such removal from office does not affect the contractual rights, if any, of The Children's Kiva or of the person removed from office.

Section 5. Resignation. Any Officer may resign at any time by giving written notice to the Board, to the President or to the Secretary of The Children's Kiva. Such resignations shall take effect at the date of receipt of such notice. Such resignation does not affect the contractual rights, if any, of The Children's Kiva or of the person who resigned.

Section 6. Vacancies. A vacancy in office because of death, resignation, removal, disqualification or any other cause may be filled for the unexpired portion of the term in the manner prescribed in the Bylaws for regular appointments or elections to such office.

Section 7. Powers and Duties. The Officers shall have such powers and duties as usually pertain to their office, except as modified by the Board, and shall also have such powers and duties as may from time to time be conferred upon them by the Board. The officers will be the designated Directors able to sign checks or drafts of The Children's Kiva. The general powers and duties of the primary Officers are as follows:

A. President. The President shall act as the Chair of the Board and be the presiding Officer at meetings of the Board unless otherwise specified by resolution of the Board. The President will sign, with the Secretary or any other authorized Officer of The Children's Kiva, any deeds, mortgages, bonds, contracts or other instruments authorized to be executed, except where the signing and execution thereof shall be expressly delegated to some other Officer or agent of The Children's Kiva, or shall be required by law to be otherwise signed or executed, and in general shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board from time to time. The President shall appoint all committees. The President shall be the primary Board contact with the Executive Director.

B. Vice-President. The Vice-President, if any, shall, in the absence of the President, or in the event of the President's inability to act, conduct all Directors meetings and shall have the authority, in the absence of the President, to sign all minutes of meetings transcribed by the Secretary, bonds, deeds, agreements or other instruments in writing made and entered into by, or on behalf of, The Children's Kiva wherein the capital of said school is or may be impaired,

encumbered or otherwise affected and to perform such other administrative functions in the absence of the President as may be deemed necessary or beneficial to the affairs of The Children's Kiva. The Vice-President shall attend all Directors meetings and shall serve as general advisor to the President.

C. Secretary. The Secretary shall keep the minutes of the Board meetings in the Minute Book of The Children's Kiva; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records of The Children's Kiva and, if required; and in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board. In the absence of the Secretary or his or her inability to perform his or her duties, such duties may be performed by an Assistant Secretary or by a Secretary pro tempore appointed at any meeting by the Chair of the Board.

D. Treasurer. The Treasurer shall have general supervision of the financial affairs of the The Children's Kiva, subject to Board concurrence. The Treasurer shall ensure the financial records are complete and accurate, and support the efforts of the Business Manager and Executive Director to present the Board with monthly financial statements and a detailed list of all expenditures. The Treasurer shall also perform other duties as from time to time may be assigned by the President or by the Board.

## **ARTICLE VI EXECUTIVE DIRECTOR**

Section 1. The Executive Director shall serve as the Chief Executive Officer and Chief Administrator for the day-to-day operation of The Children's Kiva as well as the school's personnel administrator, and shall perform such other services and duties as shall be assigned by the Board. The Executive Director shall have the authority both to offer and to terminate employment, subject to the personnel policies set by the Board. Except as otherwise provided in these Bylaws or by resolution of the Board, the Executive Director shall have the authority to act for The Children's Kiva in any matter and the action of the Executive Director shall be the action of The Children's Kiva. The Executive Director shall attend all meetings of the Board, except as otherwise directed by the Board, but is not a Director and shall not be entitled to vote. The Executive Director shall be appointed by the Board, shall account to and serve at the direction of the Board, and may be removed at any time with or without cause, pursuant to a vote of the Board as described in Section 12 of Article IV. The Board shall undertake an annual review of the Executive Director, no later than at its first May meeting, for the succeeding school year, provided that failure to conduct such review shall not limit the Board's power to retain or dismiss the Executive Director, at its pleasure.

## **ARTICLE VII STANDING COMMITTEES**

Section 1. Committees. The Board may, by resolution adopted by a majority of the Directors in office, establish standing committees. Directors shall serve on at least one standing committee. The Board may also establish other committees, as it may from time to time deem necessary. Each committee shall consist of one or more Directors. Non-Directors may also be



permitted to sit on committees and vote. Such committees shall have and exercise only the power and authority specifically prescribed and granted by the Board of Directors in the resolutions establishing them. Committees may only make recommendations to the Board of Directors.

Section 2. Standing Committees: The following committees will be standing committees of the Board and will operate on an advisory basis:

- A. The Executive Committee. The Executive Committee shall consist of the officers of the Board. The President shall chair the committee. This committee shall serve as the central planning group for The Children's Kiva. It shall also have full authority to act for the Board in managing the affairs of The Children's Kiva during the intervals between meetings of the Board, subject to re-affirmation by a majority of the Board at the succeeding meeting.
- B. Nominations and Board Development Committee. The Nominations and Board Development Committee shall implement the nomination process for nominees to Board Appointed Director positions. The Nominations Committee is responsible for setting criteria for Board Appointed Director positions, and identifying and evaluating candidates for the Board Appointed Director positions. The Nominations Committee will present candidates for election to the Board at least once annually. Election of Board Appointed Directors will be by a simple majority of the sitting Board. The Nominations and Board Development Committee will also be responsible for the orientation of new Directors, for meeting the ongoing development and leadership needs of the Board of Directors, and for evaluating the performance of the Board as a whole. The Vice President shall chair the committee.
- C. School Accountability Committee. The School Accountability Committee shall consist of two The Children's Kiva Board Directors, the Executive Director, a parent representative from the PTO and any other members. This committee will: 1) adopt building goals and objectives for the improvement of education in the building; 2) adopt a plan to improve education achievement, reduce the gaps in performance of groups within the school, 3) make recommendations to the Executive Director regarding the prioritization of expenditures of school monies; 4) determine whether decisions affecting the educational process are advancing or impeding student achievement; 5) report to students and parents on the educational performance of the school and providing data for the appraisal of such performance; 6) make recommendations to the Executive Director on the expenditure of all school grants; and 7) make recommendations to the Executive Director on safety issues related to the school environment.
- D. Hiring and Evaluation Committee. The Hiring and Evaluation Committee shall be responsible for drafting a job description for the Executive Director. This Committee shall consist of two Board Directors and any other members of the public which the Board deems necessary. This Committee shall also be responsible for recruiting and recommending candidates for this position to the Board. Final approval of the job description, and selection and hiring of the final candidate, and any decision to terminate employment, shall be by a simple majority of the full Board. This Committee shall be responsible for a yearly performance report of the Executive Director, which will be presented to the Board prior to its annual review of the Executive Director. In instances where the Executive Director's performance is found to be below expectations, but the

Committee is recommending that the Board retain the Executive Director, this Committee shall create a remediation plan and will make a recommendation for further action to the Board. This Committee shall also oversee the establishment of an equitable salary schedule.

- E. Budget and Financial Oversight Committee. The Budget and Financial Oversight Committee shall develop and submit an annual balanced budget to the Board. This Committee will also prepare an annual report, including audited financial statements, to present to the Board. Upon Board approval of the annual budget and the annual report, both documents shall be made available to the public. This Committee shall advise the Board, as necessary, on other financial matters and business operations of the school. This Committee shall also oversee the scholarship award process.
- F. Curriculum Committee. The Curriculum Committee will ensure that an authentic Montessori, STEAM (Science, Technology, Engineering, Arts, and Mathematics), and CBE (Community-Based Education) curriculum is maintained by The Children’s Kiva, while at the same time maximizing student achievement at the school. This Committee will consist of the Executive Director, a credentialed lead Montessori teacher from the school, a credentialed Montessori, STEAM, or CBE representative at-large and any other members which the Committee deems necessary to its work. In addition to ensuring the authenticity of the Montessori curriculum, the Curriculum Committee will advise the Board on other essential elements of a comprehensive Montessori, STEAM, CBE program.
- G. Development and Fundraising Committee. This committee shall work in collaboration with school administration and the school Parent Teacher Organization to support grant, development and fundraising efforts.
- H. The Board may require the reorganization, upon such terms as the Board dictates and otherwise consistently with these bylaws, any committee.

## **ARTICLE VIII INDEMNIFICATION**

Section 1. Definitions. For purposes of this Article:

A. The terms “Director or Officer” shall include a person who, while serving as a Director or Officer of The Children’s Kiva, is or was serving at the request of The Children’s Kiva as a Director, Officer, partner, manager or director. The term “Director or Officer” shall also include the estate or personal representative of a Director or Officer, unless the context otherwise requires.

B. The term “proceeding” shall mean any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

C. The term “party” includes an individual who is, was, or is threatened to be made a named defendant or respondent in a proceeding.

D. The term “liability” shall mean any obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan,) or reasonable expense incurred with respect to a proceeding.

E. When used with respect to a Director, the phrase “official capacity” shall mean the office of a Director in The Children’s Kiva, and, when used with respect to a person other than a Director, shall mean the office in The Children’s Kiva held by the Officer or the employment, fiduciary or agency relationship undertaken by the employee or agent on behalf of the corporation, but in neither case shall include service for any foreign or domestic corporation or for any other person, employee benefit plan or other enterprise.

Section 2. General Provisions. The Children’s Kiva may indemnify any person who is or was a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director or Officer of The Children’s Kiva, against reasonable expenses (including attorneys’ fees,) liability, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such proceeding if such person (a) acted in good faith, (b) reasonably believed, in the case of conduct in an official capacity with The Children’s Kiva, that the conduct was in the best interests of The Children’s Kiva and, in all other cases, that the conduct was at least not opposed to the best interests of The Children’s Kiva, and (c) with respect to any criminal proceeding, had no reasonable cause to believe the conduct was unlawful. However, no person shall be entitled to indemnification under this Section 2 if either: (a) in connection with a proceeding brought by or in the right of The Children’s Kiva in which the Director or Officer was adjudged liable to The Children’s Kiva; or (b) in connection with any other proceeding charging improper personal benefit to the Director or Officer, whether or not involving action in that person’s official capacity, in which the Director or Officer is ultimately judged liable on the basis that the Director or Officer improperly received personal benefit. Indemnification under this Section 2 in connection with a proceeding brought by or on behalf of The Children’s Kiva shall be limited to reasonable expenses incurred in connection with the proceeding. The termination of any action, suit, proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself be determinative that the person did not meet the standard of conduct set forth in this Section 2.

Section 3. Successful Defense of the Merits: Expenses. To the extent that a Director or Officer of The Children’s Kiva has been wholly successful on the merits in defense of any proceeding to which the Director was a party, such person shall be indemnified against reasonable expenses (including attorneys’ fees) actually and reasonably incurred in connection with such proceeding.

Section 4. Determination of Right to Indemnification. Any indemnification under Section 2 of this Article (unless ordered by a court) shall be made by The Children’s Kiva only as authorized in each specific case upon a determination that indemnification of the Director or Officer is permissible under the circumstances because such person met the applicable standard set forth in Section 2. Such determination shall be made: (a) by the Board of Directors by a majority vote of a quorum of disinterested Directors who at the time of the vote are not, were not, and are threatened to be made parties to the proceeding; or (b) if such a quorum cannot be obtained, by the vote of a majority of the members of a committee of the Board designated by

the Board, which committee shall consist of two or more Directors who are not parties to the proceeding (Directors who are parties to the proceeding may not participate in the designation of Directors to serve on such committee); or (c) if such a quorum of the Board cannot be obtained or such a committee cannot be established, or even if such a quorum is obtained or such a committee if so designated, but such quorum or committee so directs, then by independent legal counsel selected by the Board in accordance with the preceding procedures. Authorization of indemnification and evaluation as to the reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that, if the determination that indemnification is permissible is made by independent legal counsel, authorization or indemnification and evaluation of the reasonableness of legal expenses shall be made by the body that selected such counsel.

Section 5. Advance Payment of Expenses: Undertaking to Repay. The Children's Kiva may pay for or reimburse the reasonable expenses (including attorneys' fees) incurred by a Director or Officer who is a party to a proceeding in advance of the final disposition of the proceeding if: (a) the Director or Officer furnishes The Children's Kiva a written affirmation of the Director's or Officer's good faith belief that the person has met the standard of conduct set forth in Section 2; (b) the Director or Officer furnishes The Children's Kiva with a written undertaking, executed personally or on the Director's or Officer's behalf, to repay the advance if it is determined that the person did not meet the standard of conduct set forth in Section 2, which undertaking shall be an unlimited general obligation of the Director or Officer but which need not be secured and which may be accepted without reference to financial ability to make repayment; and (c) a determination is made by the body authorizing indemnification that the facts then known to such body would not preclude indemnification.

Section 6. Other Employees and Agents. The Children's Kiva shall indemnify such other employees and agents of The Children's Kiva to the same extent and in the same manner as is provided above in Section 2 with respect to Directors and Officers, by adopting a resolution by a majority of the Board specifically identifying by name or by position the employees or agents entitled to indemnification.

Section 7. Insurance. The Board of Directors may exercise The Children's Kiva's power to purchase and maintain insurance (including without limitation insurance for legal expenses and costs incurred in connection with defending any claim, proceeding or lawsuit) on behalf of any person who is or was a Director or Officer, as such terms are defined in Section 1, above, against any liability asserted against the person or incurred by the person in any such capacity or arising out of the person's status as such, whether or not The Children's Kiva would have the power to indemnify that person against such liability under the provisions of this Article.

Section 8. Nonexclusivity of Article. The indemnification provided by this Article shall not be deemed exclusive of any other rights and procedures to which one may be entitled under the Articles of Incorporation, any Bylaw, agreement, resolution of disinterested Directors, statute, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or Officer, and shall inure to the benefit of such person's heirs, executors and administrators.

**ARTICLE IX  
CONTRACTS & FINANCES**

Section 1. Contracts and Instruments. The Board, except as in these Bylaws otherwise provided, may authorize any Officer or Officers or agent or agents of The Children's Kiva to enter into any contract or execute and deliver any instrument in the name of and on behalf of The Children's Kiva. Such authority may be general or confined to specific instances, and unless so authorized by the Board, no Officer, agent or employee shall have any power or authority to bind The Children's Kiva by any contract or engagement or to pledge its credit or to render it liable financially for any purpose or to any amount.

Section 2. Loans. The Children's Kiva shall not borrow funds, unless authorized by the Board, and then only as permitted by law. The Children's Kiva shall not lend funds to others, but may invest funds as permitted by law. When so authorized, any Officer for The Children's Kiva may effect loans and advances at any time for The Children's Kiva, and for such loans and advances, may make, execute and deliver promissory notes or other evidences or indebtedness of The Children's Kiva; and when authorized as security for the payment of any and all loans, advances, indebtedness and liabilities of The Children's Kiva may mortgage, pledge, hypothecate or transfer any real or personal property at any time held by The Children's Kiva and to that end execute instruments of mortgage or pledge or otherwise transfer said property. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts and Other Instruments of Payment. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of The Children's Kiva shall be signed by such Officer or Officers, agent or agents of The Children's Kiva and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of The Children's Kiva not otherwise employed shall be deposited from time to time to the credit of The Children's Kiva in such banks, trust companies or other depositories, qualified as public depositories under Colorado law, as the Board may select. All deposits and investments will be in compliance with state law.

Section 5. Gifts. The Board may accept on behalf of The Children's Kiva any contribution, gift, bequest or devise for the general purpose of or for any special purpose of The Children's Kiva.

Section 6. Investment Managers. The Board of Directors shall have the authority to designate any bank, trust company, brokerage firm or investment advisor to manage the assets and investments of The Children's Kiva.

**ARTICLE X  
BOOKS AND RECORDS**

Section 1. Corporate Records. The Children's Kiva shall keep as permanent record minutes of all meetings of its Board including a record of all actions taken by the Board, and a record of all waivers of notices of meetings of the Board. The Children's Kiva shall also maintain the following records: (a) appropriate accounting records; (b) its Articles of Incorporation and Bylaws; (c) a list of the names and business or home addresses of its current Directors and Officers; (d) a copy of its most recent corporate report delivered to the Secretary of State; and (e) all financial statements prepared for periods over the last three years, consistent with applicable laws.

Section 2. Inspection and Copying of Corporate Records for Tax Exempt Organization. Pursuant to Internal Revenue Code §6104, a copy of The Children's Kiva's Application for Tax Exemption under §501 of the Internal Revenue Code returns filed with the Internal Revenue Service (i.e. Form 990) must be kept at The Children's Kiva's principle office and be available for inspection to the public during regular business hours. The Children's Kiva must either allow interested persons to photocopy such documents or photocopy such documents for interested persons. The Children's Kiva may charge up to the maximum amount allowed by the Internal Revenue Service and/or the Colorado Open Records Act for such photocopying and postage.

## **ARTICLE XI MISCELLANEOUS**

Section 1. Waiver of Notice. Whenever any notice is required to be given under the provisions of the Colorado Revised Nonprofit Corporation Act or under the provisions of the Articles of Incorporation or the Bylaws of The Children's Kiva, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 2. Conflicts. In the event of any irreconcilable conflict between these Bylaws and either The Children's Kiva's Articles of Incorporation, the Operating Contract, Colorado state law or other applicable laws, the latter shall control.

Section 3. Definitions. Except as otherwise specifically provided for in these Bylaws, all terms used in these Bylaws shall have the same definition as in the Colorado Revised Nonprofit Corporation Act, as amended.

## **ARTICLE XII AMENDMENTS**

The power to alter, amend or repeal the Articles of Incorporation and these Bylaws or adopt new Bylaws is vested in the Board of Directors, acting by vote of two thirds of all Directors then in office.

I CERTIFY THAT these Bylaws were adopted by The Children's Kiva at the meeting of the Board of Directors by the Board of Directors effective \_\_\_\_\_.

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Julie Suckla  
The Children's Kiva Board President