

CITY OF TUCSON
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BYLAWS

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CITY CLERK

**OF
DARK MOUNTAIN DEVELOPMENT CORPORATION
an Arizona Nonprofit Corporation**

ARTICLE I

**AMENDED AND RESTATED BYLAWS AND AMENDED ARTICLES OF
INCORPORATION**

Section 1.1 Amendment and Restatement of Bylaws. These Amended and Restated Bylaws (the "Bylaws") of Dark Mountain Development Corporation, an Arizona nonprofit corporation ("Dark Mountain" or "Corporation"), hereby amend and restate in their entirety the original Bylaws of Corporation, and all amendments and restatements thereto. Any reference herein made to the Corporation's Bylaws will be deemed to refer to these Bylaws.

Section 1.2 Amended Articles; Seniority of Articles. The Amended Articles of Incorporation of Corporation to be filed with the Arizona Corporation Commission in connection with these Bylaws will, in all respects, be considered senior and superior to these Bylaws, with any inconsistency to be resolved in favor of the Articles of Incorporation, as amended, and these Bylaws will be deemed automatically amended, from time to time, to eliminate any such inconsistency which may then exist.

ARTICLE II

NAME, OFFICES AND CORPORATE SEAL

Section 2.1 Name of Corporation. The name of the Corporation shall be "Dark Mountain Development Corporation."

Section 2.2 Principal Office. The principal office of the Corporation shall be located at: c/o Business Development Finance Corporation, 335 N. Wilmot, Suite 420, Tucson, Arizona 85711, but other offices may be established and maintained within or outside the State of Arizona (the "State") at such places as the Board of Directors may designate.

Section 2.3 Corporate Seal. The Corporate Seal is not required on any instrument executed for the Corporation. If the Corporate Seal is used, it shall be inscribed with the words "DARK MOUNTAIN DEVELOPMENT CORPORATION."

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Document filed pursuant to Tucson City Code,
Sec. 10A-136. (2nd Mandated Copy)

Rec'd: 9/28/18

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Deputy City Clerk gmv RS

ARTICLE III

NO MEMBERS

Section 3.1 Members. The Corporation shall have no members. Corporation shall be governed exclusively by its Board of Directors as provided in **Section 4.1** hereof, and all Directors will be appointed in accordance with **Section 4.7**.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1 Function. The chief function of the Directors is to manage the affairs of the Corporation and to amend, when necessary, the Bylaws, as provided by **Article XIV**. Subject to the foregoing limitations and to further limitations contained in these Bylaws or in any statute as to action to be authorized or approved by the Directors, all corporate powers shall be exercised by or under authority of, and the business and affairs of the association shall be controlled by, the Board of Directors.

Section 4.2 Number of Directors. There shall be not less than 3 nor more than 9 Directors on the Board of Directors.

Section 4.3 Qualifications. All Directors must at all times also be directors of The Industrial Development Authority of the City of Tucson, Arizona, an Arizona nonprofit corporation, designated a political subdivision of the State of Arizona ("**Tucson IDA**").

Section 4.4 Term. The term of office of each Director shall be coterminous with the terms of office of each of the Tucson IDA Directors.

Section 4.5 Voting Rights. Each Director is entitled to 1 vote. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power present shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the laws of the State of Arizona or of the Articles of Incorporation, as amended, a different vote is required, in which case such express provision shall govern. The voting will be by ballot on any question as to which a ballot vote is demanded, prior to the time voting begins, by any person entitled to vote on such question; otherwise, a voice vote will suffice. No ballot or change will be accepted after the polls have been declared closed following the ending of the announced time for voting.

Section 4.6 Proxies. Voting by written proxy shall not be permitted.

Section 4.7 Appointment. All Corporation's directorships will be automatically filled by the actions of the Mayor and Council of the City of Tucson, Arizona, in appointing Tucson IDA Directors in accordance with the Amended and Restated Bylaws of the Industrial Development Authority for the City of Tucson, Arizona ("**IDA's Bylaws**").

Section 4.8 Resignation. Any Director may resign at any time by delivering a written resignation to the Presidents or to the Secretaries of both the Corporation and the Tucson IDA, but only if that Director is also resigning his/her directorship with the Tucson IDA. Such resignation shall be effective upon receipt unless otherwise provided by the terms thereof.

Section 4.9 No Compensation. Neither directors, officers nor relatives of a director or an officer shall receive any salary or other compensation for their services in violation of **Arizona Revised Statutes §38-481**. For purposes of this **Section 4.9**, the term “relative” shall mean any director’s or officer’s spouse, child, child’s child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister of a child of a spouse.

Section 4.10 Conflicts of Interest. The directors, officers and relatives of a director or an officer shall conduct the affairs of the Corporation in compliance with the provisions of **Arizona Revised Statutes §38-501** onward, as amended from time to time (the “**Conflict Laws**”). For purposes of this **Section 4.10**, the term “relative” shall mean any director’s spouse, child, child’s child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister of child of a spouse.

Section 4.11 Interest of Directors. No Director of the Corporation shall have any right, title or interest on or to any property or assets if the Corporation either prior to or at the time of any liquidation or dissolution of the Corporation.

Section 4.12 Liability of Directors. The private property of the Directors shall be exempt from execution or other liability for any debts of the Corporation, and no Director shall be liable or responsible for any debts or liabilities of the Corporation.

ARTICLE V

MEETINGS OF THE BOARD OF DIRECTORS

Section 5.1 Open Meeting Laws. Corporation is subject to the Open Meeting Laws codified in **A.R.S Section 38-431 et seq.**, as amended, and any successor statutes thereto (the “**Open Meeting Laws**”), and its Directors and Officers shall comply with all requirements of the Open Meeting Laws, in addition to the requirements of the Articles of Incorporation, as amended, and these Bylaws. The Open Meeting Laws shall govern in the event of any conflict with the requirements of the Articles of Incorporation, as amended, and these Bylaws.

Section 5.2 Notices of Meetings.

(a) **Public Notice.** Corporation shall post all public notices of their meetings within **24 hours** of any meeting on the Tucson IDA internet web site and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on the Tucson IDA’s website or that temporarily or permanently prevents the usage of all or part of the website does not preclude the holding of the meeting for which the notice was posted if all other public notice requirements required by law are

complied with. In case of an actual emergency, a meeting may be held on such notice as is appropriate to the circumstances.

(b) **Content of Public Notice.** Each notice shall specify the place, the day, and the hour of the meeting, the agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least **24 hours** prior to the meeting. Notices shall be given by the Secretary or, if he/she is absent, or is unable or refuses to act, by any other Officer or Director of the Corporation.

(c) **Notice to Directors.** Notice of any Regular or Special Meeting to the Directors shall be given by oral or written notice delivered personally, if the notice is in writing, to each Board Member at least **24 hours** prior to the meeting. Written notice includes notice via e-mail. Except as provided herein, notice of a Meeting may, but need not, state the nature of the business to be taken up at the meeting.

(d) **Waiver of Notice by Directors.** Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except when such attendance is for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened and the Director does not then vote on any action taken at the meeting. Any Director may waive notice of any meeting by executing a written waiver of notice either before or after the meeting. Such written waiver will be filed with the corporate minutes.

(e) **Notice for Removal of a Director.** Written notice shall be given at least **2 days** prior to the date of any meeting at which the Directors will vote to remove another Director, and the notice shall include the name of the Director whose removal is sought.

Section 5.3 Place of Meeting. Meetings of the Directors shall be held at the principal office of the Corporation or at any place within the State of Arizona designated from time to time by resolution of the Board of Directors or by written consent of all Directors. Such meetings may be held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Section 5.4 Minutes of the Meetings.

- (a) The minutes of meetings of the Board of Directors shall include the following:
- i. The date, time and place of the meeting.
 - ii. The Directors recorded as either present or absent.
 - iii. A general description of the matters considered.
 - iv. An accurate description of all legal actions proposed, discussed or taken, and the names of Directors who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the Corporation and a reference to the legal action about which they made statements or presented material.

(b) The minutes of the Board of Directors meetings are to be published within 3 working days of the meeting on the Tucson IDA's internet web site.

Section 5.5 Annual, Regular and Special Meetings.

(a) **Annual Meetings.** The Annual Meeting of Directors of the Corporation shall be held on the **second Thursday of June of each year.**

(b) **Regular Meetings.** Regular Meetings of the Board of Directors shall be held at such times and places as the Board shall from time to time designate.

(c) **Special Meetings.** Special Meetings of the Board of Directors may be called at any time by the the President or **20%** of the Directors then in office. If the President is absent or unable to act, such special meetings may be called by any Officer in place of the President.

Section 5.6 Quorum; Adjournment. The presence of a majority of the Directors shall constitute a quorum for the transaction of business. Any business, not otherwise requiring the vote of a majority of the whole Board of Directors under the Corporation's Articles of Incorporation or Bylaws, may be conducted by vote of all the Directors of the quorum then present. A quorum is not required for the Chairman of the meeting to adjourn the meeting to another date, time and place. A meeting may be recessed and resumed with less than **24 hours'** public notice, if the adjourned meeting was properly noticed pursuant to **Section 5.2**, and, if prior to recessing, notice was publicly given as to the time and place of the resumption of the meeting.

The Directors present at a duly called or held meeting at which a quorum is present may not continue to do business once the withdrawal of Directors leaves, if less than a quorum then exists.

Section 5.7 Meeting Format. At every meeting of the Board of Directors, the President shall preside over the meeting. The Secretary of the Corporation may act as secretary of all meetings. In the absence at any such meeting of the Secretary, the President may appoint another person to act as secretary of the meeting. If absent a showing of bad faith on his part, the President will, among other things, have absolute authority to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal, or question and answer portions thereof).

Section 5.8 Committees. There may be such committees as the Board of Directors may from time to time determine. Membership of such committees shall be by appointment by the President, with the consent of a majority of the Board of Directors. Committee members must be members of the Board of Directors.

ARTICLE VI

OFFICERS

Section 6.1 Positions. The Officers of the Corporation shall be a President, a Vice-President, a Secretary, Treasurer and an Assistant Secretary-Treasurer and such other officers as may be determined by the Board of Directors from time to time. Each Director may hold more than one office as the Board of Directors deems expedient, except that the same person shall not at the same time be both President and Secretary. No officer shall execute, acknowledge, or verify any instrument in more than one capacity.

Section 6.2 Qualifications. All Officers of Corporation must also be directors of the Tucson IDA.

Section 6.3 Appointment and Term. The Officers of the Corporation shall be appointed each year by the Board of Directors at its Annual Meeting. Unless an Officer resigns, dies or is removed prior hereto, he or she shall hold office until his or her-successor has been chosen and qualified.

Section 6.4 Removal. Any Officer appointed by the Board of Directors may be removed by a majority vote of the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby.

Section 6.5 Resignation. Any Officer may resign at any time by giving written notice to the Board of Directors or to the Presidents or Secretaries of the Corporation and the Tucson IDA. Any such resignation shall take effect at the time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.6 President. The President shall be the principal Executive Officer of the Corporation and shall have general supervision over the business of the Corporation and over its several officers, subject, however, to the control of the Board of Directors. The President may sign and execute in the name of the Corporation, deeds, mortgages, bonds, contracts, or other instruments authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other Officer or agent of the Corporation; and in general shall perform all duties incident to the office of the President of the Corporation, and such other duties as from time to time may be assigned by the Board of Directors.

Section 6.7 Vice-President. At the request of the President or in the President's absence, disability or refusal to act, the Vice-President, shall perform all the duties of the President and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-President may also sign and execute, in the name of the Corporation, deeds, mortgages, bonds, contracts or other instruments authorized by the Board of Directors except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or

agent of the association, and shall perform such other duties as from time to time may be assigned by the Board of Directors or the President.

Section 6.8 Secretary. The Secretary shall:

- a. Be the custodian of all records, documents and the seal of the Corporation which are to be kept at the principal office of the Corporation;
- b. Keep at the principal office of the Corporation or such other place as the Board of Directors may order, a book of minutes of all Regular and Special Board of Directors' meetings with the time and place of holding, the notices thereof given, and the names of those present at such meetings;
- c. Ensure that all notices are duly given in accordance with the provisions of these Bylaws and as required by the Open Meeting Laws; and
- d. Affix the Corporate Seal to any instrument requiring it and to attest the same by his or her signature when authorized by the Board of Directors or when such instrument shall first have been signed by the President or a Vice-President or other duly authorized officer or agent.

Section 6.9 Treasurer. The Treasurer, if required so to do by the Board of Directors, shall give a bond for the faithful discharge of his duties in such sum, and with such sureties, as the Board of Directors shall require. The Treasurer shall:

- a. Have charge and custody of, and be responsible for all funds and securities of the Corporation and deposit all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors;
- b. Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including account of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus;
- c. Render a statement of the condition of the finances of the Corporation at any meeting when required by the Board of Directors and a full financial report at the Annual Meeting, or, at the option of the Board of Directors, arrange for an annual audit of the Corporation's financial accounts by independent certified public accountants;
- d. Exhibit at all reasonable times the books of account and records to any Director or officer during business hours at the principal office of the Corporation or where such books and records are kept;
- e. Receive and give receipt for, monies due and payable to the

Corporation from any source whatsoever; and

f. In general, perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned by the Board of Directors.

Section 6.10 Records. There shall be maintained at the principal office of the Corporation all financial books and records of accounts, all minutes of the Board of Directors' meetings of the Corporation, and copies of all other material corporate records, books, documents and contracts. All such books, records, minutes, lists, documents and contracts shall be made available for inspection at any reasonable time during usual business hours by any Director of the Corporation, or duly authorized representative thereof, for any lawful purpose. Upon leaving office, each Officer or agent of the Corporation shall turn over to his or her successor or the President, in good order, such corporate monies, books, records, minutes, lists, documents, contracts or other property of the Corporation as have been in the custody of such Officer or agent during his or her term of office.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 7.1 Indemnification. To the greatest extent permitted by law, the Corporation shall hold harmless and indemnify each of its current and former Directors and Officers (hereinafter each is individually referred to as an "**Indemnitee**") against any and all liability and expenses incurred by Indemnitee in connection with any threatened or actual proceeding or legal action resulting from Indemnitee's service to the Corporation or to another entity at Corporation's request.

Section 7.2 Exclusions.

(a) In order to encourage individuals to serve as Officers and Directors, to the greatest extent permitted by law, it is the Corporation's desire to eliminate any personal liability arising or resulting from service as one of the Corporation's Officers and Directors, including his or her own active or passive negligence; provided, however, no indemnification shall apply if either the majority vote of the Board of Directors or special legal counsel as described in **A.R.S. §10-3855(B)** reasonably determines that an individual's potential liability arises out of any of the Prohibited Acts (defined below).

(b) To the greatest extent permitted by law, the liability to the Corporation's Indemnitees shall be exempt from the liability to the Corporation for money damages for any action taken or any failure to take any action, except that personal liability for any member of the Corporation's officers shall not be limited for any of the following (individually and collectively herein after referred to as the "**Prohibited Acts**"):

(i) Receipt by the Indemnitee of a financial benefit to which the Indemnitee is not entitled.

(ii) An intentional infliction of harm on the Corporation or the members of the Corporation's Board of Directors or Officers.

(iii) Liability for unlawful distributions in violation of Arizona laws governing nonprofit corporations.

(iv) An intentional violation of criminal law.

Section 7.3 Procedure. Indemnitee shall notify Corporation promptly of the threat of commencement of any proceeding or legal action with respect to which Indemnitee intends to seek indemnification. The Corporation shall be entitled to assume Indemnitee's defense with counsel reasonably satisfactory to Indemnitee, unless Indemnitee provides Corporation with an opinion of counsel reasonably concluding that there may be a conflict of interest between Indemnitee and the Corporation in the defense of the proceeding or legal action. If the Corporation assumes the defense, the Corporation shall not be liable to Indemnitee for legal or other expenses subsequently incurred by Indemnitee.

Section 7.4 Expense Advances. The Corporation shall advance expenses, including attorneys' fees, incurred or to be incurred by Indemnitee in defending a proceeding or legal action upon receipt of notice and, if required by law, of an undertaking by or on behalf of Indemnitee to repay all amounts advanced if it is ultimately determined by final judicial decision (after expiration or exhaustion of any appeal rights) that Indemnitee is not entitled to be indemnified for such expenses. In addition, whether Corporation pays for the reasonable expenses or reimburses an Indemnitee, the Indemnitee must first provide Corporation with a written affirmation of the Indemnitee's good faith belief that he/she has met the standard of conduct contain in **A.R.S. §10-3851**, or any successor thereto, or that the proceeding involves conduct for which liability has been eliminated pursuant to **A.R.S. §10-3202(B)(1)**, or any successor thereto.

Section 7.5 Settlement of Claims. Neither Corporation nor Indemnitee will unreasonably withhold consent to any proposed settlement. The Corporation shall not be obligated to indemnify Indemnitee for any amounts incurred in settlement, if settlement is made without the Corporation's prior written consent. The Corporation shall not enter into any settlement that would impose any penalty or limitation on Indemnitee without Indemnitee's prior written consent.

Section 7.6 Insurance and Other Indemnification. The Board of Directors shall have the power to: (i) purchase and maintain, at the Corporation's expenses, insurance on behalf of the Corporation and on behalf of others to the extent that power to do so has been or may be granted by statute; and (ii) give other indemnification to the extent permitted by law.

Section 7.7 Effect of Repeal. In order that Officers and Directors may rely on the indemnification promised by this **Article VII**, no repeal or amendment of this **Article VII** shall reduce the right of Indemnitee to payment of expenses or indemnification for acts of Indemnitee

taken before the date of repeal or amendment.

ARTICLE IX

PROHIBITION AGAINST SHARING IN CORPORATE EARNINGS

None of Corporation's earnings shall at any time inure to any Director, Officer, employee, committee member or other person connected with the Corporation, or any other private individual, provided that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors and other payments and disbursements may be made in furtherance of one or more of its purposes.

ARTICLE X

DISSOLUTION

In the event of dissolution of the Corporation, all funds and assets of the Corporation shall be distributed in accordance with the Corporation's Articles of Incorporation, as amended.

ARTICLE XI

TERM OF EXISTENCE

The period of duration of this Corporation shall be perpetual unless the Directors elect to dissolve the Corporation in accordance with the Articles of Incorporation and these Bylaws and Arizona law.

ARTICLE XII

FISCAL YEAR

The fiscal year of the Corporation shall begin the **July 1st** and end on **June 30th** of each year, unless otherwise modified by resolution of the Board of Directors.

ARTICLE XIII

SIGNATURES

Any action requiring a signature from a Director or Officer shall be deemed effective

upon receipt by the Secretary or the designated Officer if other than the Secretary, and may be delivered personally, by mail, by e-mail or by other form of written transmission (including facsimile transmission).

ARTICLE XIV

AMENDMENT OF BYLAWS

The authority to adopt, repeal and amend these Bylaws is hereby expressly delegated to the Board of Directors and any of these Bylaws may be altered, amended or repealed or any new Bylaws may be adopted solely by the affirmative, majority vote of the Directors then in office at any meeting, provided that notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal; except that **Section 4.11**, **Section 4.9** and **Article V** of these Bylaws may not be altered, amended or repealed.

Notwithstanding the foregoing, no amendment of these Bylaws shall be effective until the amendment shall have been approved by Board of Directors of the Tucson IDA.

ARTICLE XV

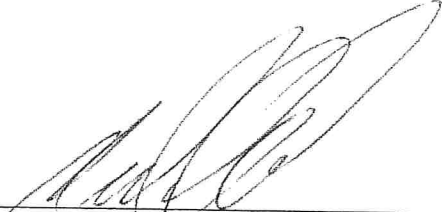
VALIDITY OF BYLAWS

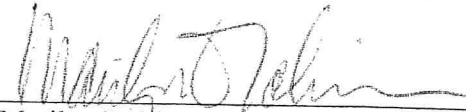
The invalidation of any section of these Bylaws, for whatever reason, shall have no effect on the balance of these Bylaws.

These Amended and Restated Bylaws were duly adopted by a resolution of the Board of Directors of the Corporation on **January 8, 2009**.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Amended and Restated Bylaws have been adopted and executed as of the date first written above.

By: 
Michael Hammond, Vice President

By: 
Marilyn Robinson, Secretary