

BYLAWS OF
SUNDANCE MOUNTAIN SOUTH ASSOCIATION, INC.

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Purpose

The purpose of the **SUNDANCE MOUNTAIN SOUTH ASSOCIATION INC.** (“Association”), is to provide for the management, maintenance, and repair of common roadways and shared well electricity, for snow removal, and for gypsy moth spraying of properties with Owners’ permission, and assessments for those purposes, as well as management and oversight of shared well maintenance and repairs as specified in the Bylaws, for that portion of the Sundance Mountain Subdivision located in Shenandoah and Rockingham Counties and access by Smith Creek Road (Route 620), New Market, Virginia (“Subdivision”). (Rev. 11/4/23)

ARTICLE 1
INTRODUCTORY PROVISIONS

§1.1 **Establishment:** These Bylaws govern the Sundance Mountain South Association, Inc., a Virginia incorporated property owner’s association

§1.2 **Definitions:** The following definitions shall apply throughout these bylaws:

- a) **“Act”** shall mean and refer to the Virginia Property Owners’ Association Act (Va. Code § 55.1-1800, et seq.; formerly § 55-508 et seq.).
- b) **“Association”** shall mean and refer to the Sundance Mountain South Association, Inc., and its successors and assigns.
- c) **“Capital Components”** shall mean and refer to those items, whether or not a part of the Common Areas, for which the Association has obligations for repair, replacement, or restoration and for which the Board of Directors determines funding is necessary.
- d) **“Common Areas”** shall mean and refer to all portions of the Subdivision owned or leased by the Association or which the Association is required by the Declaration to maintain or operate for the use and enjoyment of the Owners, identified as common roads and signage. (Rev. 11/4/23)
- e) **“Declaration”** shall mean and refer to the Declaration of Amended Restrictions and Protective Covenants for Sundance Mountain South Subdivision recorded in the Clerk’s Office of the Circuit Court of Rockingham County, Virginia and in the Clerk’s Office of the Circuit Court of Shenandoah County, Virginia.
- f) **“Lot”** shall mean and refer to the individually numbered plots of land in Sundance Mountain South Subdivision as shown upon recorded plats of the Subdivision.
- g) **“Owner”** shall mean and refer to the record Owner, whether one or more persons or entities of the fee simple title to any Lot, whether acquired by purchase, gift, inheritance, foreclosure, or otherwise, but excluding those persons or entities having an interest merely as a security for the performance of an obligation. The address of an Owner for the purpose of notices required herein shall be the address on the current year’s tax records of Rockingham County, Virginia, or Shenandoah County, Virginia, as applicable, unless an Owner provides the Association with a different address in writing.

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h) ***“In good standing”*** shall mean an Owner who has paid in full all assessments and well repair reimbursements due to the Association which have billed 60 or more days before, and who is not in violation of the Governing documents. Violation of Governing documents is determined by the Board of Directors, until such time as the matter is resolved or appealed.

i) ***“Governing Documents”*** shall mean the declaration, restrictive covenants, and any other documents, including bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.”

j) ***“Subdivision”*** shall mean and refer to all of the real estate dedicated to Sundance Mountain South Subdivision, including all Common Areas.

k) ***“Shared Wells”*** Association wells that serve multiple residences, limited to 14 service connections and no more than 24 year-round residents. (Rev. 11/4/23)

ARTICLE 2
THE ASSOCIATION

§ 2.1 **Membership:** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

§ 2.2 **Annual Meeting:** The Annual Meeting of the Association shall be held in accordance with Article 2.4, no later than the end of the calendar Year at such time and place as determined by the Board of Directors. Directors of the Association shall be elected at the Annual Meeting by majority vote of the Owners attending in person or by proxy, in accordance with Articles 2.5 and 2.6 below.

§ 2.3 **Special Meetings:** Other meetings of the Association may be called as follows:

- a) At the discretion of the President;
- b) by majority vote of the Board of Directors; and
- c) must be called at the written request of one fourth $\frac{1}{4}$ of membership votes in good standing.

The Board of Directors may establish reasonable rules and regulations regarding the calling of special meetings. Special meetings of the Association may be held at such times and places as the Board of Directors may deem convenient.

§ 2.4 **Notice of Association Meetings:** The Secretary or designee shall notify all Owners of all regularly scheduled meetings of the Association, including the Annual Meeting, at least fourteen (14) days in advance of the meeting date and shall notify all Owners of any special meeting at least seven (7) days in advance of the meeting date. Notice shall include the date, time, location, if any, and purpose of the meeting. Attendance may be by video or telephone conference call or similar method, in accordance with Board of Directors’ Guidelines. Notice may be provided by any means, including electronic mail, hand delivery, or United States mail

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sent to an Owner's address of record (as defined in § 1.2(g)). Any Owner may request in writing to be notified by U.S. mail or hand delivery. If hand delivery – will be at that Owner's expense. If notice is hand delivered, the Secretary or his/her agent shall certify in writing that the notice was delivered.

§ 2.5 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of a sufficient number of Owners in good standing entitled to cast one-fourth (¼) of the votes in the Association at the beginning of any meeting of the Association shall constitute a quorum throughout that meeting.

§ 2.6 Voting: Owners in good standing shall have one (1) vote for each Lot owned. The vote for a Lot owned by more than one (1) person or entity may be cast by any co-Owner unless an objection or protest by another co-Owner is made. Upon objection or protest, if the Lot has two equal co-Owners, no vote shall be cast for the Lot; otherwise, the one (1) vote shall be cast according to the majority vote of the co-Owners of the Lot (based on each co-Owner's percentage ownership interest). In no event shall more than one (1) vote be cast with respect to any Lot and no fractional votes shall be cast.

§ 2.7 Proxies: The votes appertaining to any Lot may be cast by written proxy or proxies duly executed by or on behalf of Owners (or all co-Owners) in good standing. Proxies must be received by the President or other presiding officer before the meeting is called to order. Proxies may be in electronic form, in which case the proxy must be accompanied by evidence of its transmission to the proxy agent or Board (e.g., electronic mail).

No proxy shall be revocable except by actual notice from the Owner to the presiding officer of the meeting that the proxy has been revoked. Any proxy shall be void if it is not in writing or electronic form, is not dated, purports to be revocable without notice, or is not signed or, in the case of an electronic proxy, accompanied by evidence of its transmission to the proxy agent by the Owner/s. Any Owners in attendance have the option to revoke their proxy at any time during the meeting. All proxies shall terminate after the first meeting held on or after the date of the proxy or any recess or adjournment of that meeting. Unless a proxy indicates otherwise, it shall be deemed to i) direct the proxy agent to vote in favor of all recommendations of the Board of Directors; and grant the proxy agent authority to vote on any other matters at the agent's discretion.

§ 2.8 Conduct of Meetings: The President shall preside over all meetings of the Association. If the President is not in attendance, the Vice President shall be the presiding officer. The Secretary shall keep minutes of all meetings and record all resolutions adopted and all transactions occurring at such meetings. If the presiding officer's conduct of the meeting is questioned, the meeting shall be conducted in accordance with the most recent edition of *Robert's Rules of Order* available at that time. All meetings shall be conducted in accordance with the Act, the Declaration, and these Bylaws.

§ 2.9 Association Records: The Association or its contracted agent shall keep detailed records of receipts and expenditures affecting the operation and administration of the Association. All financial books and records shall be kept in accordance with generally accepted accounting practices. All books and records kept by or on behalf of the Association including, without limitation, the Association's membership list and addresses, shall be available for examination and copying by any Owner in good standing or his authorized agent so long as the

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request is for a proper purpose related to his membership in the Association. This right of examination shall exist without reference to the duration of membership and may be exercised only during reasonable business hours or at a mutually convenient time and location and (ii) upon five (5) days' written notice reasonably identifying the purpose for the request and the specific books and records of the Association requested.

Books and records kept by or on behalf of the Association may be withheld from inspection and copying to the extent they concern matters identified in § 3.7 below or other matters excludible from inspection by law.

Prior to providing copies of any books or records to an Owner in good standing, the Association may impose and collect a charge, reflecting the reasonable costs of materials and labor, including any charges by its agent, not to exceed the actual costs thereof.

Financial records, contracts and meeting minutes shall be kept in electronic format and optionally hard copy and maintained by the treasurer and secretary to be transferred and made available to subsequent Boards.

§ 2.10 Rental of Owner Properties:

(a) Delegation of Use and Leasing of Residences. Any Owner may lease or delegate the use of his property to his or her family members, tenants, lessees, or contract purchasers who reside in the Residence provided, however, that any rental or lease may be limited to no more than six occupants at any given time if two-bedroom, or if a larger property, to more occupants with the consent of the Board or its delegee.

(b) Owner's Duty to Notify Association of Tenants. Each Owner shall notify the Secretary of the Association of the names and contact information of any tenant or tenants residing in the Owner's Lot.

(c) Governing Documents. Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-Lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Residence. A copy of the fully executed lease or rental agreement shall be delivered by Owner to the Association's Secretary prior to the occupancy of the Residence by the tenant or lessee.

(d) Requirements That Must Be Observed in All Residential Leases. The following specific limitations shall apply to all leases or tenancies of a Residence:

- Any rental shall be evidenced by a written lease or rental agreement, which shall include provisions stating that: (1) the tenancy is subject to the terms of the Governing Documents and that the tenant or lessee acknowledges that he/she/it has received a copy of the Governing Documents and agrees to comply with all covenants, conditions, restrictions, bylaws, rules, and regulations contained in the Governing Documents; (2) any failure of the tenant or lessee to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any

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portion of the Common Area and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy on 30 days written notice, or such shorter notice period as may be permitted under applicable state laws and/or the lease or rental agreement; (3) there shall be no right of assignment or sublease; and if the tenant or lessee has a vehicle, automobile insurance with minimum coverage limits as required by state law.

- The Owner-Lessor's right to terminate a lease or rental agreement because of the tenant or lessee's violation of the Governing Documents shall in no way restrict the right of the Association, the Declarant, or any Owner to enforce the Governing Documents, when the Owner's tenant or lessee is violating the Governing Documents.

(e) Discipline of Lessees. Subject to subparagraph (e), if any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the well-being of the association and quiet enjoyment of other Owners and residents of the Development.

(f) The Owner-Lessor shall be equally responsible for a tenant's violation of the Governing Documents, upon written notice of the violation from the Board, and may be assessed appropriate damages as provided in the Governing Documents, after a reasonable opportunity to take corrective action and a hearing before the Board, if requested.

ARTICLE 3
BOARD OF DIRECTORS

§ 3.1 Number and Qualification: The business and affairs of the Association shall be managed under the direction of a Board of Directors of seven (7) Owners in good standing elected by the Owners at the Annual Meeting of the Association. Four (4) of the directors shall be Owners whose primary residence is located in the Subdivision ("Resident Owners"). The remaining directors shall be Owners whose primary residence is not in the Subdivision ("Non-resident Owners"). In the event fewer than four (4) Residence Owners are available to serve as directors, then Non-resident Owners may serve. If fewer than three (3) Non-resident Owners are available to serve as directors, Resident Owners may serve.

§ 3.2 Election and Term of Office: The Resident Owner and Non-resident Owner-Nominees receiving the highest number of votes shall be elected. In the event of a tie, the tied Nominees shall draw lots at the organizational meeting to determine which Nominee will serve as director. However, no one billed for an indebtedness to the Association which is outstanding for more than 60 days at the time of the meeting or election may be a nominee or serve as a director. Nominees must agree to be bound by current board policies and may not serve if elected until the Secretary receives written agreement to be bound by such policies.

Directors shall be elected to serve a term of two (2) years. Directors shall hold office until their successors have been elected and qualified and may serve no more than two consecutive two-year terms if so elected. After two years have elapsed after such director leaves the Board, he or she may be nominated and if elected, serve as a director for another two terms, if so elected. A director may resign at any time.

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§ 3.3 Powers and Duties: The Board of Directors shall be the executive organ of the Association and shall have all the powers and responsibilities necessary for the operation and administration of the Association as assigned to the Association, the Act, and the Declaration. Decisions of the Board shall be decided by majority vote, except where a different vote margin is required by the Act, the Declaration, or these Bylaws. The Board of Directors may not take any action without holding a properly called meeting at which a quorum is present.

Powers and duties of the Board shall include, without limitation:

- a. Providing or contracting for maintenance, repair, improvement, and alterations of all common areas, including roads, shared wells, and water lines; snow removal; and gypsy moth spraying (as authorized by individual Owners).
- b. Opening and maintaining one or more fiduciary bank accounts in a federally insured financial institution into which all Association funds shall be deposited.
- c. Obtaining and maintaining the blanket fidelity bond or employee dishonesty insurance policy required by § 55.1-1827(B) of the Act (formerly § 55-514.2(B)); and
- d. Obtaining any other insurance coverage deemed necessary by the Board or Association, pay premiums, and settle any claims against any insurance policy.
- e. All other Administrative and operational duties and functions outlined in Article 6 of these Bylaws.

§ 3.4 Quorum: Five (5) directors either present in person or as otherwise provided in §3.5, at the beginning of any meeting shall constitute a quorum for the transaction of business throughout such meeting.

§ 3.5 Meetings and Notice: The organizational meeting of the Board of Directors shall be held immediately after, or as soon as practicable thereafter, the Annual Meeting of the Association to organize, elect officers, and consider any business properly brought before the Board. Regular meetings of the Board of Directors shall be held at such times and places as determined from time to time by the Board. The Secretary shall provide notice of all regular meetings to each director fourteen days in advance of the meeting. Special meetings of the Board shall be held when called by the President, or by a majority of the Directors. Board directors may attend by video and/or telephone conference call, or similar method in accordance with Board of Directors' Guidelines. The Secretary shall provide notice of all special meetings to each director seven days in advance of the meeting.

Notice may be provided by any means necessary, including electronic mail, hand delivery, or United States mail sent to the director's address of record (as defined in § 1.2(g)). Any director may request in writing to be notified by U.S. mail or hand delivery at that director's expense. If notice is hand delivered, the Secretary or his/her agent shall certify in writing that the notice was delivered. A director may waive notice of any Board meeting in writing before or after the meeting. A director's attendance at any Board meeting shall constitute a waiver of notice by that director unless the director attends for the specific purpose of challenging the notice.

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The Secretary shall also publish notice of the date, time and place of each Board meeting wheresuch notice is reasonably calculated to be available to a majority of Owners. Upon written request by an Owner, the Secretary shall notify the Owner of the date, time and place of Board meetings by first-class mail or electronic mail. An Owner may request to receive notice of Board meetings by first-class or electronic mail on a continuing basis by making the request in writing at least once per year and providing, as appropriate, the Owner's name, address and electronic mail address.

In addition to providing notice of Board meetings to Owners as provided above, the Secretary shall make a copy of all agenda packets and materials furnished to directors for a meeting available for inspection by the Owners at the same time such items are furnished to the directors. The foregoing shall not apply to any items relating to executive sessions as provided in§ 3.7.

Any Director may designate, in writing or by electronic means, any another director as proxy for any Board of Director's meeting.

§ 3.6 Conduct of Meetings:

a) The President shall preside over all Board meetings and the Secretary shall keep a record of all transactions and proceedings occurring at meetings. Board meetings shall be conducted in such format as determined by the Board, provided such format is in accordance with the Declaration and the Act. If the Board cannot agree on a format, the most recent edition of *Robert's Rules of Order* available at that time shall govern. The presiding officer may vote on any action if he is also a director; otherwise, the presiding officer shall vote only in the event of a tie.

b) Except as provided in § 3.7 below, all Board meetings shall be open to all Owners in good standing. The Board shall not use work sessions or other informal gatherings to circumvent the open meeting requirements of this section. The Board shall provide a period of time at each of its meetings, subject to reasonable rules and regulations, for Owners to comment on any matter relating to the Association. The Board may limit Owners' comments to items on the meeting agenda and may limit the time for which Owners may speak, provided the limitation is reasonable. Minutes of all open Board meetings shall be recorded and made available to Owners upon the earlier of (i) 60 days after the Board meeting or (ii) the date minutes are distributed to directors for the next Board meeting.

c) The Board shall not vote by secret or written ballot in open meetings, except to elect officers.

§ 3.7 Executive Sessions: The Board of Directors may convene in executive sessionupon the affirmative vote of the directors in an open meeting to:

- i) consider personnel matters;
- ii) consult with legal counsel;
- iii) discuss and consider contracts;
- iv) discuss and consider probable or pending litigation; discuss and consider matters involving violations of the Act, the Declaration, these Bylaws, or the Association's rules and regulations by an Owner, his family members,

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- guests, or invitees; or
- v) discuss and consider the personal liability of an Owner to the Association. The motion to convene in executive session shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The Board of Directors shall restrict consideration of matters during executive sessions to those matters specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the Board, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action which shall have its substance reasonably identified in the open meeting. The requirements of this paragraph shall not require the disclosure of information in violation of law.

§ 3.8 Compensation: No director shall receive any compensation from the Association for serving as a director. Directors may be reimbursed for reasonable expenses made on behalf of the Association or incurred while acting on behalf of the Association.

§ 3.9 Removal of Directors: A director may be removed from office if not in good standing for six months or more, or for violation of board policies, by a majority vote of the Owners at a duly convened Association meeting called to consider such removal. at which aquorum is present.

§ 3.10 Vacancies: When a vacancy in the Board of Directors occurs, whether caused by death, resignation, removal, or any other reason, the Board may fill the vacancy, even if less than a quorum remains, or may reduce the number of directors as provided in § 3.1 above. Any individual elected to fill a vacancy shall serve until the next Annual Meeting of the Association at which directors are elected, subject to removal under § 3.9.

ARTICLE 4
OFFICERS

§ 4.1 Description: The Association's officers shall be the President, Vice President, Secretary, and Treasurer and shall be elected by the Board of Directors at the Board's Organizational Meeting. All officers shall be Owners. Officers must be directors in good standing when elected. The Board of Directors may, from time to time, elect such other officers and determine their powers and assign their duties. Any officer may be removed from office for violation of Board policies by the Board of Directors. One person may simultaneously hold more than one office.

§ 4.2 Duties:

a) **President:** The President shall be the Chief Executive Officer of the Association. The President shall have all of the powers and duties usually vested in the office of president of an association except as limited by the Board of Directors. The President shall also have those powers and duties assigned by the Board.

b) **Vice President:** The Vice President shall act on behalf of the Association

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in the absence of the President. The Vice President shall preside over meetings of the Association and Board of Directors at which the President is not in attendance. The Vice President shall perform all other duties incident to the office of vice president and those assigned by the Board.

c) **Secretary:** The Secretary shall keep the minutes and record the resolutions of all Association and Board of Directors meetings; distribute or make minutes available to all Owners for membership meetings and board meetings in writing, provide notices of each Board and Association meeting; ensure the notification to each Owner of assessments against the Owner's Lot as soon as possible after the assessment is made; give any other notice required by the Declaration, these Bylaws, or the Act; and perform all other duties incident to the office of secretary and those assigned by the Board. Notices and communications to Owners shall be sent by electronic mail when available. Any Owner may request in writing to receive notices and communications by U.S. mail, or hand delivery at that Owner's expense.

d) **Treasurer:** The Treasurer shall keep or supervise the keeping of assessment rolls and Owners' accounts; keep or oversee the keeping of the Association's books showing detailed records of the Association's receipts and expenditures in accordance with generally accepted accounting practices; oversee the receipt and deposit of all the Association's income and receipts in appropriate insured accounts with financial institutions; ensure the disbursement of Association funds in accordance with the budget and resolutions of the Board of Directors; and perform all other duties incident to the office of treasurer and those assigned by the Board.

§ 4.3 **Contracts:** All Board authorized agreements, contracts, deeds, leases, and other instruments to which the Association is a party that have been duly authorized by the Board of Directors, shall be executed by the President or any officer designated by resolution of the Board of Directors.

§ 4.4 **Compensation:** No officer shall receive any compensation for serving as an officer. Officers may be reimbursed for reasonable expenses made on behalf of the Association or incurred while acting on behalf of the Association. The membership, at a duly convened membership meeting, may vote to compensate the Treasurer for his or her duties at a rate set by the Board of Directors.

§ 4.5 **Vacancies:** Vacancies in any office shall be filled by the Board of Directors at a special meeting of the Board held for such purpose. Each person so elected shall hold office until a successor is elected at the next Organizational Meeting of the Board.

ARTICLE 5
LIABILITY OF DIRECTORS, OFFICERS, AND THE ASSOCIATION

§ 5.1 **Directors and Officers:** To the extent permitted by law, in any proceeding brought by or in the right of the Association or brought by or on behalf of the Owners, no director, or officer shall be liable for any damages; provided, however, that the liability of a

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director, or officer Owner shall not be so limited if the director or officer Owner engaged in willful misconduct or a knowing violation of any criminal law. The liability of directors and officers shall also be limited as provided in § 13.1-870.2 of the Code of Virginia.

§ 5.2 Indemnification: The Association shall indemnify any director or officer made a party to a proceeding (excluding any proceeding brought by or in the right of the Association in which the director or officer is adjudged liable to the Association) because he/she is or was a director or officer against any liability incurred in the proceeding and may pay the expenses in advance of the director or officer if indemnification and payment would be authorized applying the standards of § 13.1-876 of the Code of Virginia. This indemnification shall not be exclusive of any other rights to which any director or officer may be entitled including, without limitation, any rights conferred by applicable law or under policies of insurance purchased and maintained by the Association or others, even as to liabilities against which the Association would not have the power to indemnify such director or officer under the provisions of this Article 5.

The Association may purchase and maintain insurance in such amounts and on such terms and conditions as the Board of Directors may deem reasonable against all liabilities or losses it may sustain in consequence of the indemnification provided for in this Article 5.

The Board of Directors shall have the power, generally and in specific cases, to indemnify employees and agents of the Association to the same extent as provided in this Article 5 with respect to directors and officers. The Board of Directors shall be empowered by a majority vote of a quorum of disinterested directors to contract in advance to indemnify any director or officer. The Board of Directors shall further be empowered, by majority vote of a quorum of disinterested directors, to cause the Association to contract in advance to indemnify any person who is not a director or officer who was or is a party to any proceeding by reason of the fact that he/she is or was an employee or agent of the Association or was serving at the request of the Association as director or officer, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, to the same extent as if such person were a director or officer.

§ 5.3 The Association: The Association, directors and officers shall not be liable to any Owner for failing to provide any service which any of them is required to provide, or for injury or damage to any person or property caused by natural elements or by any Owner or other person or resulting from electricity, water, snow, ice, or other substance which may leak or flow from any portion of the Common Areas or from any pipe, drain, conduit, structure, or other apparatus. The Association, directors and officers shall not be liable to any Owner for loss or damage by theft or otherwise of personal property which is stored or left anywhere within the Subdivision. No diminution or abatement of any assessments shall be allowed for inconvenience or discomfort arising from upkeep of the Common Areas or from any action taken by the Association, or any director or officer, or Owner which does not comply with any law, ordinance, or other governmental regulation or order.

ARTICLE 6
OPERATION OF THE ASSOCIATION

§ 6.1 Fiscal Year: The fiscal year of the Association shall be the calendar year unless the Board of Directors determines otherwise.

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§ 6.2 **Annual Budget:** At its annual meeting, the Board shall adopt a budget for the operation and administration of the common areas for the current fiscal year.

§ 6.3 **Regular Assessments:** The Association shall assess each tract Owner an amount approved by the membership each year at the annual membership meeting, based upon the annual budget approved at said meeting. In the event no annual meeting is held, the amount assessed at the last annual meeting shall continue for the following calendar year. The well electric portion of the annual assessment shall not apply to those Owners with private wells not operated by the Association.

After the end of each fiscal year, an itemized accounting of actual receipts and expenses for the fiscal year shall be furnished to any Owner in good standing upon written request.

- (a) Expenses for the maintenance, operation, repair, and replacement of common wells, shall be assessed against the individual properties served by each common well, on an equal per lot basis, as those expenses accrue, or on such other payment schedule as the Board may determine is necessary. The Association shall provide communication availability for owners to report water access problems and shall contract with plumbers and other professionals to inspect and service the shared wells and lines. All well and water line repair and maintenance costs are the full responsibility of the shared owners of each well, advanced by the Association if cash flow permits, and divided and billed among the shared well owners on a current basis. In order to maintain fiscal liquidity, it is essential that owners promptly reimburse the Association for advances of funds for well and line repairs on behalf of the owners. (Rev. 11/4/23)

§ 6.4 **Special Assessments:** Special assessments to cover any expense not provided for by the regular assessments may be levied at a Special Meeting of the Association, called for that purpose and held in accordance with Sections 2.3 through 2.6 of these Bylaws.

A Special Assessment that affects the entire membership requires a vote of the majority of Owners that are present, after a quorum is established, and assessed against the Lots in the same proportion as Regular Assessments. All expenses for roadwork are considered to affect all members of the Association.

Expenses not affecting the entire membership may be levied against those lots affected, by a majority vote of the Owners of those lots and shall be shared equally and solely by those Owners.

All Special Assessments levied shall be payable within a time period determined by the Board of Directors. (Rev. 12/11/21)

§ 6.5 **Reserves:** The Association shall establish and maintain reasonable reserves for working capital, operations, contingencies, upkeep, and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such reserves.

At least every five (5) years the Board of Directors shall conduct a study to

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determine the necessity and amount of reserves required to repair, replace, and restore the Capital Components of the Subdivision. The Board shall review such study annually to determine whether the Association's current reserves are sufficient and make adjustments the Board deems necessary to maintain sufficient reserves.

If the reserve study indicates a need to budget for reserves, the Association's budget shall include an estimate of such expenditures.

§ 6.6 Failure to Prepare or Adopt the Budget: The Board of Director's failure or delay in preparing or adopting an annual budget for any fiscal year shall not constitute a waiver or release in any manner of any Owner's obligation to pay assessments. In the absence of an annual budget, each Owner shall continue to pay assessments at the rate established for the previous fiscal year.

§ 6.7 Accounts: All sums collected by the Association from any source may be commingled into a single fund. All monies shall be deposited in a fiduciary account as provided in § 3.3 (c).

§ 6.8 Upkeep: The Association shall be responsible for all upkeep of the Common Areas unless such upkeep is necessitated by the negligent or willful acts of an Owner or the Owner's family members, guests, or invitees, in which event such expense shall be charged to and assessed against the responsible Owner and the Owner's Lot. The Association shall not be responsible for the cost of upkeep of any Lot except as expressly provided in the Declaration or unless specifically agreed to by the Association and then, at the expense of the Owner.

§ 6.9 Statement of Account: The Association shall furnish to any Owner, upon written request, a certificate in writing signed by the Treasurer, setting forth whether all assessments for his Lot have been paid, and if not, the amount of any unpaid assessments. Such certificate shall be conclusive evidence of payment of any amount therein stated to have been paid.

ARTICLE 7
ENFORCEMENT

§ 7.1 Generally: As provided in the Declaration, the Association shall have the rights and remedies listed below in addition to the remedies provided in § 55.1-1828 of the Act (formerly § 55-515) or otherwise provided by law.

a) **Damages:** The Association may recover all costs and expenses incurred by the Association as a result of any Owner's willful or negligent acts or the acts of an Owner's family member, guest, or invitee. All persons responsible for such costs and expenses shall be jointly and severally liable. Such liability shall include any increase in the Association's or any

b) **Owner's casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any Lot or its appurtenances.** Nothing contained herein, however, shall be interpreted or construed as modifying any waiver by any insurance company of its rights of subrogation.

c) **Costs and Attorney fees:** In any proceeding arising out of an alleged default by any Owner, the prevailing party shall be entitled to recover the costs of such

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proceeding including reasonable attorney fees.

d) *No Waiver of Rights:* The Association's failure to enforce any right, provision, covenant, or condition contained in the Declaration, the Act, or these Bylaws shall not constitute a waiver of its right to enforce such right, provision, covenant, or condition in the future either against the same or a different Owner for the same or a different violation. All rights, remedies, and privileges reserved, granted, or assigned to the Association pursuant to any provision of the Declaration or the Act shall be deemed cumulative and the exercise of any one or more thereof shall not be deemed an election of remedies nor shall it preclude the Association from exercising other available remedies.

e) *Default.* Upon default by a property owner, the Association, acting through its board of Directors, may enforce the terms of the applicable Document of Restrictions (Covenants) and these Bylaws by any method normally available to the owner of private property in Virginia, including but not limited to, application to the court for injunctive relief or damages, during which the court may award to the Association court costs and reasonable attorney fees.

§ 7.2 Collection, Late Charges and Interest: The Association must take prompt action to collect all assessments, charges and fees more than thirty (30) days past due. Any assessment or charge not paid within five (5) business days after the due date may incur a Five percent (5%) late charge and may accrue interest from the due date at the rate assessed for arrears by the Virginia Department of Taxation. The Board of Directors may change the amount of the late charge or the rate of interest at any time not to exceed the maximum permissible rate under Virginia law.

Where an assessment against an Owner is payable in installments, upon a default by the Owner in the timely payment of any two (2) consecutive installments, the Board of Directors may accelerate the maturity of the remaining installments and declare the entire balance due and payable in full by written notice to such defaulting Owner.

§ 7.3 Lien for Assessment: As provided by the Act for assessments more than thirty (30) days past due, the Board may file or record, at the expense of the Owner, a memorandum of lien in the Clerk's Office containing the information required by § 55.1-1833 of the Act (formerly § 516). The Association may file or record such a memorandum if assessments are more than six (6) months past due.

At least ten (10) days prior to filing a memorandum of lien, the Secretary shall hand deliver or send written notice to the Owner by certified mail, return receipt requested, at the Owner's last known address, informing the Owner that the memorandum of lien will be filed in the Clerk's Office.

The Association may enforce any such lien as provided by the Act including, without limitation, (i) bringing a court action to foreclose on the lien or (ii) effecting a non-judicial foreclosure by selling the Lot at public sale in accordance with the requirements of the Act.

§ 7.4 Collection Suits: The Association may, in the name of the Association, file suit to recover a money judgment for unpaid assessments, fees, or charges without waiving its right to file a memorandum of lien as provided in § 7.3. The Association may file and seek enforcement of an assessment lien notwithstanding the pendency of any suit to recover a money

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judgment.

§7.5 Penalties for Violations: The Association may (i) suspend an Owner's right to use facilities or services, including water services provided directly by the Association, for nonpayment of assessments or well repair reimbursements more than sixty (60) days past due, to the extent that the Owner's access to his/her Lot over or through the Common Areas is not precluded, and (ii) assess charges against an Owner for any violation of the Declaration or the Association's rules and regulations for which the Owner is responsible.

Before any such suspension or charges are imposed, the Owner shall be given an opportunity to be heard and to be represented by counsel before the Board of Directors.

The Secretary shall hand-deliver or mail by certified United States mail, return receipt requested, notice of such hearing, including the charges or other sanctions that may be imposed, at least fourteen (14) days in advance thereof, to the Owner at his address according to § 1.2(g) hereof.

The amount of any charge assessed under this § 7.5 shall not exceed Fifty Dollars (\$50.00) for a single offense, or Ten Dollars (\$10.00) per diem for any offense of a continuing nature and shall be treated as a special assessment against the responsible Owner's Lot for the purpose of §§ 7.2, 7.3, and 7.4 of these Bylaws. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding ninety (90) days. If an Owner files a lawsuit challenging any such charges, no additional charges shall accrue after the date of filing. If the court rules in favor of the Association, the Association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the Owner prior to filing of the action, including reasonable attorneys' fees and court costs

The hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such Unit Owner at his address or addresses according to § 1.2(g) hereof within seven (7) days after the hearing. This § 7.5 shall not be construed to prohibit the exercise of other powers and responsibilities by the Association as set forth in the Act, the Declaration, or these Bylaws.

§7.6 No Waiver of Rights: The Association's failure to take action against any Owner for collection of any amount due shall not constitute a waiver of its right to take action for collection in the future against the same or a different Owner for the same or a different installment.

ARTICLE 8
MISCELLANEOUS

§ 8.1 Amendment: Amendments shall be approved after due notice, by a majority of Owners at a duly constituted membership meeting.

§ 8.2 Severability: If any provision of these Bylaws is found invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without in any way affecting the remaining provisions of these Bylaws.

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Adopted at a meeting of the Association Membership of the Sundance Mountain South Association, Inc. held after due and proper notice on December 11, 2021, revised 11/4/2023 at a duly convened Association Membership meeting.

Attest: Diane Gannon
Voluntary Acting Secretary
11/5/23

True and correct to my best knowledge and belief.

Attest: Alan Herman
Director and Chair, Finance
Committee 11/5/23