

JUL 23 1997

RECEIVED

JUL 22 1997

Administrator  
MI DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
CORPORATION, SECURITIES & LAND DEVELOPMENT BUREAU

**NON-PROFIT**  
**ARTICLES OF INCORPORATION**

MI DEPT. OF CONSUMER & INDUSTRY SERVICES  
CORPORATION, SECURITIES & LAND DEV. BUREAU

These Articles of Incorporation are signed and acknowledged by the Incorporator for the purpose of forming a non-profit Corporation under the provisions of Act No. 162 of the Public Acts of 1982 as follows:

**ARTICLE I**

749-134

The name of the Corporation is The Hills of Waterford Association. ✓

**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 The Hills of Waterford, a condominium (hereinafter called the "Condominium");
- (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 allocate the proceeds thereof;
- (d) To rebuild improvements after casualty;
- (e) To contract for and employ persons, firms, or corporations to assist in management, operation, maintenance, and administration of said Condominium;
- (f) To make and enforce reasonable regulations concerning the use and enjoyment of said Condominium;
- (g) To own, maintain and improve, and to buy, sell, convey, assign, mortgage, or lease (as Landlord or Tenant) any real and personal property, including, but not limited to, any unit in the Condominium or any other real property, whether or not contiguous to the Condominium, for the purpose of providing benefit to the members of the Corporation and in furtherance of any of the purposes of the Corporation;
- (h) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business; to secure the same by mortgage, pledge or other lien;
- (i) To enforce the provisions of the Master Deed and By-Laws of the Condominium and of these Articles of Incorporation and such By-Laws and Rules and Regulations of this Corporation as may hereafter be adopted;

JUL 22 1997

4

- (j) To assert, defend or settle any claims on behalf of the Co-owners in connection with the Common Elements of the Project, subject to the express limitations in suits, actions, and proceedings set forth in the Condominium By-Laws and Article XII hereof;
- (k) To do anything required of or permitted to it as administrator of said Condominium by the Condominium Master Deed or By-Laws or by Act No. 59 of Public Acts. of 1978, as amended, or as may be amended;
- (l) In general, to enter into any kind of activity in connection with the foregoing purposes, 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 said Condominium and to the accomplishment of any of the purposes thereof.

**ARTICLE III**

Location of the first registered office is:

41050 Vincenti Court  
Novi, Michigan 48375

**ARTICLE IV**

The name of the first resident agent is:

Bernard Gliberman

**ARTICLE V**

Said Corporation is organized upon a non-stock membership basis.

The amount of assets which said Corporation possesses is:

Real Property - None  
Personal Property - None

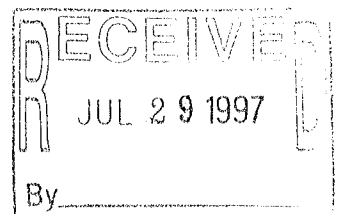
Said Corporation is to be financed under the following general plan:

Assessment of Members

**ARTICLE VI**

The name and place of business of the Incorporator is as follows:

Bernard Gliberman  
41050 Vincenti Court  
Novi, Michigan 48375



## ARTICLE VII

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

Gertruce Zicherman  
41050 Vincenti Court  
Novi, Michigan 48375

## ARTICLE VIII

The term of corporate existence is perpetual.

## ARTICLE IX

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 subscribers hereto shall be members of the Corporation until such time as their membership shall terminate, as hereinafter provided;
- (b) Membership in the Corporation (except with respect to any nonco-owner incorporators, who shall cease to be members upon the qualification for membership of any co-owner) shall be established by 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 his unit in the Condominium;
- (d) Voting by members shall be in accordance with the provisions of the By-Laws of this Corporation.

## ARTICLE X

A volunteer Director of the Corporation is not personally liable to the Corporation or its shareholders or members for monetary damages for a breach of the Director's fiduciary duty. However, the Director's liability is not limited or eliminated for any of the following:

- (a) A breach of the Director's duty of loyalty to the Corporation or its shareholders or members.
- (b) Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law.
- (c) A violation of MCLA 450.2551.
- (d) A transaction from which the Director derived an improper personal benefit.
- (e) An act or omission occurring before the date this document is filed.
- (f) An act or omission that is grossly negligent.

#### ARTICLE XI

The Corporation assumes all liability to any person other than the Corporation, its shareholders, or its members for all acts or omissions of a volunteer Director or committee member occurring on or after the date this document is filed.

#### ARTICLE XII

The requirements of this Article shall govern the Corporation's commencement, defense, and conduct of any legal actions or arbitration except for actions to enforce the By-Laws of the Corporation or collect delinquent assessments. The requirements of this Article will ensure that the members of the Corporation are fully informed regarding the prospects and likely costs of any action the Association proposes to engage in, as well as the ongoing status of any actions actually filed by the Corporation or being defended against 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. The following procedures and requirements apply to the Corporation's commencement of any action other than in action to enforce the By-Laws of the Corporation or collect delinquent assessments. In any action which seeks damages in excess of One Thousand (\$1,000.00) Dollars from the Association and in which the Association intends to spend or does spend in excess of One Thousand (\$1,000.00) Dollars on attorney fees, costs, or settlement, or any combination thereof, the Association shall comply with the following procedures and requirements.

(a) The Association's Board of Directors ("Board") shall be responsible in the first instance for recommending to the members that any action be filed or defended against, and supervising and directing any actions or defenses that are filed.

(b) Before an attorney is engaged for purposes of filing or defending any 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 action. In the event that the Corporation needs to retain an attorney to file a

timely answer or response to any action before there is time to call a litigation evaluation meeting, that retaining shall be conditioned on approval of the members at the meeting as outlined below. 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.

(1) A certified resolution of the Board setting forth in detail the concerns of the Board giving rise to the need to file the suit or defense and further certifying that:

(-a-) it is in the best interests of the Corporation to file a lawsuit or defend against it;

(-b-) that at least one Board member has personally made a good faith effort to negotiate a settlement on behalf of the Corporation, without success;

(-c-) litigation is the only prudent, feasible and reasonable alternative;  
and

(-d-) the Board's proposed attorney for the proceeding 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 litigation, 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 or defended an action in any court, together with the case number, county and court in which each 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, or in the case of defense, the litigation attorney's written estimate of the likely outcome.

(4) The litigation attorney's written estimate of the cost of the action through a trial on the merits of the case ("total estimated cost"). The total estimated cost of the action shall include the litigation attorney's expected fees, court costs, expert witness fees, and all other expenses expected to be incurred in the 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 action both in total and on a monthly per Unit basis, as required by subparagraph (f) of this Article.

(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 any proceeding. 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 the replacement of the same, and the reasonable and prudent repair and replacement alternatives. The independent expert opinion shall be sent to all 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 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 legal proceeding and whether the matter should be handled by the litigation attorney. The commencement of any action or defense by the Corporation (other than a suit to enforce the Condominium By-Laws or collect delinquent assessments), or the retaining of an attorney to defend a claim in excess of One Thousand (\$1,000.00) Dollars in which is reasonably expected to result in expenses in excess of One Thousand (\$1,000.00) Dollars, shall require the approval of two-thirds majority. 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 action that is subject to this Article shall be paid by special assessment of the members of the Corporation ("litigation special assessment"). The litigation special assessment shall be approved at the litigation evaluation meeting (or at any subsequent duly called and noticed meeting) by a majority of all members of the Corporation for the amount of the estimated total cost of the 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 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 the 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 over a period not to exceed twenty-four (24) months.

(g) During the course of any action authorized by the members pursuant to this Article, 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 fee, the fees of any experts retained by the attorney, and all other costs of the litigation during the thirty (30) days period immediately preceding the date of the attorney's written report ("reporting period").

(2) All actions taken in the 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 action through the date of the written report, as compared to the attorney's estimated total cost of the action.

(5) Whether the originally estimated total cost of the action remains accurate.

(h) The Board shall meet monthly during the course of any proceeding to discuss and review:

(1) the status of the litigation;

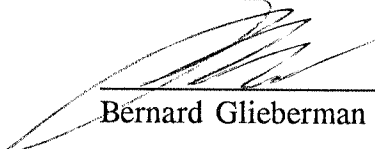
(2) the status of settlement efforts, if any; and

(3) the attorney's written report.

(i) If at any time during the course of a proceeding, the Board determines that the originally estimated total cost of the proceeding or any revisions thereof is inaccurate, the Board shall immediately prepare a revised estimate of the total cost. 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 or not to continue the action and increase the litigation special assessment. The meeting shall have the same quorum and voting requirements as a litigation evaluation meeting.

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

I, the Incorporator, sign my name this 10th day of July, 1997.

  
Bernard Gliberman

Drafted By and Return To:  
**James P. Babcock**, Attorney at Law  
21610 Eleven Mile Road, Suite One  
St. Clair Shores, Michigan 48081  
(810) 445-1660