



TURTLEBACK MOUNTAIN RESORT

RESTATED BYLAWS OF THE TURTLEBACK OWNERS ASSOCIATION, INC.
A NEW MEXICO NONPROFIT CORPORATION

Date: JANUARY 22, 2024

ARTICLE 1

- 1.1. **Applicability.** These Restated Bylaws ("Bylaws") provide for governance of the Turtleback Owners Association, a New Mexico nonprofit corporation, ("Association").
- 1.2. **Definitions.** Capitalized terms used herein without definition shall have the meanings specified for such terms in the Restated Declaration of Restrictive Covenants By Turtleback Development Corporation, filed _____, in the records of Sierra County at Reception No. _____ ("Declaration").
- 1.3. **Office.** The office of the Association and the Board shall be located at 120 Stagecoach Drive, Elephant Butte, NM 87935, or at such other place as may be designated from time to time by the Board.

ARTICLE 2
ASSOCIATION

- 2.1. **Purpose.** The Association shall be the entity responsible for ensuring management, maintenance, operation, and control of the Common Easements within the Property. The Association shall be the primary entity responsible for the Declaration and such reasonable rules regulating use of the Common Easements as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in the Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Declaration and these Bylaws.
- 2.2. **Membership.** Ownership of a Lot is required in order to qualify for membership in the Association. Any person, upon acquiring an ownership interest in a Lot, shall automatically become a member of the Association and be subject to these Bylaws. Each Lot shall have one Owner and one vote, regardless of the number of persons sharing ownership interest. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.
- 2.3. **Annual Meetings.** The annual meetings of the Association shall be held at least once every thirteen months and shall be held between no earlier than 50 and no later than 35 days before the beginning of the fiscal year. At such annual meetings, regardless of whether a quorum is present, the Board shall be elected and (unless a special meeting is called for such purpose) the Board of Directors shall present an accounting of the expenses, itemizing receipts and disbursements for the preceding calendar year. The Board shall also present the estimated budget for the coming calendar year, and any other business which may properly be brought before the Association. The Association's budget shall be deemed ratified unless it is rejected by a majority vote of those present, in person or by proxy, at the time any such vote taken. Within thirty calendar days after adoption of any proposed budget for the Association, the Board shall provide a copy of the budget to all lot owners. The Board shall also provide to all lot owners a statement, included with a copy of the annual budget, listing all fees and fines that may be charged to a lot owner by the Association or any management company retained by the Association to act on behalf of the Association, including charges for a disclosure certificate pursuant to Subsection H of Section 47-16-12 of the NM HOA Act.
- 2.4. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board; provided however that the meetings shall be held within Sierra County, New Mexico.

2.5. **Special Meetings.** The President shall call a special meeting of the Association at any time upon: a) resolution signed by at least a majority of the board of Directors; or, b) written petition to the President signed by Members who are entitled to vote at least 25% of all the votes of the Association. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice, unless agreed to by more than 50% of the Members present and entitled to vote, either in person or by proxy.

2.6 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, which notice shall be delivered electronically, hand-delivered or sent by mail at least 15 days, but not more than 50 days, before such meeting to each Member, addressed to the Member's address or email address last appearing on the books of the Association for the purpose of notice. If sent by mail, the notice shall be deemed to be delivered when addressed to an Owner at the address as it appears in the Association's records and deposited in the United States mail, postage prepaid. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

2.7 **Voting.** The Association shall have one class of voting Membership. One vote is allocated to each Lot regardless of the number of persons sharing an ownership interest, and such persons may choose among themselves how to allocate their vote and who shall be authorized to cast it. Except as otherwise provided by the New Mexico HOA Act, Section 47-16-1, et. seq. ("HOA Act"), the Declaration or these Bylaws, a majority vote of those present, in person or by proxy, at the time the vote is taken at a duly convened meeting at which a quorum is present, is required to adopt decisions. No Member may vote at any meeting of the Association or be elected to or serve on the Board if (a) the Owner owes the Association for unpaid assessments or fines; b) the Association holds a lien against their Lot; (c) the amount necessary to release such lien has not been paid at the time of such meeting or election, as determined by the Board or (d) the Owner is in violation of any covenant or obligation under the Declaration and such violation is not cured at the time of such meeting or election, as determined by the Board..

2.8 **Type of Voting.** The Association shall provide for votes to be cast in person, by absentee ballot or by proxy and may provide for voting by some other form of delivery. If the Board should adopt a resolution so providing, the election of Directors may be conducted, in whole or in part, by mail, fax, or e-mail.

2.9 **Proxies.** A vote may be cast in person or by proxy. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Lot. No proxy shall in any event be valid for a period in excess of 90 days after the execution thereof. The proxy must be dated and executed by the Owner, but if a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy, but in no case shall the total vote cast be more than that allocated to the lot under the Declaration. If proxy voting is utilized at a lot owner meeting, a person shall not pay a company or person to collect proxy votes.

2.10 **Quorum.** In any meeting, the presence, in person or by proxy or by absentee ballot, of Members entitled to cast 20% of the votes of the Association, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting without notice other than announcement at the meeting, until a quorum shall be represented.

2.11 **Conduct of Meetings.** The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The President and Secretary may designate another individual to keep the minutes provided that the final minutes shall be attested to by the Secretary and signed by the President. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then-current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these Bylaws or the New Mexico Nonprofit Corporation Act.

2.12 **Ballots.** Ballots, if used, shall be counted by a neutral third party or by a committee of volunteers. The volunteers shall be selected or appointed at an open meeting, in a fair manner, by the

chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates.

2.13 Election of Board members. Elections for Board of Directors may be conducted by mail.

2.14 Open Meetings. All Owners shall have the right to attend and speak at all meetings, but the Board may place reasonable time restrictions on those persons speaking. Any portion of a meeting may be closed only if that portion is limited to consideration of: (a) legal advice from an attorney for the Board or Association; (b) pending or contemplated litigation; or (c) personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual contractor for the Association.

ARTICLE 3 BOARD

3.1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors ("Board"). The Board shall be composed of three to five persons. As of the date of these Bylaws, one of the Board members shall be elected by the Owners, including the Declarant as an Owner of lots, if any. Not later than sixty days after conveyance of fifty percent of the lots that are part of the development, and any additional lot that may be added to the development, to lot owners other than the Declarant, no less than thirty-three percent of the members of the Board shall be elected by Owners other than the Declarant. Upon expiration of Declarant control, as set forth in Article 6 of the Restated Declaration, all of the Board members shall be elected by the Owners of the Lot, including the Declarant in the event Declarant owns lots.

3.2. Term of Office. Board members shall be elected annually by the Members. Directors shall hold office for a term of two years. To ensure consistency on the Board, the Directors terms shall be staggered.

3.3. Removal. Any Director may be removed from the Board, for cause, by a majority vote of the Members. In the event of death, resignation or removal of a Director, his or her successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor.

3.4. Compensation. No Director shall receive compensation for their activities as a Director. However, any Director may be reimbursed for their actual expenses incurred in the performance of his or her duties.

3.5. Notice. Notice of the time, date and location of Board meetings and drafts of any proposed policy resolutions shall be provided to Owners at least forty-eight hours in advance electronically, by conspicuous posting, posting on the Association's website or social media or by any other reasonable means as determined by the Board.

3.6. Certification by Board Member. Within ninety days after being elected or appointed to the Board, each Board member shall certify in writing to the Secretary of the Association that the Board member: (a) has read the community documents; (b) will work to uphold the community documents and policies to the best of the member's ability; and (c) will faithfully discharge the member's duties to the Association. A Board member who does not file the written certification pursuant to this Section shall be suspended from the Board until the member complies with this Section. The Association shall retain each Board member's written certification for inspection by lot owners for five years after the Board member's election or appointment. The failure of the Association to have a Board member's written certification on file does not affect the validity of any action taken by the Board or any protections provided to Board members under the NM HOA Act or the Nonprofit Corporation Act if the Association is organized under the Nonprofit Corporation Act.

ARTICLE 4

BOARD MEETINGS

4.1 Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly at such place and hour as may be fixed from time to time by resolution of the Board.

4.2. **Special Meetings.** Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than seven days notice to each Director. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her at the time and place thereof. If all the Directors are present at a meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

4.3. **Quorum.** A majority of the number of Directors present in person or by telephone shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present in person or by telephone at a duly held meeting at which the quorum is present shall be regarded as the act of the Board.

4.4. **Notice to Members.** Notice of the time, date and location of Board meetings and drafts of any proposed policy resolutions shall be provided to lot owners at least forty-eight hours in advance electronically, by conspicuous posting, posting on the Association's website or social media, or by any other reasonable means as determined by the Board.

ARTICLE 5 POWERS AND DUTIES OF THE BOARD

5.1. **Powers.** The Board shall have all powers provided by New Mexico Non-Profit Corporation Act, and also shall have power to:

- a. Adopt and publish rules and regulations;
- b. Suspend the voting rights and right of a Member to use the Common Easements during any period in which such Member shall be in default in the payment of any assessment levied by the Association or in default of any other covenant or obligation of the Owner as set forth in the Declaration. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for violation of published rules and regulations;
- c. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- d. Declare the office of a Director to be vacant in the event such Director shall be absent from three consecutive regular meetings of the Board;
- e. Prepare a detailed line item budget on at least an annual basis for approval in accordance with Section 10(3)(b) herein at either the annual meeting or at any special meeting specifically called for budget presentation. The Board has authority to operate the affairs of the Association within the limits of the budget as provided in the Declaration. The Board does not have the authority to exceed the approved budget by more than 10% without the submission of a revised budget for adoption in accordance with Section 10(3)(b);
- f. Employ a Managing Agent (as independent contractor) or such other contractor or employees as they deem necessary, and/or appoint Member committees as they deem necessary, and to prescribe their duties;
- g. Assure exterior maintenance of individual Structures and Lots. In the event an Owner shall fail to maintain the exterior of the buildings or any other improvements situated on their Lot in an aesthetic manner, in a safe manner, or in a manner that prevents the waste or misuse of water, the Association, after approval by a majority vote of the Board, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall become a special assessment to which such Lot is subject;
- h. Fix and determine the amount of the annual assessment, establish reserves and determine capital assessments, all within the conditions described herein and in the Declaration;
- i. Collect or cause to be collected assessments as provided herein and in the Declaration;

- j. Establish fines, late fees, rate of interest, and the method by which interest shall be calculated;
- k. File all required governmental reports;
- l. Open bank accounts on behalf of the Association and designate the signatories thereon.

5.2. **Duties.** It shall be the duty of the Board to:

- a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at any meeting when such statement is requested in writing by 25% of the Members who are entitled to vote;
- b. Perform all duties required by law, and supervise all Officers, agents and employees of the Association; and to see that their duties are properly performed;
- c. Fix the amount of the annual assessment against each Lot, as provided for and approved by the budget process stated herein and in the Declaration;
- d. Send written notice of each assessment to every Owner subject thereto, as provided for and approved by the budget process stated herein and in the Declaration;
- e. Foreclose the lien against any property for which assessments are not paid on a timely basis or to bring an action at law against the Owner personally obligated to pay the same. The lien shall be for the entire unpaid amount of the annual assessment, together with interest, notwithstanding that periodic payments may have been established for the convenience of the Members;
- f. Issue, upon request by any Member, a certificate setting forth whether or not any assessment has been paid on said Members Lot. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- g. Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- h. Cause the Common Easements, including monumentation and landscaping along Turtleback Mountain Parkway, to be maintained to Peer Standards;
- i. Cause the exterior of all Structures to be maintained to comply with the Declaration;
- j. Procure and maintain adequate liability and hazard insurance on property owned by the Association;
- k. Negotiate contracts for master insurance policies for the Common Easements as needed, and provide, in its discretion, liability insurance on the acts of Directors and Officers in connection with the Association's duties and activities;
- l. Cause all bills of the Association to be paid from assessment funds in a timely manner; and
- m. Delegate to one of its Directors, or to a person employed for such purpose, the authority to act on behalf of the Board on such matters relating to the duties of the Managing Agent.

5.3. **Managing Agent.** The Board may employ for the Association and Property a "Managing Agent" at compensation established by the Board and may delegate day-to-day operating responsibilities to the Managing Agent pursuant to a managerial contract.

5.4 **Financial Audit.** At least every three years, the Board shall provide for a financial audit, review or compilation of the Association's records in accordance with generally accepted accounting principles by an independent certified public accountant and shall provide that the cost thereof be

assessed as a common expense. The audit, review or compilation shall be made available to lot owners within thirty calendar days of its completion.

ARTICLE 6 OFFICERS

- 6.1. **Officers.** The Officers of this Association shall be a president, a vice president, a secretary, and a treasurer, and such other Officers as the Board may create by resolution. The vice president may also be the secretary or treasurer.
- 6.2. **Election of Officers.** The election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members. The President shall be a member of the Board of Directors. Any other officers may, but need not, be Members or Directors.
- 6.3. **Term.** The Officers of the Association shall be elected annually by the Board and each shall hold office for two years unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.
- 6.4. **Removal and Vacancy.** Any Officer may be removed from office with cause by the Board. Any Officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the office he or she replaces.
- 6.5. **Powers and Duties.** The duties of the Officers are as follows:
- a. The president shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds, promissory notes and other written instruments.
 - b. The vice president shall act in the place and stead of the president in the event of his or her absence, inability or refusal to act.
 - c. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members and their addresses, and shall perform such other duties as required by the Board. These duties may be assigned to the Managing Agent with the Board's approval provided the secretary shall retain oversight and authority for all assigned duties.
 - d. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and other daily operating documents of the Association; keep proper books of account; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members; and shall perform such other duties as required by the Board. These duties may be assigned to the Managing Agent with the Board's approval provided the treasurer shall retain oversight and authority for all assigned duties.

ARTICLE 7 ARCHITECTURAL REVIEW COMMITTEE

- 7.1. **Number and Qualification.** The Board shall appoint at least one Architectural Review Committee ("Committee") composed of at least three persons. Committee members need not be Owners.
- 7.2. **Term.** Appointed Committee members serve at the pleasure of the Board.
- 7.3. **Compensation.** The Board, in its discretion, may determine appropriate compensation for Committee members, which may be paid by design review fees, as a Common Expense, or both. Appointed Committee members may be reimbursed for actual expenses incurred in the performance of their duties.

7.4 **Duties.** The Committee shall implement the Turtleback Mountain Resort Design Guidelines which include, but are not limited to, the Architectural Guidelines, Landscaping Guidelines, Design Review Process, and Construction Regulations.

**ARTICLE 8
INDEMNIFICATION AND NON-LIABILITY**

8.1 **Liability of Directors, Officers, Members and Association.** To the extent allowed by law, the Directors and Officers shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. To the extent allowed by the New Mexico Nonprofit Corporation Act, the Association hereby indemnifies and holds harmless and agrees to defend each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Directors and Officers on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the New Mexico Nonprofit Corporation Act, the Declaration or these Bylaws. Directors and Officers shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the Officers, the Board or the Managing Agent on behalf of the Association shall, if obtainable, provide that the Officers, Directors or the manager are acting only as agents for the Association and shall have no personal liability thereunder (except as Members), and that each Member's liability thereunder shall be limited to the percentage such Member's vote(s) bear in proportion to the total number of the votes of the Association.

8.2 **Association Liability.** The Association shall not be liable for any failure of utility or other service to be obtained by the Association or paid for as a Common Expense. Except to the extent of insurance for same, the Association shall not be liable for injury or damage to any person or property caused by the elements, another Member, by any other person, or resulting from electricity, water, snow or ice which may leak or flow from or across any portion of the Common Easements, or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles or property which may be stored upon any of the Common Easements. No diminution or abatement of any assessment, as herein or elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Easements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

8.3 **Common or Interested Directors.** Each Director shall exercise his powers and duties in good faith and with a view of the interests of the Association and the Property. No contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the Directors of the Association are Directors or Officers or are pecuniarily or otherwise interested is either void or voidable because any such Director is present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if the common Directorate or interest is disclosed and the contract or transaction is commercially reasonable to the approving body at the time it is authorized, ratified, approved or executed. Any common or interested Director may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if such Director were not such Director or Officer of such Association or not so interested.

8.4 **Committee Actions.** Neither the Declarant, the Association, its Officers and Directors, the Committee, nor any individual member thereof shall be liable in damages to anyone submitting a request to the Committee (including any appeal to the Board arising from such a request), to any Owner, or to anyone claiming through any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a. The approval, conditioned approval, failure to approve, or disapproval of any plans, requested variance, or appeal, whether or not defective. The Committee may take any action with regard to plans, variances, and appeals as authorized the Design Review Process.
- b. The construction or performance of any work, whether or not pursuant to approved plans or in conformance with a requested variance. In reviewing plans, requested variances, and appeals, the Committee considers only aesthetic matters reflected therein, and not the structural adequacy,

advisability or safety of any matter contained therein. The Committee shall not be responsible for any defects in said plans, requested variance, or appeal, or any Structure or Improvement whether or not completed according to the plans.

- c. The development or manner of development of any Lot or portion thereof within the Property.
- d. Delay, so long as the Committee has acted within the timeframes specified in these Bylaws, the Declarations and the Design Guidelines, or as may have been extended by mutual written agreement of the Committee and the submitting Owner, or as may be reasonably necessary due to acts of force-majeure.
- e. Mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval, conditioned approval, failure to approve, or disapproval of any plans, requested variance, or appeal.

Pursuant to the Declaration, by the acquisition of title to any Lot in the Property, and in consideration thereof, each Owner thereby has agreed not to file suit against the Declarant, the Association, its Officers and Directors, the Committee, nor any individual member thereof, to recover damages in connection with any of the foregoing events. Anyone submitting plans, a request for a variance or an appeal to the Committee for approval has for himself, and his successors and assigns, by the submitting of the same, waived all claims for damages resulting from any of the foregoing acts or omissions. Without in any way limiting the generality of the foregoing, the Declarant, the Association, its Officers and Directors, the Committee, or any individual member thereof may consult with or hear, on an individual basis, any Owner or agent of the Owner with respect to any plans, requested variance, or appeal submitted to it.

ARTICLE 9 BOOKS AND RECORDS

9.1 Inspection. The books, records, and papers of the Association shall be subject to inspection by any Member, during reasonable business hours, and upon reasonable notice to the Association, and upon such reasonable conditions as the Board may impose. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reproduction cost.

- a) All financial and other records of the Association shall be made available during regular business hours for examination by a lot owner within ten business days of a written request.
- (b) The Association shall not charge a fee for making financial and other records available for review. The Association may charge a reasonable fee of not more than ten cents (\$.10) per page for copies.
- (c) As used in this section, "financial and other records" includes:
 - (i) the Declarations of the Association;
 - (ii) the name, address and telephone number of the Association's designated agent;
 - (iii) the Restated By-laws of the Association and any amendments thereto;
 - (iv) the names and addresses of all Association members;
 - (v) minutes of all meetings of the Association's lot owners and Board for the previous five years, other than executive sessions, and records of all actions taken by a committee in place of the Board or on behalf of the Association for the previous five years;
 - (vi) the operating budget for the current fiscal year;
 - (vii) current assessments, including both regular and special assessments;
 - (viii) financial statements and accounts, including bank account statements, transaction registers, association-provided service or utility records and amounts held in reserve;
 - (ix) the most recent financial audit or review, if any;
 - (x) all current contracts entered into by the Association or the Board on behalf of the Association;
 - (xi) current insurance policies, including company names, policy limits, deductibles, additional named insureds and expiration dates for property, general liability and Association director and officer professional liability, and fidelity policies; and

(xii) any electronic record of action taken by the Board.

- (d) A lot owner that is denied access to financial and other records is entitled to the greater of the actual damages incurred for the Association's willful failure to comply or fifty dollars (\$50.00) per calendar day, starting on the eleventh business day after the Association's receipt of the written request until such records are provided.

ARTICLE 10 ASSESSMENTS

10.1 Covenant to Pay. By the Declaration, each Member is deemed to covenant and agree to pay to the Association all annual assessments, including reserves and capital improvement costs, which shall be due and payable and such special and/or additional assessments as are allowed by the Declaration and these Bylaws.

10.2 Consensual Lien for Non-Payment. The annual, special and additional assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

10.3 Annual Assessments.

- a. Each Lot shall be allocated an equal share of the Common Expenses, regardless of the purchase price, size or location of the Lot. The amount of such assessments shall be determined by the Board and shall be in an amount sufficient to meet the funding requirements for the maintenance and upkeep of the common areas. During the period of Declarant Control, all assessments shall be payable directly to the Declarant, and the Declarant shall pay any deficit for Common Expenses.
- b. At least 80 days before the beginning of each fiscal year, the Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Easements, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by this Declaration, the Association's Bylaws or a resolution of the Board of Directors and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Common Easements and the rendering to the Owners of all contracted services. Such budget may also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements ("Common Expenses"). During the period of Declarant control, a budget approved by the Board of Directors shall be adopted without requiring approval of the membership. After the termination of Declarant control, no later than 65 days before the beginning of the fiscal year, the Board shall send to each Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses, including reserves and any additional assessments payable by each Owner. Unless a majority of the Members present or voting by proxy at the annual meeting or at a special meeting called for the purpose of considering the budget reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. The date for any special meeting would be set not less than fourteen (14) days or more than thirty (30) days after mailing to the owners the copy of the proposed budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Members shall continue until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

10.4 Special Assessments. Special assessments include emergency and unanticipated costs that were not included in the Association's budget, but which should be borne equally by all Owners in the same manner as annual assessments. Special assessments also shall include fines imposed by the Association for violation of this Declaration, the Association's Bylaws, the Design Guidelines or any rules established by the Association, as well as costs incurred by the Association under Article 5 of the Declaration, and any such special assessment shall be borne exclusively by the Owner or Owners incurring the same. Special assessments may be established at any regular or special meeting of the

Board, provided that no lien shall attach to any Lot relating to any unpaid special assessment until the earlier of 60 days after receipt of notice of the special assessment by the Lot Owner or 5 days after any special meeting of the Association called for the purpose of discussing the special assessment.

10.5 **Fines.** The Board shall establish a policy regarding fines imposed by the Association for violation of the Declaration, the Bylaws, the Design Guidelines, or any rules established by the Association, as well as costs incurred by the Association under Article 5 of the Declaration. The policy shall include the amounts that will be charged, may identify different categories of violations (if any), and may identify the procedure by which the Board will process alleged violations. The policy shall be made part of the Rules & Regulations of the Association.

ARTICLE 11 THE SIERRA DEL RIO GOLF COURSE

11.1 **Proximity to the Sierra del Rio Golf Course.** The Property is situated adjacent to and around the Sierra del Rio Golf Course. Activities taking place on the Golf Course may result in (a) accident, loss, damage, injury, or death ("Harm") to persons, pets, personal property, and real property located in Turtleback Mountain Resort or (b) trespass or nuisance, including but not limited to golfers, golf carts and/or golf balls entering the property.

11.2 **Mutual Covenants Among Association Members.** By the acquisition of title to any Lot in the Property, and in consideration thereof, such Lot being in proximity to the Sierra del Rio Golf Course, EACH MEMBER HAS ACKNOWLEDGED THE POTENTIAL FOR HARM ARISING FROM ACTIVITIES TAKING PLACE ON THE SIERRA DEL RIO GOLF COURSE AS A RESULT OF THE PROXIMITY TO THE SIERRA DEL RIO GOLF COURSE, and has been deemed to covenant that:

- a. Neither the Declarant nor the Association nor Turtleback Mountain Partners nor the Sierra del Rio Golf Course shall be responsible for nor have any liability for Harm to persons, pets, personal property, or real property located on the Property, where such Harm or alleged Harm arises from activities taking place on the Sierra del Rio Golf Course.
- b. Neither the Declarant nor the Association nor Turtleback Mountain Partners nor the Sierra del Rio Golf Course shall be responsible for trespass or nuisance caused by activities taking place on the Sierra del Rio Golf Course, including but not limited to golfers, golf carts and/or golf balls entering any Lot.
- c. Each Member shall be solely responsible for the Member's personal safety, as well as the safety of the Member's family, guests, invitees, tenants, pets, personal property, and real property, and to take every precaution to provide for such safety and well-being.
- d. Each Member releases the Declarant, the Association, Turtleback Mountain Partners and the Sierra del Rio Golf Course from any claim of Harm, trespass, or nuisance arising from activities taking place on the Sierra del Rio Golf Course, agrees to not sue or otherwise make any claim against Declarant, Association, Turtleback Mountain Partners or Sierra del Rio Golf Course for the same, and to waive all claims for damages resulting from any such actual or perceived Harm, trespass or nuisance.
- e. Each Member agrees, to the extent not disallowed by statute, to indemnify the Declarant, the Association, Turtleback Mountain Partners and the Sierra del Rio Golf Course from claims of Harm, trespass, or nuisance arising from activities taking place on the Sierra del Rio Golf Course where such claims are raised by the Member's guests, invitees or tenants.

ARTICLE 12 AMENDMENTS

12.1 **Amendment.** These Bylaws may be amended by the Declarant during the period of Declarant control or, following Declarant control, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members, present in person or by proxy. Provided however, that the power to amend aforesaid shall not authorize any amendment:

- a. Permitting the sale, conveyance, lease, transfer, mortgage, pledge, granting of any deed of trust, or hypothecation of the Common Easements to any entity besides a governmental entity or a

utility service provider, provided however, that nothing in this paragraph shall limit the Declarant's rights pursuant to Article 6 of the Declaration, or

- b. Altering the right of each Lot Owner to membership in the Association with rights appurtenant thereto, or
- c. Causing these Bylaws to be inconsistent with the Declaration.

ARTICLE 13 MISCELLANEOUS

13.1 Member Address for Purposes of Notice. A Member's address shall appear on the books of the Association for the purpose of notice to the Member. A Member may change this address by providing written notice to the Association, which shall become effective thirty (30) days after receipt by the Association.

13.2. Conflict Among Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 14 ENFORCEMENT

14.1. Every Owner and the Owner's tenants, guests and invitees shall comply with the Homeowners Association Act, the Declaration, the Bylaws, and the Rules and Regulations promulgated by the Directors. The prevailing party to any action to enforce the Declaration, Bylaws or Rule and Regulations shall be entitled to file suit in a court of law in the district court in Sierra County, New Mexico and the prevailing party shall be entitled to its reasonable costs and attorney's fees.

(a) The Association may, after provided written notice and an opportunity to dispute an alleged violation, other than failure to pay assessments, levy reasonable fines for violations of or failure to comply with any provision of the Declaration, Bylaws, and Rules and Regulations.

(b) Prior to imposition of a fine or suspension, the Board shall provide an opportunity to submit a written statement or for a hearing before the Board or a committee appointed by the Board by providing written notice to the person sought to be fined or suspended fourteen days prior to the hearing. Following the hearing or review of the written statement, if the Board or committee, by a majority vote, does not approve a proposed fine or suspension, neither the fine nor the suspension may be imposed. Notice and a hearing are not required for violations that pose an imminent threat to public health or safety.

(c) If a person against whom a violation has been alleged fails to request a hearing or submit a written statement as provided for in Subsection (b) of this section, the fine or suspension may be imposed, calculated from the date of the violation.


(d) An Owner or the Association, provided they mutually agree, may use a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation, settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues, for complaints between the Owner and the Association.

(e) For any other violation which is not subject to a fine, in the event the Board determines that any Owner has not complied with any of the provisions of the Declaration, the Board may, at its option, give written notice to the Owner of the conditions complained of. The Owner shall correct same or, if not readily correctable within thirty (30) days after notice from the Association, the Owner shall submit corrective plans proposing its remedy to the condition complained of within fifteen (15) days after notice from the Association. The Board shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the condition complained of. In the event such condition is not corrected according to the approved plans, within the allotted time, the Board shall have the right to undertake to remedy such condition or violation complained of, if such condition or violation constitutes a hazard or danger to persons or property, or to bring suit against the Owner to enforce the provisions of this Declaration, and seek damages, reasonable costs and attorney's fees, injunctive relief or such other rights and remedies as allowed by law. The cost thereof, including any attorneys' fees, shall be deemed to be an assessment to such Owner and enforceable by the Association in the same manner as any other unpaid assessment, including the right to immediately lien the property. The Association, or any agent or contractor hired by the Board, is hereby granted the right of entry onto the affected Parcel to so correct any hazardous or unsafe condition or violation complained of and Owner shall have no legal recourse

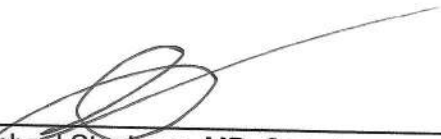
against Association, the Board, any individual Director or Officer, or any agent or contractor hired by the Board of Directors of the Association, for any damages resulting therefrom.

In witness whereof, these Bylaws have been executed and attested by the President and the Secretary on behalf of the Association, this 22nd day of January, 2024.

TURTLEBACK OWNERS ASSOCIATION, INC. A NEW MEXICO NONPROFIT CORPORATION

By: 

David Berman, President

By: 

Michael Stephens, MD, Secretary