

**Stark Mountain Foundation, Inc. Restated and Amended Bylaws  
Effective April 15, 2020**

**Article 1: GENERAL PROVISIONS**

Section 1.1. Articles of Incorporation. The name of the Foundation shall be as set forth in the Articles of Incorporation, i.e. “Stark Mountain Foundation, Inc.”. References in these bylaws to the "Articles" shall mean the Foundation's Articles of Incorporation as may be amended from time to time. In the event of a conflict between these bylaws and the Articles, the terms of the Articles shall control.

Section 1.2. Corporate Powers. Except as expressly limited by the Articles or by these bylaws, the Foundation shall have all of the powers of a Vermont nonprofit corporation as provided in the Vermont Nonprofit Corporation Act (11B V.S.A. §1.01, et seq.) (hereinafter “the Act”).

Section 1.3. Office and Location. The registered office shall be located in the State of Vermont at the place specified in the Articles, or elsewhere in Vermont as the Board of Directors may lawfully designate from time to time. The principal office and place of business of the Foundation shall be at such place as the Board shall fix from time to time. The Foundation may have such other offices and places of business within and without the State of Vermont as the Board may fix from time to time, or as the business of the Foundation may require.

Section 1.4. Corporate Seal. The corporate seal of the Foundation shall be circular in form and shall bear the words and figures "Stark Mountain Foundation, Inc.", the word "Vermont" and the year 2000. The form of seal but not the content may be altered by the Board of Directors (hereinafter “the Board”) without amending these Bylaws.

Section 1.5. Headings. The headings of Articles and Sections in these bylaws are as a matter of convenience and for reference purposes, and are not meant to define, limit or describe the scope of these bylaws nor the intent of any provision herein.

Section 1.6. Amendments of Bylaws. The Board of Directors, by a sixty percent (60%) vote of all directors, may alter, amend or repeal these bylaws, and adopt new bylaws, provided that the notice of any regular or special meeting at which such action is to be taken shall either set out the text of the proposed new bylaw, amendment or bylaw to be repealed or amended, or shall summarize the changes to be effected by such adoption, amendment or repeal.

Section 1.7. Non-Discrimination. The Foundation shall not discriminate in conducting its business on the basis of race, color, religion, national origin, sex, sexual orientation, ancestry, age, disability, veteran status, military service, genetic information, gender

identity, or any other category protected under applicable law .

## **Article 2: MEMBERS**

Section 2.1. Members. The Foundation shall not have members.

## **Article 3: DIRECTORS**

Section 3.1. Number. The Foundation shall have no fewer than five (5) directors and no more than fifteen (15) directors.

Section 3.2. Qualification. Any person over the age of majority without regard to race, color, religion, national origin, sex, sexual orientation, ancestry, age, disability, veteran status, military service, genetic information, gender identity, or any other category protected under applicable law shall be qualified to serve as a director of the Foundation.

### Section 3.3 . Terms.

Section 3.3 .1. Terms of Directors. Each director's full term shall be three years and until his or her successor is duly elected and qualified. A director's term may be reduced at the discretion of the board upon the nomination of each director so that, to the extent practicable, the terms of one-third of the directors shall expire each year. All director terms shall run from October 1 through September 30 and efforts shall be made to hold the annual meeting of the Foundation close in time to the end of terms to correspond with the election of qualified successors to directors whose terms have expired.

Section 3.3 .2 . Terms of Successors to the Directors. If a Director loses qualification to serve, dies, resigns or is removed from office before the end of his or her term, a qualified person shall be appointed by the Board to serve as a replacement director for the remainder of the vacated term. Service during said vacated term shall be considered as service for a first term unless said service is for a period of less than one year, in which event the Board may vote not to include said service in the calculation of successive terms for service.

Section 3.4 . Election. Upon the expiration of a director's term, at the Foundation's annual meeting a qualified person shall be elected by the Board to replace each director whose term has expired. The replacement so elected may be the same person whose term has just expired, however, except as otherwise set forth herein, no one may serve as a director for more than three (3) successive three-year terms.

Section 3.5 . Vacancies, Resignation and Removal. Any vacancy in the Board may be filled by a majority of the directors present at any meeting. Any director may resign his or her office at any time by delivering a written resignation to the President or Secretary. Directors may be removed from office in the manner prescribed by the Vermont Nonprofit Corporations Act.

Section 3.6 . Powers. The Board shall manage and control the business, property and affairs of the Foundation. In the management and control of the business, property and affairs of the Foundation, the Board is hereby vested with all of the powers and authority of the Foundation, so far as not inconsistent with the Act or other laws of the State of Vermont, the Articles or these bylaws.

Section 3.7 . Compensation and Expenses. Directors shall not receive any stated salaries or compensation for their services, but by resolution of the Board, a director may be reimbursed for expenses incurred at a regular or special meeting of the Board or a committee thereof, or in service to the Foundation and its purposes. Any such reimbursement or compensation must be consistent with the mandates of the Foundation's Conflict of Interest Policy addressed in Section 8.3 below. Nothing contained herein shall be construed to preclude any director from serving the Foundation in any other capacity and receiving reasonable compensation for such additional duties, provided such service conforms with the Foundation's Conflict of Interest Policy.

Section 3.8 . Gifts; Fund Raising. The directors may accept on behalf of the Foundation any grant, contribution, gift, bequest or devise for the general or a special purpose of the Foundation as well as engage in any fund raising to further its corporate purposes.

#### **Article 4: MEETINGS OF THE BOARD OF DIRECTORS**

Section 4.1. Presiding Officer. The presiding officer shall be the President, elected by the Board, who shall preside over meetings of the Board and shall be responsible for the conduct of Board meetings.

Section 4.2. Annual Meeting. The annual meeting shall be held each calendar year upon notice, as close in time to October 1 of each year as is practicable, and at such time and place as shall be fixed by the Board. Notice of such annual meetings shall be given to all Directors by first class or registered U.S. mail no fewer than 10 days before the meeting date. Said notice may be given electronically provided that each director receiving notice electronically shall acknowledge receipt. Said notice shall set forth any and all matters to be approved by the directors at the annual meeting.

Section 4.3. Regular Meetings. Regular meetings of the Board shall be held at such time and place as shall from time to time be fixed by the Board. Unless otherwise specified by the Board, the President or Vice President shall give electronic notice with return receipt no fewer than five (5) days before the meeting, including in the notice the time, place and agenda.

Section 4.4. Special Meetings. Special meetings of the Board may be called by the President or any three (3) directors. The person(s) calling the special meeting shall fix the time and place thereof. Unless notice of a special meeting is waived by the directors in writing, notice of each special meeting of the Board shall be given by the Secretary or by

a person calling the special meeting. It shall be sufficient notice to a director of a special meeting to send notice by mail at least 72 hours before the meeting addressed to him/her at his/her usual or last known business or residence address, or to give notice to him/her in person or by telephone, facsimile or electronic mail at least 24 hours before the meeting. Any notices sent by electronic mail shall be documented by return receipt. Any business to be transacted, and the purpose thereof, at any regular or special meeting of the Board which requires director approval shall be specified in the notice of the meeting.

Section 4.5. Attendance as Waiver of Notice. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director states at the commencement of the meeting that s/he attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called, noticed or convened.

Section 4.6. Quorum and Vote Required. At any meeting of the Board, a majority of directors then in office shall constitute a quorum for the transaction of business. The directors present at a duly called meeting at which a quorum was present when called may continue to do business and take action at the meeting notwithstanding the withdrawal of enough directors to constitute a quorum. Any meeting may be adjourned from time to time by a majority of the votes cast upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice if the time and place to which it is adjourned is fixed and announced at such meeting. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the vote of a greater number is required by these bylaws or the Act ( e.g. amendment of these Bylaws, change of quorum requirements). No director may vote by proxy at a meeting of the Board.

Section 4.7. Action by Consent. Any action required or permitted to be taken at a meeting of the Board, or of a committee of the Board, may be taken without a meeting if all of the directors, or members of the committee so acting, sign written consents setting forth the action taken or to be taken, at any time before the intended effective date of such action. Such consents shall be filed with the minutes of directors' or relevant committee's meetings, as the case may be, and shall have and may be stated by any officer of the Foundation to have the same effect as a unanimous vote or resolution of the Board or the relevant committee at a legal meeting thereof. Any such action taken by unanimous written consents may be set forth in the form of resolutions or votes. Action by written consent may be accomplished electronically provided the minutes reflect that the communication was documented by return receipts and acknowledgment by facsimile or electronic signature.

Section 4.8. Telephone Meetings. Members of the Board or of any committee designated thereby may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment provided all persons participating in the meeting can hear each other and participate. Participation in a meeting telephonically by any director who does not object at the beginning of such meeting to the holding thereof shall constitute presence in person of said member at such meeting.

## **Article 5: COMMITTEES**

Section 5.1. Executive Committee. The Board may designate an Executive Committee to act on urgent business when it is impractical to assemble the entire Board, except that such committee may not (1) take action affecting basic or long-range policies or the legal status of the Foundation, nor (2) authorize a distribution of Foundation funds for charitable purposes nor (3) alter such a distribution approved by the Board. The committee shall be composed exclusively of directors and shall include at a minimum those directors holding the offices of President, Treasurer and Secretary. The Committee may be convened by the President or by any two members of the committee upon fair and reasonable notice to all of its members and a quorum of at least three of its members. Any action of the Executive Committee shall be reported to the Board at its next meeting. The functioning of the Executive Committee shall not operate to relieve the Board of its legal responsibilities in the oversight of the Foundation.

Section 5.2. Other Committees. The Board may designate standing or special committees and appoint their members. At least one member of each committee shall be a director of the Foundation, but other members need not be a director. A director of the Foundation shall be the chair of each committee. Such committees shall advise the Board or exercise such authority as the Board shall designate.

## **Article 6: OFFICERS**

Section 6.1. Qualification, Designation and Appointment. Each officer of the Foundation shall be a director of the Foundation. The officers of the Foundation shall be a President, a Secretary and a Treasurer. The Board may also elect a Vice-President. The Board shall elect said officers at each annual meeting. All officers are bound to discharge their duties in good faith and in accordance with the standards of conduct set forth in §8.42 of the Act.

Section 6.2. Additional Officers. The Board may elect *or* appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms as designated by the Board and shall exercise such powers and perform such duties as shall be determined by the Board.

Section 6.3. Compensation of Officers. The officers of the Foundation shall serve without compensation, but the Board is authorized to reimburse any one or all directors or officers for expenses incurred for the Foundation.

Section 6.4. Term, Removal and Vacancies. Each officer shall serve a one year term beginning on October 1 of each year or as soon thereafter as the annual meeting for the applicable year is held. Each officer may serve no more than three (3) consecutive terms, except that the Treasurer may serve without limitation provided the Treasurer is re-elected each year to so serve. Any officer may be removed with or without cause at any time by the Board as further set forth in §§8.08-8.10 of the Act. Any vacancy occurring

in any office of the Foundation may be filled by the Board for the remainder of the term.)

Section 6.4. Term, Removal and Vacancies. Each officer shall hold office until the next annual meeting of the Board of Directors, and until his or her successor shall have been appointed and qualified, or until his or her death, resignation or removal. Any officer may be removed with or without cause at any time by the Board as further set forth in §§8.08-8.10 of the Act. Any vacancy occurring in any office of the Foundation may be filled by the Board for the remainder of the term.

Section 6.5. President. The President shall be the chief executive officer of the Foundation, shall have the general and active management of the business of the Foundation, shall chair the meetings of the Foundation, and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Secretary may not serve as the President.

Section 6.6. Vice President. The Vice-President, in the absence of or in the case of the disability of the President, shall perform the duties and exercise the powers of the President and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice President shall report to the President whenever called upon to perform the duties and/or to exercise the powers of the President.

Section 6.7. Secretary. The Secretary shall attend all meetings of the Board of Directors and record all the proceedings of the Board in a book kept for that purpose, and shall give notice of special meetings of the Board. The Secretary shall perform such other duties as may be prescribed by the Board or President, under whose supervision the Secretary shall be. The Secretary shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by the Secretary's signature. The Board may give general authority to any other officer to affix the seal of the Foundation and to attest to the same. The Secretary shall have such other powers and duties as are prescribed by the Board. In case of the absence of or disability of the Secretary, the President shall designate one of the present directors to serve as interim Secretary for the meeting and business at hand. Unless the Board determines otherwise, the Secretary shall act as Registered Agent. The President may not serve as the Secretary.

Section 6.8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Foundation. The Treasurer shall deposit all moneys and other valuable effects in the name and to the credit of the Foundation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Foundation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, at its regular meetings, or when the Board so requires, an account of all transactions as Treasurer and of the financial condition of the Foundation.

## **Article 7: FINANCIAL MATTERS**

Section 7.1. Deposit of Funds. All funds of the Foundation shall be deposited in such banks or trust companies or with such bankers or other depositories as the Board may, from time-to-time, determine by resolution.

Section 7.2. Signing Authority. All checks, drafts, endorsements, contracts, deeds, agreements, notes and evidences of indebtedness of the Foundation shall be signed by such officer or officers or agent or agents of the Foundation and in such manner as the Board may determine by resolution from time to time.

Section 7.3. Fiscal Year. The fiscal year of the Foundation shall end on September 30.

Section 7.4. Borrowing Limitations. Notwithstanding, Section 4.6 of these bylaws, the Foundation may not enter into a "borrowing" transaction as a debtor or pledge assets to secure any borrowing without the affirmative vote of 100% of the directors at a specially called meeting.

Section 7.5. Annual Report. On an annual basis within 90 days of its year-end, the Foundation shall make available to the public its annual financial statements except that donor information shall be held confidential and not made public. The financial statements shall comply with generally accepted accounting procedures.

## **Article 8: INVESTMENT POLICY**

Section 8.1. Management of Investments. The Board shall charge the officers of the Foundation with the administration and management of investments. The officers may utilize independent investment managers, brokers, and advisors as approved by the Board. Managers, brokers, and advisors shall be reviewed at a minimum of every three years by the Board to ensure competitive performance and fees.

Section 8.2. Communication and Reporting. Quarterly evaluations of investments shall be supplied to the Board by the officers, managers or advisors in the form as may be requested by the directors and shall include market valuations, industry segmentation, transaction registers, cash statements and similar reports. The report of fixed-income and equities shall show purchase date, market value and share or unit values at cost and market values.

Section 8.3. Conflict of Interest. It is the policy of the Foundation to avoid conflicts of interest in its operations and in the selection of investment managers or funds. Therefore, directors and officers shall disclose any financial relationship with any manager or advisor being considered. Similarly, the independent consultants shall have no controlling interest with and/or in any entity to which the Foundation has invested, except as otherwise set forth in the Foundation's Conflict of Interest Policy with respect to shareholders in the Mad River Glen Cooperative. Further, the Foundation hereby adopts the Conflict of Interest Policy attached hereto and incorporated herein of even date herewith.

## **Article 9: INDEMNIFICATION**

Section 9.1. Basic Indemnification. Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another foundation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Foundation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding; provided that no indemnification shall be provided for any person with respect to any matter as to which he or she shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Foundation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or a plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his or her action was in the best interests of the Foundation, and/or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

### Section 9.2. Other Indemnification.

Section 9.2.1 . Indemnification. To the extent that a director, officer, employee or agent of the Foundation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.1 above, or in defense of any claim, issue or matter therein, provided he or she shall not have acted unlawfully or in bad faith, he or she shall be indemnified against expenses, including reasonable attorneys' fees, actually and reasonably incurred by him/her in connection therewith. Any such person may enforce the right of indemnification granted by these bylaws by a separate action against the Foundation if an order for indemnification is not entered by a court in the action, suit or proceeding in which s/he was successful on the merits or otherwise.

Section 9.2.2 . Determination as to Indemnification. Any indemnification under Section 9.1 hereof, unless ordered by a court, shall be made by the Foundation only upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because s/he has met the applicable standard of conduct set forth in Section 9.1. Such determination shall be made by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable and a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. Once made by the Board, any such determination may not be revoked by the Board. Upon the making of such determination by the Board, the director, officer, employee or agent may enforce the indemnification against the Foundation by a separate action notwithstanding any



attempted or actual subsequent action by the Board.

Section 9.2.3 . Defense expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board upon receipt of a commitment by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that s/he is entitled to be indemnified by the Foundation as authorized in these bylaws.

Section 9.2.4 . Exclusivity. The indemnification provided in these bylaws for any person shall not be deemed exclusive of any other rights to which such person may be entitled under any other bylaw, agreement, vote of disinterested directors, or by the Act or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding such office, and shall continue as to any such person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 9.3. Insurance. The Board may authorize the purchase and maintenance, at the expense of the Foundation, of insurance on behalf of any person who is or was a director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify him or her against such liability under the provisions of the Act, these bylaws or otherwise.

These Bylaws, as restated, were duly adopted by the Foundation's Board of Directors at a duly called meeting on April 15, 2020.