

# BARCLAY PARK ASSOCIATION

**NONPROFIT**

## **RESTATED ARTICLES OF INCORPORATION**

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**RETURN TO:**

Steve Sowell  
2 Crocker Blvd. Suite 301  
Mount Clemens, MI 48043

These Articles of Incorporation are signed and acknowledged by the incorporator for the purpose of forming a nonprofit corporation under the provisions of Act No. 162 of the Public Acts of Michigan of 1982, as follows: Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Restated Articles of Incorporation.

The following Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the corporation.

### **ARTICLE I**

The name of the Corporation is Barclay Park Association. The identification number originally assigned by the Bureau is 753513. The present identification number assigned by the Bureau is 800833955. The date of filing of the original Articles of Incorporation was November 2, 1998.

### **ARTICLE II**

The purpose or purposes for which the Corporation is formed are as follows:

- (a) To manage and administer the affairs of, and to maintain, Barclay Park, a condominium (hereinafter referred to as the "Condominium") and the Common Elements thereof;
- (b) To levy and collect assessments against and from the members of the Corporation and to use the proceeds thereof for the purposes of the Corporation;
- (c) To carry insurance and to collect and to allocate the proceeds thereof;
- (d) To rebuild improvements after casualty;
- (e) To contract for and employ persons, firms, corporations or other agents to assist in the management, operation, maintenance and administration of the Condominium;

- (f) To acquire, maintain and improve, and to buy, operate, manage, sell, convey, assign, mortgage, or lease any real or personal property (including any Unit in the Condominium and easements, rights-of-way and licenses) on behalf of the Corporation in furtherance of any of the purposes of the Corporation;
- (g) To grant easements, rights-of-entry, rights-of-way, and licenses to, through, over, and with respect to the Association property and/or the Common Elements of the Condominium on behalf of the members of the Corporation in furtherance of any of the purposes of the Corporation and to dedicate to the public any portion of the Common Elements of the Condominium;
- (h) To borrow money and issue evidences of indebtedness in furtherance of any and all of the purposes of the Corporation and to secure the same by mortgage, pledge, or other lien on property owned by the Corporation;
- (i) To make and enforce reasonable rules, regulations, resolutions, and/or policies concerning the use and enjoyment of the Condominium;
- (j) To enforce the provisions of the Master Deed and Bylaws of the Condominium and of these Articles of Incorporation and such Bylaws and rules and regulations of this Corporation as may hereinafter be adopted;
- (k) To sue in all courts and participate in actions and proceedings judicial, administrative, arbitral or otherwise, subject to the express limitations on suits, actions and proceedings as set forth in Article XI of these Articles;
- (l) To do anything required of or permitted to it as administrator of the Condominium by the Condominium Master Deed or Bylaws or by Act No. 59 of the Public Acts of 1978, as amended;
- (m) In general, to enter into any kind of activity; to make and perform any contract and to exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of the Condominium and to the accomplishment of any of the purposes thereof.

### **ARTICLE III**

Said Corporation is organized upon a nonstock basis,

The amount of assets which said Corporation possesses is;

<b>Real Property:</b>	None
<b>Personal Property:</b>	None

Said Corporation is to be financed under the following general plan:

Assessment of Members owning Units in the Condominium

The Corporation is organized on a membership basis.

### **ARTICLE IV**

The address of the initial registered office is:

**27780 Novi Road, Suite 110** ~~2025 W. Long Lake Road, Suite 104~~  
~~Novi Troy, MI 48375098~~

The mailing address of the initial registered office is:

**27780 Novi Road, Suite 110** ~~2025 W. Long Lake Road, Suite 104~~  
~~Novi Troy, MI 48375098~~

The name of the initial resident agent at the registered office is:

**Meadow Management, Inc. Lorne Zalesin**

The resident agent or the registered office, or both, may be changed by filing a statement with the department in accordance with MCL 450.2242.

### **ARTICLE V**

~~The name and business address of the incorporator is:-~~

**Lorne Zalesin**  
**2025 W. Long Lake Road, Suite 104**  
**Troy, MI 48098**

## ARTICLE VI

~~The name and address of the first Board of Directors is as follows:-~~

~~——— **Josh Paeth**  
——— **2025 W. Long Lake Road, Suite 104**  
——— **Troy, MI 48098**~~

## ARTICLE VII

The term of the corporate existence is perpetual.

## ARTICLE VIII

The qualifications of members, the manner of their admission to the Corporation, the termination of membership, and voting by such members shall be as follows:

- (a) Each Co-owner (including the Developer) of a Unit in the Condominium shall be a member of the Corporation, and no other person or entity shall be entitled to membership, except that the first Board of Directors named herein shall be a member of the Corporation until such time as the Condominium is established and any Unit owner qualifies as a member, provided that such director's termination as a member shall not affect her status as director.
- (b) Membership in the Corporation shall be established by the acquisition of fee simple title to a Unit in the Condominium and by recording with the Register of Deeds in the County where the Condominium is located, a Deed or other instrument establishing a change of record title to such Unit and the furnishing of evidence of same satisfactory to the Corporation (except that the Developer of the Condominium shall become a member immediately upon establishment of the Condominium), the new Co-owner thereby becoming a member of the Corporation, and the membership of the prior Co-owner thereby being terminated,
- (c) The share of a member in the funds and assets of the Corporation cannot be assigned, pledged, encumbered or transferred in any manner except as an appurtenance to the member's Unit in the Condominium.
- (d) Voting by members shall be in accordance with the provisions of the Bylaws of this Corporation.

## **ARTICLE VIIX**

Section 1. ~~A volunteer director, as defined in Section 110(2) of Act No. 162 of the Public Acts of 1982, as amended, and/or a volunteer officer are not personally liable to the Corporation or its members for monetary damages for a breach of the director's or officer's fiduciary duty. Under all circumstances except those listed immediately below, no person or entity shall bring or maintain a claim for monetary damages against a director or volunteer officer of the Corporation for a director's or volunteer officer's acts or omissions. Any such claim shall be brought and maintained against the Corporation.~~ However, this provision shall not eliminate or limit the liability of a director or officer for any of the following:

- (a) ~~A breach of the director's or officer's duty of loyalty to the Corporation or its members. Intentional infliction of harm on the Corporation, its shareholders, or members;~~
- (b) ~~Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law. An intentional criminal act;~~
- (c) A violation of Section 551;(1) of Act No. 162 of the Public Acts of 1982, as amended.
- (d) ~~A transaction from which the director or officer derived an improper personal benefit. The amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled;~~
- (e) ~~An act or omission occurring before the effective date of this Amendment. A liability imposed under section 497(a).~~  
~~An act or omission that is grossly negligent.~~

Section 2. The Corporation shall assume, pay for, and undertake all obligations and the liability for any and all acts or omissions of its volunteer directors, and volunteer officers, or other volunteer occurring on or after the effective date of this Amendment if all of the following are met:

- (a) The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
- (b) The volunteer was acting in good faith.
- (c) The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
- (d) The volunteer's conduct was not an intentional tort.
- (e) The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use

of a motor vehicle for which tort liability may be imposed as provided in Section 3135 of the Insurance Code of 1956, Act No. 218 of the Public Acts of 1956, being Section 500.3135 of the Michigan Compiled Laws.

~~Section 3. If, after the adoption of this Article by the Corporation, the Michigan Nonprofit Corporation Act is amended to further limit or eliminate the liability of a volunteer director, volunteer officer, or other volunteer, then a volunteer director, volunteer officer, or other volunteer shall not be liable to the Corporation or its members as provided in the Michigan Nonprofit Corporation Act, as amended.~~

~~Section 4. No amendment, alteration, modification or repeal of this Article IX shall have any effect on the liability of any volunteer director, volunteer officer, or other volunteer of the Corporation with respect to any act or omission of such volunteer director, volunteer officer, or other volunteer occurring prior to such amendment, alteration, modification or repeal.~~

~~Section 5. The invalidity or unenforceability of any provision of this Article shall not affect the validity or enforceability of the remaining provisions of this Article.~~

#### **ARTICLE VIII**

In addition to the provisions of Article VII, the Corporation may indemnify its directors, officers, volunteers, individuals, or persons in the following manner:

(a) Individuals. The Corporation shall indemnify every Director, officer and volunteer of the Association against all expenses and liabilities, including reasonable attorney fees and amounts paid in settlement incurred by or imposed upon the Director, officer or volunteer in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, to which the Director, officer or volunteer may be a party or in which they may become by reason of their being or having been a Director, officer or volunteer of the Corporation, whether or not they are a Director, officer or volunteer at the time such expenses are incurred, if the person acted in good faith and in a manner which they reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was lawful; provided, however, that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been finally adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that a court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses as the court shall deem proper.

(b) Expenses. To the extent that a Director, officer, or volunteer has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 1, or in defense of any claim, issue, or matter therein, and indemnification is granted, they

shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith and in any action, suit or proceeding brought to enforce the indemnification provided for herein.

- (c) Determination of Right to Indemnification.** Except in a situation governed by Section 2, any indemnification under Section 1 (unless ordered by a Court) shall be made by the Corporation only as authorized in the specific case upon determination that indemnification of the Director, officer, or volunteer is proper in the circumstances because they have met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by a majority vote of Directors acting at a meeting at which a quorum consisting of Directors who were not parties to such action, suit, or proceeding is present, or (b) if such a quorum is not obtainable (or even if obtainable), and a majority of disinterested Directors so directs, by independent legal counsel (compensated by the Corporation), in a written opinion, or (c) if such a quorum is not obtainable, then by a majority vote of a committee of Directors who are not parties to the action (such committee shall consist of not less than two (2) disinterested Directors), or (d) by the shareholders or members.
- (d) Advance Payment of Expenses.** Expenses of each person indemnified hereunder incurred in defending a civil, criminal, administrative, or investigative action, suit, or proceeding (including all appeals), or threat thereof, may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board of Directors, whether a disinterested quorum exists or not, upon receipt of an undertaking by or on behalf of the Director, officer, or volunteer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made, but need not be secured.
- (e) Rights Not Exclusive.** The indemnification or advancement of expenses provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled as a matter of law or under these Articles of Incorporation, the Condominium Documents, or any contractual agreement. However, the total amount of expenses for indemnification from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in this Article shall continue as to a person who has ceased to be a Director, officer, or volunteer and shall inure to the benefit of the heirs, executors, and administrators of such a person.
- (f) Directors and Officers Liability Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, or volunteer of the Corporation, or is or was serving at the request of the Corporation as an unpaid, volunteer Director, volunteer officer, or volunteer of another corporation (whether nonprofit or for profit), partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of

his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article or of the Michigan Nonprofit Corporation Act.

To the extent that any provision of this Article VIII conflicts with the provisions of Article VII, the provisions of Article VII shall control.

PROPOSED



## **ARTICLE IX**

Any action which may be taken at a meeting of the ~~members of the~~ Corporation (except for ~~the election or removal of directors voting on questions or proposals where the full question, proposal or choice is not yet known~~) may be taken without a meeting, ~~with or without prior notice,~~ by written ~~consent vote or ballot~~ of the ~~m~~Members ~~or Directors, as the case may be.~~ Written ~~consent votes or ballots may~~shall be solicited in the same manner as provided in the Bylaws for the Corporation for the giving of notice of ~~meetings of members~~Corporation ~~Meetings~~. Such solicitations ~~may~~shall specify:

- (a) The proposed action;
- (b) That the Member or Director can vote for or against any such proposed action;
- (c) The percentage of ~~consent~~approvals necessary to approve the action; and
- (d) The time by which ~~consent~~written votes must be received in order to be counted.

~~The form of written consents shall afford an opportunity to consent (in writing) to each matter and shall provide that, where the member specifies his or her consent, the vote shall be cast in accordance therewith.~~ Approval by written ~~consent vote or ballot~~ shall be constituted by receipt within the time period specified in the ~~solicitation~~written vote or ballot, of a number of ~~written consents~~approvals which equals or exceeds the minimum number of ~~votes~~approvals which would be required for approval if the action were taken at a meeting ~~at which all members entitled to vote were present and voted.~~

## ARTICLE XI

~~Notwithstanding any other provision of these Articles to the contrary, the requirements of this Article XI shall govern the Corporation's commencement and conduct of any civil action except for actions to enforce the Bylaws of the Corporation or to collect delinquent assessments. The requirements of this Article XI will ensure that the members of the Corporation are fully informed regarding the prospects and likely costs of any civil action the Corporation proposes to engage in, as well as the ongoing status of any civil actions actually filed by the Corporation. These requirements are imposed in order to reduce both the cost of litigation and the risk of improvident litigation, and in order to avoid the waste of the Corporation's assets in litigation where reasonable and prudent alternatives to the litigation exist. Each member of the Corporation shall have standing to sue to enforce the requirements of this Article XI. The following procedures and requirements apply to the Corporation's commencement of any civil action other than an action to enforce the Bylaws of the Corporation or to collect delinquent assessments:-~~

- ~~(a) The Corporation's Board of Directors ("Board") shall be responsible in the first instance for recommending to the members that a civil action be filed, and supervising and directing any civil actions that are filed-~~
- ~~(b) Before any attorney is engaged for purposes of filing a civil action on behalf of the Corporation, the Board shall call a special meeting of the members of the Corporation ("litigation evaluation meeting") for the express purpose of evaluating the merits of the proposed civil action. The written notice to the members of the date, time and place of the litigation evaluation meeting shall be sent to all members not less than twenty (20) days before the date of the meeting and shall include the following information copied onto 8 1/2" x 11" paper:-~~
  - ~~(1) A certified resolution of the Board setting forth in detail the concerns of the Board giving rise to the need to file a civil action and further certifying that:
    - ~~(a) it is in the best interests of the Corporation to file a lawsuit;~~
    - ~~(b) that at least one Board member has personally made a good faith effort to negotiate a settlement with the putative defendant(s) on behalf of the Corporation, without success;~~
    - ~~(c) litigation is the only prudent, feasible and reasonable alternative;~~
    - ~~(d) and the Board's proposed attorney for the civil action is of the written opinion that litigation is the Corporation's most reasonable and prudent alternative.~~~~
  - ~~(2) A written summary of the relevant experience of the attorney ("litigation attorney") the Board recommends be retained to represent the Corporation in the proposed civil action, including the following information;~~

- ~~(a) the number of years the litigation attorney has practiced law; and~~
- ~~(b) the name and address of every condominium and homeowner association for which the attorney has filed a civil action in any court, — together with the case number, county and court in which each civil action was filed~~
- ~~(3) The litigation attorney's written estimate of the amount of the Corporation's likely recovery in the proposed lawsuit, net of legal fees, court costs, expert witness fees and all other expenses expected to be incurred in the litigation.~~
- ~~(4) The litigation attorney's written estimate of the cost of the civil action through a trial on the merits of the case ("total estimated cost"). The total estimated cost of the civil action shall include the litigation attorney's expected fees, court costs, expert witness fees, and all other expenses expected to be incurred in the civil action.~~
- ~~(5) The litigation attorney's proposed written fee agreement.~~
- ~~(6) The amount to be specially assessed against each Unit in the Condominium to fund the estimated cost of the civil action both in total and on a monthly per Unit basis, as required by subparagraph (f) of this Article XI.~~
- ~~(7) The litigation attorney's legal theories for recovery of the Association.~~
- ~~(c) If the lawsuit relates to the condition of any of the Common Elements of the Condominium, the Board shall obtain a written independent expert opinion as to reasonable and practical alternative approaches to repairing the problems with the Common Elements, which shall set forth the estimated costs and expected viability of each alternative. In obtaining the independent expert opinion required by the preceding sentence, the Board shall conduct its own investigation as to the qualifications of any expert and shall not retain any expert recommended by the litigation attorney or any other attorney with whom the Board consults. The purpose of the independent expert opinion is to avoid any potential confusion regarding the condition of the Common Elements that might be created by a report prepared as an instrument of advocacy for use in a civil action. The independent expert opinion will ensure that the members of the Corporation have a realistic appraisal of the condition of the Common Elements, the likely cost of repairs to or replacement of the same, and the reasonable and prudent repair and replacement alternatives. The independent expert opinion shall be sent to the members with the written notice of the litigation evaluation meeting.~~
- ~~(d) The Corporation shall have a written fee agreement with the litigation attorney, and any other attorney retained to handle the proposed civil action. The Corporation shall not enter into any fee agreement that is a combination of the retained attorney's hourly rate and a contingent fee arrangement unless the existence of the agreement is disclosed to the members in the text of the Corporation's written notice to the members of the litigation evaluation meeting.~~

- ~~(e) At the litigation evaluation meeting the members shall vote on whether to authorize the Board to proceed with the proposed civil action and whether the matter should be handled by the litigation attorney. The commencement of any civil action by the Corporation (other than a suit to enforce the Bylaws or collect delinquent assessments) shall require the approval of sixty-six and two thirds (66-2/3%) percent of all members in number and in value. Any proxies to be voted at the litigation evaluation meeting must be signed at least seven (7) days prior to the litigation evaluation meeting.~~
- ~~(f) All legal fees incurred in pursuit of any civil action that is subject to this Article XI shall be paid by special assessment of the members of the Corporation ("litigation special assessment"). Notwithstanding anything to the contrary herein, the litigation special assessment shall be approved at the litigation evaluation meeting (or at any subsequent duly called and noticed meeting) by sixty-six and two thirds (66-2/3%) percent of all members in number and in value in the amount of the estimated total cost of the civil action. If the litigation attorney proposed by the Board is not retained, the litigation special assessment shall be in an amount equal to the retained attorney's estimated total cost of the civil action, as estimated by the attorney actually retained by the Corporation. The litigation special assessment shall be apportioned to the members in accordance with their respective percentage of value interests in the Condominium and shall be collected from the members on a monthly basis. The total amount of the litigation special assessment shall be collected monthly over a period not to exceed twenty-four (24) months.~~
- ~~(g) During the course of any civil action authorized by the members pursuant to this Article XI, the retained attorney shall submit a written report ("attorney's written report") to the Board every thirty (30) days setting forth:~~
- ~~(1) The attorney's fees, the fees of any experts retained by the attorney or the Association, and all other costs of the litigation during the thirty (30) day period immediately preceding the date of the attorney's written report ("reporting period");~~
  - ~~(2) All actions taken in the civil action during the reporting period, together with copies of all pleadings, court papers and correspondence filed with the court or sent to opposing counsel during the reporting period;~~
  - ~~(3) A detailed description of all discussions with opposing counsel during the reporting period, written and oral, including, but not limited to, settlement discussions;~~
  - ~~(4) The costs incurred in the civil action through the date of the written report, as compared to the attorney's estimated total cost of the civil action;~~
  - ~~(5) Whether the originally estimated total cost of the civil action remains accurate;~~
- ~~(h) The Board shall meet monthly during the course of any civil action to discuss and review:-~~

(1) the status of the litigation;

(2) the status of settlement efforts, if any;

(3) and the attorney's written report;

(i) If, at any time during the course of a civil action, the Board determines that the originally estimated total cost of the civil action or any revision thereof is inaccurate, the Board shall immediately prepare a revised estimate of the total cost of the civil action. If the revised estimate exceeds the litigation special assessment previously approved by the members, the Board shall call a special meeting of the members to review the status of the litigation, and to allow the members to vote on whether to continue the civil action and increase the litigation special assessment. The meeting shall have the same quorum and voting requirements as a litigation evaluation meeting.

~~The attorneys' fees, court costs, expert witness fees and all other expenses of any civil action subject to this Article XI ("litigation expenses") shall be fully disclosed to members in the Corporation's annual budget. The litigation expenses for each civil action subject to this Article XI shall be listed as a separate line item captioned "litigation expenses" in the Corporation's annual budget.~~

## **ARTICLE XII**

These Articles of Incorporation may only be amended by the consent of sixty-six and two thirds (66-2/3%) percent of all members in number and in value.

Signed this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

These Restated Articles of Incorporation were adopted by the membership of the corporation at a meeting duly called for that purpose by the affirmative vote of the requisite majority of members as stated in the Bylaws for Barclay Park Association.

Dated: \_\_\_\_\_

Barclay Park Association

|  
|  
| \_\_\_\_\_  
| By:

| Its President

| RMM/MKM server/Barclaypark/Articles 10.27.98

PROPOSED