

---

---

**BYLAWS**  
**of**  
**BENTON HARBOR PARKS**  
**AND**  
**RECREATION CONSERVANCY**

**Effective August 29, 2013**

**Prepared by:**  
**Miller Canfield Paddock and Stone, PLC**  
**277 South Rose Street, Suite 5000**  
**Kalamazoo, Michigan 49007**  
**269.381.7030**

---

---

## TABLE OF CONTENTS

Page

## TABLE OF CONTENTS

Page

|              |   |    |
|--------------|---|----|
| ARTICLE I    | - OFFICES .....   | 1  |
| Section 1.01 | Resident Agent and Registered Office.....                             | 1  |
| Section 1.02 | Business Offices.....   | 1  |
| ARTICLE II   | - PURPOSE.....  | 1  |
| Section 2.01 | General.....  | 1  |
| ARTICLE III  | - ORGANIZATION.....   | 1  |
| Section 3.01 | Organization.....   | 1  |
| ARTICLE IV   | - BOARD OF DIRECTORS.....   | 1  |
| Section 4.01 | Functions.....  | 1  |
| Section 4.02 | Number, Selection and Term .....                                      | 2  |
| Section 4.03 | Election/Appointment of Directors.....                                | 2  |
| Section 4.04 | Meetings.....   | 4  |
| Section 4.05 | Notice of Meetings.....   | 5  |
| Section 4.06 | Resignation .....   | 6  |
| Section 4.07 | Removal .....   | 5  |
| Section 4.08 | Vacancies .....   | 6  |
| Section 4.09 | Quorum .....  | 6  |
| Section 4.10 | Voting .....  | 6  |
| Section 4.11 | Action by Unanimous Consent.....                                      | 6  |
| Section 4.12 | Compensation of Directors .....                                       | 7  |
| Section 4.13 | Discharge of Duties.....  | 7  |
| Section 4.14 | Directors' Liability for Corporate Actions .....                      | 7  |
| Section 4.15 | Presumption of Director's Concurrence in Absence of Dissent .....     | 7  |
| Section 4.16 | Participation in Meeting by Telephone or Remote<br>Communication..... | 7  |
| Section 4.17 | Minutes of Meetings .....   | 8  |
| ARTICLE V    | - OFFICERS.....   | 8  |
| Section 5.01 | Officers .....  | 8  |
| Section 5.02 | President.....  | 8  |
| Section 5.03 | Vice President .....  | 9  |
| Section 5.04 | Secretary .....   | 9  |
| Section 5.05 | Treasurer .....   | 9  |
| Section 5.06 | Giving of Bond by Officers .....                                      | 9  |
| Section 5.07 | Compensation of Officers .....  | 9  |
| Section 5.08 | Resignations .....  | 10 |
| Section 5.09 | Removal .....   | 10 |

## TABLE OF CONTENTS

|              |   | Page |
|--------------|---|------|
|              | Section 5.10 Vacancies .....  | 10   |
|              | Section 5.11 Discharge of Duties; Reliance on Reports .....                               | 10   |
| ARTICLE VI   | - MEMBERS.....  | 10   |
|              | Section 6.01 Non-voting Members .....   | 10   |
|              | Section 6.02 Member Dues.....   | 10   |
| ARTICLE VII  | - COMMITTEES .....  | 10   |
|              | Section 7.01 General.....   | 10   |
|              | Section 7.02 Executive Committee.....   | 11   |
|              | Section 7.03 Powers.....  | 11   |
|              | Section 7.04 Rules for Committees .....   | 12   |
| ARTICLE VIII | - INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES<br>AND AGENTS .....                   | 12   |
|              | Section 8.01 Indemnification: Claims by Third Parties.....                                | 12   |
|              | Section 8.02 Actions by or in Right of the Corporation .....                              | 12   |
|              | Section 8.03 Expenses .....   | 13   |
|              | Section 8.04 Determination of Indemnification.....  | 13   |
|              | Section 8.05 Advancement of Expenses.....   | 13   |
|              | Section 8.06 Partial Indemnification.....   | 13   |
|              | Section 8.07 Liability Insurance .....  | 13   |
|              | Section 8.08 Severability .....   | 14   |
| ARTICLE IX   | - CONFLICTS OF INTEREST .....   | 14   |
|              | Section 9.01 Provisions Regarding Payment of Compensation and Property<br>Transfers ..... | 14   |
|              | Section 9.02 Conflict of Interest Policy.....   | 14   |
| ARTICLE X    | - FISCAL YEAR.....  | 15   |
|              | Section 10.01 Fiscal Year/Accounting Methods .....  | 15   |
| ARTICLE XI   | - MISCELLANEOUS PROVISIONS .....  | 15   |
|              | Section 11.01 Contracts, Conveyances, Etc.....  | 15   |
|              | Section 11.02 Execution of Instruments .....  | 15   |
|              | Section 11.03 Borrowing .....   | 15   |
|              | Section 11.04 Deposits.....   | 15   |
|              | Section 11.05 Method of Giving Notices .....  | 15   |
|              | Section 11.06 Corporate Seal.....   | 17   |
|              | Section 11.07 Headings and Parenthetical Insertions .....                                 | 17   |
|              | Section 11.08 Conflict With Statute .....   | 17   |
| ARTICLE XII  | - AMENDMENTS AND ADDITIONS.....   | 17   |
|              | Section 12.01 Amendments .....  | 17   |
|              | Section 12.02 Rules, Regulations and Policies.....  | 17   |

**BYLAWS  
OF  
BENTON HARBOR PARKS AND RECREATION CONSERVANCY**  
(A Michigan Nonprofit Corporation)

**ARTICLE I - OFFICES**

**Section 1.01 Resident Agent and Registered Office.** The Resident Agent and Registered Office of the Corporation shall be a person and a location in the State of Michigan stated in the Articles of Incorporation. The Board of Directors may change the Resident Agent and/or Registered Office at any time.

The Board of Directors may authorize the Corporation to qualify to do business in such foreign states as the Board determines are necessary for the Corporation to conduct its affairs.

The Board of Directors may designate the Corporation's resident agent and/or registered office in any State, and may change this at any time. Upon any change in the resident agent or registered office of the Corporation in any State, the President shall cause to be filed in such State an appropriate form containing the name of the new resident agent and/or new address of the registered office and such other information as may be required to accomplish the change.

**Section 1.02 Business Offices.** The Corporation may have business offices at such places as the Board of Directors may determine.

**ARTICLE II - PURPOSE**

**Section 2.01 General.** The purposes of the Corporation are as set forth in Article II of the Articles of Incorporation of the Corporation.

**ARTICLE III - ORGANIZATION**

**Section 3.01 Organization.** The Corporation shall be a non-stock corporation, organized on a directorship basis pursuant to the Michigan Nonprofit Corporation Act, P.A. 162 of 1982, and any amendments thereto ("Act").

**ARTICLE IV - BOARD OF DIRECTORS**

**Section 4.01 Functions.** Except as specifically provided in the Corporation's Articles of Incorporation or these Bylaws, all rights, powers, duties and responsibilities relative to the management and control of the Corporation's property, activities and affairs are vested in the Board of Directors. In addition to the power and authority expressly conferred upon it by these Bylaws and the Articles of Incorporation, the Board of Directors may take any lawful action on behalf of the Corporation which is not by law or by the Articles of Incorporation or by these Bylaws required to be taken by some other party.

The Directors shall have the right to select, hire, supervise and fire a Chief Executive Officer, Executive Director (or similar position) for the Corporation who shall be responsible for the Corporation's day-to-day operations in consultation with the Corporation's officers, including the hiring and termination of employees and agents (if any) to carry out the work of the Corporation, establishing their duties, and performing any duties and functions as are specified by the Board or by any person to whom the board has given authority to supervise and direct this person.

**Section 4.02 Number, Selection and Term.** The Board of Directors shall consist of three (3) groups of Directors: Stakeholder Directors, At-Large Directors and Ex Officio Directors (the Directors from all groups are sometimes individually referred to as a "Director" and collectively referred to as the "Directors" or the "Board of Directors"), as described and appointed or elected pursuant to Section 4.03 below. The number of Directors which shall constitute the Board of Directors shall be the amount appointed and elected pursuant to Section 4.03 below.

All Director positions shall initially be filled by a vote of the incorporators and thereafter shall be filled as provided in Section 4.03 below. In selecting the initial Directors, the incorporators shall appoint those persons whom any Stakeholders have designated to serve as their Stakeholder Directors and those persons whom the incorporators have been informed will serve as Ex Officio Directors, even though this may not be all Stakeholder Directors and all Ex Officio Directors. After the initial Directors have been appointed, any Stakeholder who has not named a person to serve as a Director may appoint a person to serve as a Stakeholder Director and any person holding an Ex Officio Position may assume an Ex Officio Director position.

All Directors, regardless of group, shall have equal rights, with the only differences being those set forth in these Bylaws.

All Directors, except Ex Officio Directors, shall serve three year terms, with the terms of one-third of the Directors expiring each year. To accomplish this, one-third of the initial Stakeholder Directors and one-third of the At-Large Directors shall serve for a one year term; one-third shall serve for a two year term and one-third shall serve for a three year term, with the Incorporators designating which Stakeholder Directors and At-Large Directors will serve terms of one, two or three years. Thereafter as the term of a Stakeholder Director and At-Large Director expires, the person appointed or elected to fill that position shall serve for a three year term. A Stakeholder Director and an At-Large Director may serve an unlimited number of consecutive terms.

An Ex Officio Director shall serve on the Board for so long as he/she holds the position listed in Section 4.03. If a person ceases to hold such a position, regardless of how this occurs or the reason for such action, such person (or his or her designee) shall cease to be an Ex Officio Director.

**Section 4.03 Election/Appointment of Directors.**

A. Stakeholder Directors. Those organizations designated as Stakeholders on Exhibit "A" attached hereto (referred to as a "Stakeholder") shall each have the right to appoint that number

of Directors listed next to that Stakeholder's name ("the Stakeholder Directors"). Each Stakeholder shall notify the Corporation, in writing, of the name and address of each person it is appointing as a Stakeholder Director.

Subject to the provisions of Section 12.01 below, the Board of Directors, by the affirmative vote of 66% (sixty six percent) of the total number of Directors then in office, may add additional organizations as Stakeholders, terminate an organization as a Stakeholder or change the rights of Stakeholders, including the number of Stakeholder Directors that each can appoint. If there is a change in the Stakeholders, a new Exhibit "A" shall be prepared and attached to these Bylaws, however, the failure to complete or attach a new Exhibit "A" shall not alter or affect any decision by the Board of Directors concerning a Stakeholder.

In addition: (i) an organization shall be automatically removed as a Stakeholder if it dissolves or ceases to operate its business for a period of three (3) consecutive months; and (ii) an organization may be terminated as a Stakeholder, by a majority vote of the Board of Directors, if it merges with another entity or changes its official business name.

If an organization is terminated as a Stakeholder, then all Stakeholder Directors appointed by this Stakeholder shall cease to be Directors.

In no event shall the City of Benton Harbor be terminated as a Stakeholder or any change made in the number of Stakeholder Directors that it can appoint without the City's express written consent.

B. Ex Officio Directors. A person who holds any of the following positions (an "Ex Officio Position") shall serve as a Director for so long as the person holds such Ex Officio Position (an "Ex Officio Director"):

Mayor of Benton Harbor  
Superintendent of Benton Harbor Area Schools  
Director of Benton Harbor Community Economic Development Department  
County Commissioner for District 4 of Berrien County Commission  
Chair of Benton Harbor Parks and Recreation Committee  
City Manager for Benton Harbor (or his/her designee)  
Two residents of Benton Harbor appointed by the Benton Harbor City Commission  
Berrien County Sheriff (or his/her designee)  
Benton Harbor City Commissioner Appointee

If these Bylaws permit a person holding an Ex Officio Position to appoint a designee to represent him or her on the Board of Directors, the person holding the Ex Officio Position shall send a written notice to the Corporation advising it of the name of his or her designee. This designee shall serve as the Ex Officio Director until he or she is replaced by the person holding the Ex Officio Position or until the person holding the Ex Officio Position ceases to hold this position, whichever occurs first.

Subject to the provisions of Section 12.01 below, the Board of Directors, by the

affirmative vote of 66% (sixty six percent) of the total number of Directors then in office, may add or eliminate Ex Officio positions.

If an Ex Officio Position is eliminated by the Board, or if the organization which has created this Ex Officio Position eliminates or materially modifies this position, the Ex Officio Director holding this position shall cease to serve on the Board as an Ex Officio Director.

In no event shall the Board of Directors take any action to delete or eliminate an Ex Officio Position or to modify the rights of any Ex Officio Position unless the City of Benton Harbor has given its express written consent.

c. At-Large Directors. The Board of Directors may appoint other persons to serve as Directors (the “At-Large Directors”). At-Large Directors shall be elected by a plurality of the votes cast by the entire Board of Directors. In electing At-Large Directors, the Board shall use its best efforts to find Directors who represent at least one of the following sectors: public (community), private (business), government and/or education/academia.

The Directors may elect more than one person from each sector, and the Directors are not required to elect At-Large Directors from each sector. Not all sectors have to be represented on the Board at one time. In selecting At-Large Directors, the Board shall try to find persons who are familiar with the Benton Harbor area and whose views represent those of other residents of Benton Harbor.

The Board of Directors, by the affirmative vote of 66% (sixty six percent) of the total number of Directors then in office, may increase or decrease the number of At-Large Directors. If the number of At-Large Directors is reduced, the Board as part of its vote to reduce the number of At-Large Directors shall also vote to designate those At-Large Directors whose positions are being eliminated and these persons shall cease to be At-Large Directors.

D. Increase in Number of Directors. If the number of Stakeholder Directors or At-Large Directors is increased, the person appointed or elected to a newly created position shall be given an initial term of office of from one to three years so that the terms of office of approximately one-third of the Stakeholder Directors and At-Large Directors will expire each year.

#### **Section 4.04 Meetings.**

(a) The Board of Directors may set the time and place for regular meetings of the Board as is necessary to conduct the business of the Corporation. The Board shall use its best efforts to meet at least once per quarter, in addition to the annual meeting.

(b) The annual meeting of the Board of Directors of the Corporation shall be held in March of each year or on a date, time and place determined by the Board of Directors. At the annual meeting, the positions of any At-Large Directors whose terms have expired or that are vacant shall be filled and the Board may consider any other business that is properly brought before the meeting. If less than a quorum of Directors attends a meeting, then the matters that were to be considered at such meeting may be

taken up by the Board at any later regular, special or annual meeting or by unanimous written consent.

(c) Special meetings of the Board of Directors may be called by the Secretary of the Corporation upon the request of the President or two (2) of the Directors.

(d) Meetings of the Board of Directors may be held at any place or places that are convenient to the Directors. The Board shall use its best efforts to not schedule a meeting for a holiday.

**Section 4.05 Notice of Meetings.** Unless required by the Act or otherwise provided in these Bylaws, the annual, regular and special meetings of the Board of Directors shall be held pursuant to notice of the time, place and purpose thereof given to each Director in any of the following manners: (a) by notice given personally, either orally or in writing, at least twenty four (24) hours before the meeting; (b) by notice given by speaking directly to the Director orally by telephone at least twenty four (24) hours before the meeting; (c) by electronic transmission (as described in Section 11.05 below) given at least twenty four (24) hours before the meeting; or (d) by written notice sent by mail, which is mailed at least three (3) days before the date of the meeting.

If a purpose of any Director meeting is to vote to amend the Corporation's Articles of Incorporation, then notice of the meeting shall be given to all Directors at least ten (10) days before the meeting and shall be accompanied by a copy of the proposed amendment or a summary of the changes to be effected by the amendment

The Board of Directors may, by resolution, set the date, time and place for regular meetings of the Board, or approve a method for determining when a regular meeting will be held (e.g. 5:30 pm on the first Monday of each month at a designated location). A Director shall have received notice of the regular meeting dates if he or she is present at the meeting at which the resolution approving the meeting dates was adopted, or, if the Director was not present at the meeting and was given a notice pursuant to Section 11.05 informing him or her of the regular meeting dates; in such case, no further notice has to be given to the Director of the date, time and place of any regular meeting. In case the Board shall change the date, time or place of regular meetings, notice of this action shall be promptly given to each Director who shall not have been present at the meeting at which the action was taken, with the notice being given as required for annual meetings of the Board.

If the Board decides that a Director can participate in a meeting by conference call or other remote communication, pursuant to Section 4.15 below, this shall be stated in the notice of the meeting, together with instructions the Director can use to join the meeting by conference call or other remote communication.

Notwithstanding the foregoing, no notice need be given to any person who submits a signed waiver of notice before or after a meeting. Attendance of a Director at a meeting constitutes a waiver of notice of the meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.



**Section 4.06 Resignation.** A Director may resign by giving written notice to the President or Secretary of the Corporation which notice shall be immediately forwarded to the Board of Directors. Unless otherwise specified in the resignation, the resignation shall take effect upon receipt by the President or Secretary and the acceptance of the resignation shall not be necessary to make it effective.

**Section 4.07 Removal.** Any Stakeholder Director may be removed at any time, with or without cause, by the decision of the Stakeholder who appointed such person, and notice of this action shall be given to the Board by the Stakeholder.

Any Stakeholder Director and At-Large Director may be removed at any time, with or without cause, by the affirmative vote of 66% (sixty six percent) of the total number of Directors then in office, excluding the Director who is proposed for removal. The notice of the meeting at which the removal will be considered shall state that a purpose of the meeting is to vote on the removal of a Director who shall be named.

**Section 4.08 Vacancies.** An opening on the Board of Directors resulting from a vacancy or an increase in the number of At-Large Directors shall be filled at any time, at an annual or special meeting of the Board of Directors, by the affirmative vote of a majority of the remaining Directors, though less than a quorum, or by an action by unanimous written consent. A person elected by the Directors to fill a vacancy in an At-Large Director position shall serve for the unexpired portion of the term of the At-Large Director who is being replaced.

An opening on the Board of Directors resulting from a vacancy or an increase in the number of Stakeholders or the number of Stakeholder Directors shall be filled by the Stakeholder who has the right to appoint a Stakeholder Director to fill this position.

An opening on the Board of Directors resulting from a vacancy or an increase in the number of Ex Officio Directors shall be filled by the person who is named to fill the position that is designated to serve as an Ex Officio Director.

**Section 4.09 Quorum.** The presence at a meeting of one third (1/3) of the total number of Directors then in office shall constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the Directors present may reschedule the meeting for a date certain. Notice of the rescheduled meeting shall be given pursuant to the terms of these Bylaws.

**Section 4.10 Voting.** 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 of Directors unless a greater vote is required by law, by the Articles of Incorporation or by these Bylaws. Each Director present shall have one vote. Except for voting by unanimous written consent, pursuant to Section 4.11, Directors must be present in person to vote (including being present by remote communication). No proxy voting is allowed and Directors cannot send persons to act in their place.

**Section 4.11 Action by Unanimous Consent.** Action required or permitted to be taken at a meeting of the Board of Directors or a committee thereof may be taken without a meeting if, before or after the action, all members of the Board of Directors or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the

minutes of the proceedings of the Board of Directors or the committee. The consent has the same effect as a vote of the Board of Directors or the committee for all purposes.

**Section 4.12 Compensation of Directors.** A Director, as such, shall not be compensated for the performance of services for the Corporation, but may, by resolution of the Board of Directors, receive reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by the Director in his or her capacity as a Director. A Director may also be compensated for duties or services he/she performs that beyond the scope of his/her duties as a Director, with the payment being subject to the provisions of Article IX below.

**Section 4.13 Discharge of Duties.** A Director shall discharge the duties of that position in good faith and with that degree of diligence, care and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a Director, when acting in good faith, may rely upon the opinion of counsel for the Corporation, upon the report of an independent appraiser selected with reasonable care by the Board, or upon financial statements of the Corporation represented to the Director as correct by the President or the officer of the Corporation having charge of its books of account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the Corporation.

If a Director is subject to the Uniform Prudent Management of Institutional Funds Act, MCLA 451.921 to 451.931, the Director, in discharging his/her duties under such act shall conform to the standards of this Act.

**Section 4.14 Directors' Liability for Corporate Actions.** In addition to any other liability imposed upon the Directors by the Act or other law, the Directors who vote for, or concur in making a loan to an officer, Director or employee of the Corporation or of a subsidiary thereof contrary to the Act are jointly and severally liable to the Corporation for the benefit of its creditors to the extent of any legally recoverable injury suffered by such persons as a result of the action, but not to exceed the amount unlawfully paid or distributed.

**Section 4.15 Presumption of Director's Concurrence in Absence of Dissent.** A Director who is present at a meeting of the Board of Directors, or a committee thereof of which he or she is a member, at which an action referred to in Section 4.13 of this Article is taken, is presumed to have concurred in that action unless a dissent is entered in the minutes or unless a written dissent to the action is filed with the person acting as secretary of the meeting before or promptly after the adjournment. The right to dissent does not apply to a Director who voted in favor of the action. A Director who is absent from a meeting of the Board of Directors, or a committee thereof of which he or she is a member, at which any such action is taken is presumed to have concurred in the action unless a written dissent is filed with the Secretary within a reasonable time after he/she had knowledge of the action.

**Section 4.16 Participation in Meeting by Telephone or Remote Communication.** Provided the Board approves of using conference telephone or other means of remote communication during a meeting, a member of the Board of Directors or of a committee designated by the Board may participate in a meeting by means of conference telephone or other means of remote communication by means of which all persons participating in the meeting can

communicate with each other. Participation in a meeting pursuant to this Section constitutes presence in person at the meeting.

**Section 4.17 Minutes of Meetings.** Minutes shall be taken for all meetings of the Board of Directors and committees with authority to act on behalf of the Board. The minutes shall document the action taken at the meeting, when it was taken and who made the motions and the decisions that were made and any information required to show how decisions complied with any policies of the Corporation, including the conflict of interest and compensation policies. The person who records such minutes shall use his or her best efforts to prepare written minutes and circulate these to the Board by the later of the following dates: the next meeting of the Board or committee or sixty (60) days after the date of the meeting.

## **ARTICLE V - OFFICERS**

**Section 5.01 Officers.** The Officers of the Corporation shall be a President, a Treasurer and a Secretary. The offices of Vice President and Chairperson are optional. The initial officers shall be elected by the incorporators and they shall serve an initial term that commences with their election and terminates at the annual meeting of the Board of Directors held in 2015. Commencing with the Board of Directors' annual meeting in 2015 and at each annual meeting thereafter, the Officers shall be elected by a vote of the Board of Directors for a term extending until the next annual meeting of the Board of Directors and each shall serve for this term or until his or her resignation or removal, whichever occurs first.

Any officer position, including President, may be held by two persons, who shall be designated as co-officers, such as Co-President, Co-Treasurer, etc. The Officers shall be elected by the Board of Directors at its first meeting and at each annual meeting thereafter. The Board of Directors of the Corporation may from time to time elect or appoint other Officers including Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board may deem advisable, and such Officers shall have such authority, and shall perform such duties as from time to time may be prescribed by the Board of Directors. Any two or more offices, except that of President and Secretary, may be held by the same person. In addition to the powers and duties of the Officers of the Corporation as set forth in these Bylaws, the Officers shall have such authority and shall perform such duties as from time to time may be determined by the Board of Directors. No Officer shall execute, acknowledge or verify any instrument in more than one capacity if the instrument is required by law or the Articles of Incorporation or Bylaws to be executed, acknowledged or verified by two (2) or more Officers.

**Section 5.02 President.** The President shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Board of Directors. Unless otherwise provided by resolution of the Board of Directors, the President shall have the power and authority, on behalf of the Board of Directors, to perform all acts, execute and deliver all documents, contracts, instruments, papers and certificates of every conceivable kind and character and take all steps that the President may deem necessary or desirable to effectuate the actions and policies of the Board. The President shall also perform such other duties and

functions as shall be assigned to him or her from time to time by the Board of Directors. He or she shall be, ex officio, a member of all standing committees.

**Section 5.03 Vice President.** The position of Vice President is optional and is not required. The Board of Directors may create one or more Vice President positions and elect persons to fill these positions. A Vice President shall have such powers and perform such duties as shall from time to time be assigned by these Bylaws or by the Board of Directors. In the event the President is absent, unavailable or no longer in office, then the Vice President shall perform the duties and exercise the powers of the President (if there is more than one Vice President, then the Vice President designated by the Board to perform the duties of the President shall serve in place of the President); however, the Vice President shall not terminate or change the duties of any employees, change any committee appointments, or undertake any other material action normally performed by the President unless the Board approves or unless the Board officially elects the Vice President as President.

**Section 5.04 Secretary.** The Secretary shall give, or cause to be given, notice of all meetings of the Board, and all other notices required by law and these Bylaws. The Secretary shall have the responsibility for maintaining the official minutes and records of the Corporation, except such financial records that are the responsibility of the Treasurer, which shall at all times remain the property of the Corporation and be open to inspection by any Officer. The Secretary shall perform such other duties as may be assigned by the President or the Board. Unless otherwise directed by the Board or by the President, the Secretary may utilize the services of the staff of the Corporation when performing these duties, including the appointment of an Assistant Secretary.

**Section 5.05 Treasurer.** The Treasurer shall have the responsibility for the financial records of the Corporation, which shall at all times remain the property of the Corporation and be open to inspection by any Officer. The Treasurer shall be responsible for the receipt, custody and disbursement of the Corporation's funds, under procedures, rules and orders established by the Board. The Treasurer shall report the financial condition of the Corporation at meetings of the Board and such other reports as may be directed by the Board or President. The report presented at the annual meeting shall set forth in appropriate detail: the assets and liabilities, including relevant trust funds, of the Corporation for the fiscal year ending prior to the annual meeting; the principal changes in assets and liabilities, including trust fund monies, incurred during that fiscal year; the revenues of the Corporation for that fiscal year, including receipts restricted to any particular purpose; the expenses and other disbursements for that fiscal year; and any other information which the Treasurer, or Board may so direct. A copy of the report, or an abstract, shall be included in the minutes of the meeting.

**Section 5.06 Giving of Bond by Officers.** All Officers of the Corporation, if required to do so by the Board of Directors, shall furnish bonds to the Corporation for the faithful performance of their duties, in such penalties and with such conditions and security, as the Board shall require. The Corporation shall assume the cost of providing any bond required hereunder.

**Section 5.07 Compensation of Officers.** No Officer of the Corporation shall be compensated for the performance of services for the Corporation, but may, by resolution of the

Board of Directors, be reimbursed for actual, reasonable and necessary expenses incurred in his or her capacity as an Officer.

**Section 5.08 Resignations.** Any Officer may resign at any time by giving written notice to the Board of Directors or to the President of the Corporation. Any such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 5.09 Removal.** Any of the Officers designated in Section 5.01 of this Article V may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation will be served thereby, by the vote of a majority of the total number of Directors.

**Section 5.10 Vacancies.** If there is a vacancy in any Officer position, the vacancy may be filled by the Board of Directors. Any person elected to fill a vacancy shall serve until the next election of Officers by the Directors and shall exercise the full power and authority of the Officer position to which he/she is elected.

**Section 5.11 Discharge of Duties; Reliance on Reports.** An Officer shall discharge his or her duties as an officer, and shall be entitled to rely on reports, etc., in the same manner as specified for a Director in Section 4.12.

## **ARTICLE VI - MEMBERS**

**Section 6.01 Non-voting Members.** The Corporation may have honorary members, if approved by the Board of Directors. All members shall meet such requirements for membership as are established by the Board of Directors, from time to time. A person shall be a member for such term as is established by the Board of Directors.

No member of the Corporation shall have any right to vote on any matter involving the Corporation, nor shall any member have any interest in any of the Corporation's assets. A member shall not have the right to file a claim against the Corporation seeking to compel the Corporation or the Board of Directors to take certain action, or refrain from taking certain action. A member shall also not have any right to file any suit in any court seeking to have the Corporation dissolved or requesting any other relief or remedies from the Corporation or any of its Officers or Directors.

**Section 6.02 Member Dues.** The Board of Directors may, from time to time, establish reasonable annual membership dues to be paid by all Members as a condition for becoming and remaining a member. For purposes of dues payment, members may be divided into classes, with members in different classes paying different dues.

## **ARTICLE VII - COMMITTEES**

**Section 7.01 General.** The Board of Directors may designate standing committees with such duties and powers as it may provide in order to carry out the programs and purposes of the Corporation. Special committees may be appointed by the President, with the consent of the Board of Directors. Any Special Committee shall be dissolved as soon as it has fulfilled its

functions. The President, with the consent of the Board of Directors, shall designate the persons to serve on each committee and to serve as Chairperson of the committee. Membership on committees is open to all persons, Directors and non-Directors. Each committee shall make such reports of its activities to the Board of Directors as the Board may request.

**Section 7.02 Executive Committee.** There is hereby established an Executive Committee comprised of the following persons, who shall be *ex officio* members of the Executive Committee: the President/Co-Presidents of the Corporation; the Director appointed by the Boys and Girls Club; the Director appointed by the Rotary Club of Benton Harbor-Sunrise; the Director of the Benton Harbor Community Economic Development Department; and the Mayor of Benton Harbor. In addition, the Board of Directors may appoint up to four (4) additional Directors to serve on the Executive Committee, with each serving for terms established by the Board.

At all meetings of the Executive Committee, a majority of the members of the committee shall constitute a quorum and the vote by a majority of the members present at any Executive Committee meeting at which there is a quorum present shall be the act of the Executive Committee. The President/Co-Presidents of the Corporation shall be the Chairperson of the Executive Committee. For purposes of quorum and voting, if there are Co-Presidents each Co-President shall be counted separately for quorum and each shall be entitled to vote separately.

The Executive Committee may also act by unanimous written consent, as provided in Section 4.11 above.

Subject to the limitations on its powers set forth in Section 7.03 below and by law, the Executive Committee shall have and may exercise all of the powers of the Board of Directors and may act to the same extent as the Board of Directors in the management of the business and affairs of Corporation between meetings of the Board. The Executive Committee may set dates for regular meetings and may also hold special meetings at the request of the President/Co-Presidents or any three members of the committee. Notice of meetings shall be given as described in Section 4.05. The Executive Committee shall keep regular minutes of its proceedings and report to the Board at the next ensuing meeting of the Board.

**Section 7.03 Powers.** Any committee shall exercise such powers and perform such duties as are stated in these Bylaws or as the Board of Directors may, from time to time authorize, including any or all powers and authority of the Board in the management and affairs of the Corporation; however, no committee shall have power or authority to:

- (a) Amend the Articles of Incorporation.
- (b) Adopt an agreement of merger or consolidation.
- (c) Amend the Bylaws of the Corporation.
- (d) Fill vacancies in the Board.
- (e) Fix compensation of the Directors for serving on the Board or on a committee.

(f) Take any other action prohibited by law, the Articles of Incorporation or these Bylaws.

**Section 7.04 Rules for Committees.** The Board of Directors may adopt rules regarding the conduct of committees and their meetings, including rules for the calling of meetings, quorum requirements and voting. To the extent it is not inconsistent with the rules adopted by the Board of Directors, each committee may establish its own rules to govern the conduct of its activities.

## **ARTICLE VIII - INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS**

**Section 8.01 Indemnification: Claims by Third Parties.** The Corporation shall, to the fullest extent permitted by law, indemnify in full any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a Director, Officer, employee, nondirector volunteer or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she 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 the conduct was unlawful.

**Section 8.02 Actions by or in Right of the Corporation.** The Corporation shall, to the fullest extent permitted by law, indemnify in full any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a Director, Officer, employee, nondirector volunteer or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the Corporation unless and only to the extent that the court in which the action or

suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses which the court considers proper.

**Section 8.03 Expenses.** To the extent that a Director, Officer, employee, nondirector volunteer or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 8.01 and 8.02 of this Article or in defense of any claim, issue or matter in the action, suit or proceeding, the Corporation shall indemnify such person against expenses (including actual and reasonable attorneys' fees incurred in connection with the action, suit or proceeding and in any action suit or proceeding brought to enforce the mandatory indemnification provided herein.

**Section 8.04 Determination of Indemnification.** As a condition precedent to any indemnification under Sections 8.01 and 8.02 of this Article, the Board of Directors of the Corporation shall first make a determination that indemnification of the Director, Officer, employee, nondirector volunteer or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 8.01 and 8.02. Such determination shall be made in any of the following ways: (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such quorum of the Board is not obtainable, then by a majority vote of a committee of directors who are not parties to the action, with the committee consisting of at least two (2) disinterested directors; or (iii) by independent legal counsel in a written opinion.

**Section 8.05 Advancement of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding described in Sections 8.01 or 8.02 above may be paid by the Corporation in advance of the final disposition of the action, suit, or proceeding, if approved by the Board of Directors, in its complete discretion, and to the extent that the Board may approve, upon receipt of an undertaking by or on behalf of the Indemnitee to repay the expenses if it is ultimately determined that the Indemnitee is not entitled to be indemnified by the Corporation. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made and may be evidenced by a promissory note if required by the Board. The Corporation may require such security, guarantees, bonds or other assurances, as the Board deems advisable to secure the undertaking to repay the expenses advanced by the Corporation.

**Section 8.06 Partial Indemnification.** If an Indemnitee seeks indemnification under Section 8.01 or 8.02 for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount thereof, the Corporation may, if approved by the Board of Directors, in its complete discretion, and to the extent that the Board may approve, indemnify the Indemnitee for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the Indemnitee is entitled to be indemnified.

**Section 8.07 Liability Insurance.** The Corporation shall purchase and maintain general liability insurance against risks normally arising from the conduct of the Corporation's business and insurance (including insurance issued by an affiliated insurer and insurance for which premiums may be adjusted retroactively, in whole or in part, based upon claims experience, or similar arrangements and may also create a trust fund or other form of funded arrangement) on behalf of any person who is or was a Director, officer, employee or agent of the



Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, business corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of the Act, as amended.

**Section 8.08 Severability.** Each and every paragraph, sentence, term and provision of this Article shall be considered severable in that, in the event a court finds any paragraph, sentence, term or provision to be invalid or unenforceable, the validity and enforceability, operation, or effect of the remaining paragraphs, sentences, terms, or provisions shall not be affected, and this Article shall be construed in all respects as if the invalid or unenforceable matter had been omitted.

## **ARTICLE IX - CONFLICTS OF INTEREST**

**Section 9.01 Provisions Regarding Payment of Compensation and Property Transfers.** Any contract or other transaction between the Corporation and one or more of its Directors or other person who is a Disqualified Person, as defined in Section 4958 of the Internal Revenue Code of 1986 (the "Code") and the Regulations promulgated thereunder (herein a "Disqualified Person"), or between the Corporation and a domestic or foreign corporation, domestic or foreign business corporation, firm or association of any type or kind, in which one or more Disqualified Persons are directors, or are otherwise interested, must not constitute an excess benefit transaction pursuant to Section 4958 of the Code and the Regulations promulgated thereunder, and any such contract or transaction shall comply with the requirements of Section 4958 and its Regulations. Any economic benefit that is provided to a Disqualified Person for the performance of services shall be documented with written substantiation that is contemporaneous with the transfer of the economic benefit.

To the extent feasible, the Corporation shall attempt to meet the requirements established in the Regulations for Section 4958 to qualify a payment or transfer of property involving a Disqualified Person for the rebuttable presumption that such payment or transfer is not an excess benefit transaction.

**Section 9.02 Conflict of Interest Policy.** The Board may approve a Conflicts of Interest Policy that establishes policies and procedures for determining when a Director, Officer or other person involved with the Corporation has a conflict of interest and which specifies procedures for reviewing, voting upon and performing any contract or transaction with such an interested person or with an entity in which such person has an interest. The policies and procedures approved by the Board may be stricter than those set forth in the Act or in these Bylaws.

## **ARTICLE X - FISCAL YEAR**

**Section 10.01 Fiscal Year/Accounting Methods.** The fiscal year of the Corporation shall be determined by the Board of Directors. The Board shall also determine the particular accounting methods and principles to be followed by the Corporation.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

**Section 11.01 Contracts, Conveyances, Etc.** Unless otherwise directed by the Board of Directors, all conveyances, contracts and instruments of transfer and assignment shall be specifically approved by the Board of Directors and shall be executed on behalf of the Corporation by such Officers or agents as may be specifically authorized by the Board of Directors.

**Section 11.02 Execution of Instruments.** Unless otherwise designated by the Board of Directors, all Corporation instruments and documents including, but not limited to, checks, drafts, bills of exchange, acceptances, notes or other obligations or orders for the payment of money shall be signed by such Officers of the Corporation as from time to time are designated by resolution of the Board of Directors. The Board of Directors may also require that checks or drafts be signed by two (2) or more persons.

**Section 11.03 Borrowing.** No loans and no renewals of any loans shall be contracted on behalf of the Corporation except as authorized by the Board of Directors of the Corporation. When authorized to do so, any Officer or agent of the Corporation may effect loans and advances for the Corporation from any bank, trust company or other institution or from any firm, Corporation or individual, and for such loans and advances may make, execute and deliver promissory notes or other evidences of indebtedness and liabilities of the Corporation. When authorized to do so, any Officer or agent of the Corporation may pledge, hypothecate or transfer, as security for the payment of any and all loans, advances, indebtedness and liabilities of the Corporation any and all stocks, securities and other personal property at any time held by the Corporation and to that end may endorse, assign and deliver the same. The authority contained in this Section 11.03 shall be express and confined to specific instances.

**Section 11.04 Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation shall be endorsed, assigned and delivered by such person or persons and in such manner as may from time to time be designated by the Board of Directors.

**Section 11.05 Method of Giving Notices.** Any notice required by statute or by these Bylaws to be given by the Corporation to the Directors, Officers or other person entitled to receive notice (a "Recipient"), unless otherwise provided herein or in any statute, shall be given by any of the following methods: personal delivery; telephone; mail; or electronic transmission.

The Corporation may select the method(s) of notice that it wishes to use in any instance. Any notice given pursuant to Section 4.05 above, shall also comply with the terms of that Section.

The Corporation may send and receive notice using any of the methods permitted by these Bylaws. It is not required to use a specific type of notice, even if requested by the person who is sending or receiving the notice. The Corporation may use more than one method of notice in any instance.

When a notice or communication is required or permitted by these Bylaws to be given by mail, it shall be mailed, except as otherwise provided in these Bylaws or the Act, to the Recipient at his or her last known address. The notice or communication is given when deposited, with proper postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be by first class mail except where otherwise provided in the Act.

Notice by telephone shall be deemed given when it is told directly to the Recipient; it shall not be sufficient to leave notice on an answering machine or with a family member of the Recipient.

For purposes of these Bylaws, the term “electronic transmission” shall be defined to mean any form of communication that meets all of the following:

- (a) It does not directly involve the physical transmission of paper;
- (b) It creates a record that may be retained, retrieved and reviewed by the Recipient; and
- (c) It may be directly reproduced in paper form by such recipient through an automated process.

This includes, without limitation, notice given by facsimile telecommunication and electronic mail and other methods approved for use by the Board of Directors.

When a notice or communication is permitted by the Act to be given by electronic transmission, the Corporation may send notice using such means of electronic transmission as it selects and may send it to any electronic address or telephone number that is registered to the Recipient, except as provided below. The notice or communication is given when electronically transmitted to the Recipient at an electronic address or telephone number registered to the Recipient. If a person notifies the Corporation in writing that he or she does not want to receive notice by electronic transmission, then the Corporation shall use another form of notice when sending notices to this person. If a person notifies the Corporation in writing that he or she wants to receive notice only pursuant to certain a type(s) of electronic transmission or only wants electronic transmissions sent to certain electronic addresses or telephone numbers, the Corporation shall comply with this request, provided that the Corporation is not required to use a method of electronic transmission that has not been approved for use by the Board of Directors.

An affidavit of the Secretary or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the giving of such notice by the form stated in the affidavit.

The Corporation may select those forms of electronic transmission that it wishes to utilize for sending and receiving notices and other communications. The Corporation may also rescind, modify or limit the use of any method of electronic transmission for sending and receiving notices. A Director and any other person entitled to send or receive a notice or communication is limited to sending and receiving notice and other communications to and from the Corporation only through those forms of electronic transmission approved by the Board of Directors. A Director or other person may not require that the Corporation use a form of electronic transmission that the Board of Directors has not elected to use.

**Section 11.06 Corporate Seal.** The Corporation shall have the right to adopt a corporate seal.

**Section 11.07 Headings and Parenthetical Insertions.** The Article and Section headings included in these Bylaws have been used solely for convenience and shall in no event act as or be used in conjunction with the interpretation of these Bylaws.

**Section 11.08 Conflict With Statute.** In the event any Article or Section of these Bylaws shall conflict with the Michigan Non-Profit Corporation Act, the Act shall control.

## **ARTICLE XII - AMENDMENTS AND ADDITIONS**

**Section 12.01 Amendments.** These Bylaws may be altered or amended by the affirmative vote of 66% (sixty six percent) of all Directors then in office, provided that if the proposed amendment will be presented for a vote at a meeting of the Board, then written notice containing a copy of the proposed amendment or describing the substance of the proposed amendment shall be sent to each Director of the Corporation at least ten (10) days in advance of the date of meeting, unless such notice is waived by all the Directors. Any amendment shall be effective when approved by the Directors.

The City of Benton Harbor must give its express written consent to any amendment to the Articles of Incorporation or these Bylaws that will: (a) reduce or change the Stakeholder Directors that can be appointed by the City of Benton Harbor or reduce or change the Ex Officio Directors who are employees or officials of the City of Benton Harbor or County of Berrien, or (b) restrict or reduce the rights of any Stakeholder Director appointed by the City of Benton Harbor or appointed by persons associated with the City of Benton Harbor or County of Berrien or of any Ex Officio Director who is an employee, officer or official of the City of Benton Harbor or County of Berrien. If the City of Benton Harbor does not consent to such amendment, then it shall not be approved.

**Section 12.02 Rules, Regulations and Policies.** The Directors may adopt additional rules, regulations and policies, general or specific, for the conduct of meetings, and additional rules, regulations and policies, general or specific, for the conduct of the affairs of the Corporation provided, however, no such additional rule, regulation or policy shall be inconsistent with or in contravention of any provision of the Articles of Incorporation or these Bylaws.

I certify that the foregoing Bylaws were adopted by the Corporation on the 29 day of August, 2013.

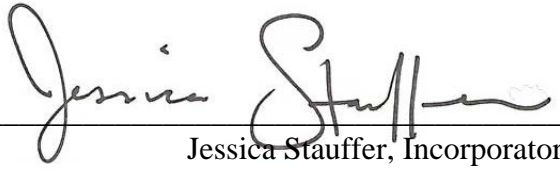
  
Jessica Stauffer, Incorporator

EXHIBIT "A"

STAKEHOLDERS

| <u>Organization</u>                               | <u>Number of Directors</u> |  |
|---|----------------------------|--|
| Abonmarche  | One                        |  |
| Benton Harbor City Commission                     | One                        |  |
| Benton Harbor High School –<br>Student Appointee* | One                        |  |
| Benton Harbor Public Schools<br>Athletic Director | One                        |  |
| Benton Harbor-St. Joseph YMCA                     | One                        |  |
| Berrien County Association of<br>Churches         | One                        |  |
| Berrien County Health Dept.                       | One                        |  |
| Boys and Girls Club of Benton<br>Harbor           | One                        |  |
| Boy Scouts of America                             | One                        |  |
| Chemical Bank                                     | One                        |  |
| Cornerstone Alliance                              | One                        |  |
| Fifth Third Bank                                  | One                        |  |
| First Church of God                               | One                        |  |
| Indiana Michigan Power                            | One                        |  |
| JumpStart   | One                        |  |
| Lakeland Regional Hospital                        | One                        |  |
| Lead the Way Foundation                           | One                        |  |
| NAACP, Benton Harbor chapter                      | One                        |  |

|  |     |  |
|--|-----|--|
|  |     |  |
| Overflow Christian Community Development Association | One |  |
| Renaissance Athletic Club                            | One |  |
| Rotary Club-Sunrise, Benton Harbor                   | One |  |
| Southwest Michigan Planning Commission               | One |  |
| Whirlpool  | One |  |

\*This appointment will be made by the Principal of the High School, or by an agent of the Benton Harbor Area Schools.

21282747.5\007666-00024