

# **SUNFLOWER VILLAGE HOMES ASSOCIATION**

## **PROPOSED AMENDED AND RESTATED NONPROFIT CORPORATION ARTICLES OF INCORPORATION (Adopted April 29, 2009)**

IT IS HEREBY PROPOSED that the Articles of Incorporation of Sunflower Village Homes Association be amended and restated in their entirety as follows:

The following Amended and Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the Corporation. 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:

### **ARTICLE I**

The name of the Corporation is Sunflower Village Homes Association.

### **ARTICLE II**

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

- (a) To manage and administer the affairs of, to maintain, and to promote the health, safety and welfare of the residents within Sunflower Village Subdivisions Nos. 1 through 11 and Sunflower East Subdivisions Nos. 1 and 2, (hereinafter referred to as the "Subdivisions") and the Common Areas thereof as defined in the Declarations of Covenants and Restrictions, as amended, which shall not be deemed to require the removal of snow and ice from recreational asphalt pathways;
- (b) To levy collect assessments against and from the lot owners in the Subdivisions, 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 Subdivisions and Common Areas;
- (f) To acquire, own, maintain and improve, and to buy, operate, manage, sell, convey, assign, mortgage, or lease any real or personal property (including any lot in the Subdivisions and easements, rights-of-way and licenses) on behalf of the Corporation in furtherance of any of the purposes of the Corporation;
- (g) To acquire, own, hold, improve, build upon, operate and maintain the Common Areas for use for park, recreation and playground purposes, including buildings, structures, personal property and improvements incident thereto.
- (h) To maintain and otherwise manage landscaping, parking areas, walk areas (but not to require snow removal from recreational walking paths) and recreational facilities upon the Common Areas and such public walkways and sidewalks as the Association may deem necessary; to pay all taxes and assessments which may be properly levied or assessed against property acquired by the Association; to repair, maintain, rehabilitate and restore the Common Areas and any improvements located thereon; to file liens upon the Lots in the Subdivisions to secure payment of charges and assessments due to the Association pursuant to the Declarations and to collect, foreclose and otherwise enforce compromise, release, satisfy and discharge of said liens; and to take any action necessary to the filing, maintenance and discharge of said demands, and to do all other acts necessary to the filing, maintenance and discharge of said liens; and to take action necessary to enforce the Declarations, covenants, restrictions, reservations and conditions which at present or in the future affect the Lots and Common Areas in the Subdivisions, either by recorded instrument, By-Laws of the Association, rules and regulations of the Association, or in any other way created.

- (i) 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 Areas 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 Areas of the Subdivisions;
- (j) 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;
- (k) To make and enforce reasonable rules, regulations, resolutions, and/or policies concerning the use and enjoyment of the Subdivisions;
- (l) To sue in all courts and participate in actions and proceedings judicial, administrative, arbitrate or otherwise;
- (m) To do anything required of or permitted to it as administrator of the Subdivisions by the respective Declarations, as amended;
- (n) 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 Subdivisions and to the accomplishment of any of the purposes thereof. To do any and all lawful things and acts which the Association, at any time, and from time to time, shall, at its discretion, deem to be in the best interest of the members of the Association, and to pay all costs and expenses in connection therewith and in connection with any and all the purposes of the Association, and, further, to do any and all lawful things which may be advisable, proper, authorized or permitted to be done by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Subdivisions, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the

exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of the members of the Association, and, further, to do any and all things and exercise all rights and powers permitted to corporations incorporated not for profit under the laws of the State of Michigan.

### **ARTICLE III**

Said Corporation is organized upon a nonstock basis.

The amount of assets which said Corporation possesses is:

Real Property as of 10/10/08: \$865,105.00  
Personal Property as of 10/10/08: \$43,260.00

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

Assessment of Members owning Lots in the Subdivisions.

The Corporation is organized on a membership basis.

### **ARTICLE IV**

The address of the initial registered office is:

**25505 West Twelve Mile Road, Suite 2600  
Southfield, MI 48034-8338**

The mailing address of the initial registered office is:

**25505 West Twelve Mile Road, Suite 2600  
Southfield, MI 48034-8338**

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

Amy Markos  
45800 Hanford Road  
Canton, MI 48187

## **ARTICLE V**

The term of the corporate existence is perpetual.

## **ARTICLE VI**

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 owner of a Lot in the Subdivisions shall be a member of the Corporation, and no other person or entity shall be entitled to membership.
- (b) Membership in the Corporation shall be established by the acquisition of fee simple title to a Lot in the Subdivisions and by recording with the Register of Deeds in the County where the Subdivisions are located, a Deed or other instrument establishing a change of record title to such Lot and the furnishing of evidence of same satisfactory to the Corporation, the new Lot owner thereby becoming a member of the Corporation, and the membership of the prior Lot owner thereby being terminated.
- (c) A land contract vendee shall also be deemed a member of the Association upon the recording of the Land Contract, a Memorandum of Land Contract, or such other evidentiary document. The fee owner and the land contract vendee of the same Lot shall both designate and file with the Association a document designating only one of them as having the authority to designate the voting representative of the Lot on all Association matters. In the absence of such designation, the land contract vendee shall have the right to choose the designated voter. The fee owner and land contract vendee shall each be jointly and severally responsible for Association assessments, compliance with Subdivision documents, and any other Association matters. In the event of a conflict whereby only one party can pragmatically be entitled to a right in regard to the Lot, the fee owner shall have first priority over the land contract vendee. For purposes of this section, any reference to the land contract vendee or the fee owner shall be deemed to

include all such persons or entities as are named with them in such respective title interest.

- (d) 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 Lot in the Subdivision.

(e) Voting by members shall be in accordance with the provisions of the Bylaws of this Corporation. Notwithstanding the above, a member entitled to vote at an election for directors may vote, in person, by proxy, or by electronic transmission as defined by 2008 Act 9, Michigan Nonprofit Corporation Act; MCL 450.106(3).

## **ARTICLE VII**

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. 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.
- (B) Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law.
- (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.
- (E) An act or omission occurring before the effective date of these Articles of Incorporation.
- (F) An act or omission that is grossly negligent.

Section 2. The Corporation assumes the liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer occurring on or after the effective date of these Articles of Incorporation 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.

Section 6. For purposes of this Article, "volunteer director" means a director who does not receive anything of more than nominal value from the corporation for serving as a director other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by a director in his or her capacity as a director. "Nondirector volunteer" or "volunteer officer" means an individual, other than a volunteer director, performing services for a nonprofit corporation who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.

## **ARTICLE VIII**

Any action which may be taken at a meeting of the members of the Corporation (including the election of directors, but not including the removal of directors) may be taken without a meeting, with or without prior notice, by written consent of the members.

Written consents may be solicited in the same manner as provided in the Bylaws for the Corporation for the giving of notice of meetings of members. Such solicitation may specify:

- (a) The percentage of consents necessary to approve the action; and
- (b) The time by which consents 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 shall be constituted by receipt within the time period specified in the solicitation of a number of written consents which equals or exceeds the minimum number of votes 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.

Such a consent may be transmitted electronically, as defined by 2008 Act 9, Michigan Nonprofit Corporation Act, and shall contain information from which it can be determined by the Association that it was duly transmitted by the member, or by a person authorized to act for the member, and it shall include the date on which it was transmitted, which shall be the date on which consent was signed for purposes of the vote. The electronic transmission shall be reproduced in paper form and delivered by hand or by mailing to the Association at its principal office, or to an officer or agent of the Association, in order to be counted.

## **ARTICLE IX**

No contract or other transaction between this corporation and any other corporation, firm, or association shall be subject to cancellation because one or more of the directors or officers of the corporation are interested in or are directors or officers of the other corporation, firm, or association. Any individual director or officer may be a party to or may be interested in any contract or transaction of the corporation. However, the contract or other transaction must be fair and reasonable to the corporation when it is authorized, approved, or ratified, and the individual must disclose the material facts about the relationship or interest to the Board of Directors before it authorizes, approves, or ratifies the contract or transaction by a sufficient vote that does not include the vote of the interested director or officer. Any person who becomes a director or an officer of the corporation is relieved from any liability that might otherwise exist from contracting with the corporation for the benefit of that person or any firm, association, or corporation in which the person is otherwise interested in as stated in this article.

Note: Informational Copy Only (A signed recorded copy is on file in the Office)