

ARTICLES OF INCORPORATION

Michigan Department of Consumer and Industry Services

Filing Endorsement

This is to Certify that the ARTICLES OF INCORPORATION – NONPROFIT

for

MORGAN CREEK CONDOMINIUM ASSOCIATION OF CANTON

ID NUMBER: 760565

received by facsimile transmission on January 11, 2000 is hereby endorsed

Filed on January 11, 2000 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 11th day of January, 2000.



, Director

Corporation, Securities and Land Development Bureau

MORGAN CREEK CONDOMINIUM ASSOCIATION OF CANTON

NONPROFIT

ARTICLES OF INCORPORATION

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 Morgan Creek Condominium Association of Canton.

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, Morgan Creek Condominiums, 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:

Real Property: None
Personal Property: 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:

**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 initial resident agent at the registered office is:

John A. Bertin

ARTICLE V

The name and business address of the incorporator is:

**Melvin M. Kaftan
25505 West Twelve Mile Road, Suite 2600
Southfield, MI 48034-8338**

ARTICLE VI

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

**John A. Bertin
25505 West Twelve Mile Road, 2600
Southfield, MI 48034-8338**

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 IX

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.
- (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 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 X

Any action which may be taken at a meeting of the members of the Corporation (except for the election or 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.

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; and
 - (-d-) 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. 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 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 equally 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; and
 - (3) 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

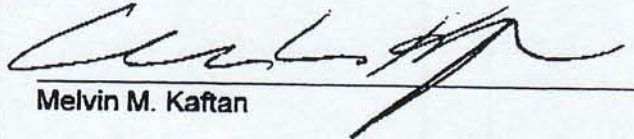
meeting of the members to review the status of the litigation, and to allow the members to vote on whether to continue the civil action and increase the litigation special assessment. The meeting shall have the same quorum and voting requirements as a litigation evaluation meeting.

- (i) 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.

Signed this 10TH day of JANUARY, 2000.


Melvin M. Kaftan

RMM/MKMB/server/d:/MorganCreek/Articles 1.5.2000