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STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

CORPORATIONS, SECURITIES COMMERCIAL LICENSING BUREAU

LANSING, MICHIGAN

# ARTICLES OF INCORPORATION

OF

# KALAMAZOO FOUNDATION FOR EXCELLENCE

(A Michigan Nonprofit Corporation)

Acting pursuant to MCL 117.4o of the Home Rule City Act (P.A. 1909, No. 279, §4o), the City Commission of the City of Kalamazoo, Michigan (the "City Commission"), by Resolution No. 17-xx, adopted at its regular meeting of August 21~~7~~, 2017, has authorized the formation of Kalamazoo Foundation for Excellence (the "Corporation") and has designated the incorporators, signing below, to execute these Articles of Incorporation to incorporate the Corporation as a nonprofit corporation under the Michigan Nonprofit Corporation Act, MCL 450.2101 *et. seq.* as amended (the "MNCA") subject to the following provisions:

## ARTICLE I

The name of the Corporation is: Kalamazoo Foundation for Excellence.

## ARTICLE II

A. The purposes for which the Corporation is organized are:

1. To be organized, and at all times to be operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the City of Kalamazoo, Michigan (the "City of Kalamazoo;" sometimes referred to as the "City"), a governmental unit described in Sections 170(b)(1)(A)(v) and 170(c)(1) of the Internal Revenue Code of 1986 (the "Code").

2. The Corporation shall only provide support to the City of Kalamazoo and shall not provide support of any kind, direct or indirect, to any other person, business, entity, corporation (nonprofit or profit) or organization. This shall not prevent the City of Kalamazoo from using funds it receives from the Corporation to make grants to third parties if the City Commission determines that such grants will further those priorities and objectives set forth in subsection (b) below.

B. To conduct the following activities in support of the City of Kalamazoo:

1. To solicit and receive contributions, grants and donations of cash, property and other items.

2. To create a fund into which will be deposited contributions and donations (both great and small), grants, and other revenues received by the Corporation and from this fund to annually pay a grant or grants directly to the City of Kalamazoo of such amounts as is consistent with the terms of (a) any written agreement among the City of Kalamazoo, the Corporation, and the initial major donors to the Corporation, including a Memorandum of Understanding, dated October 24, 2016 by, between and among the City of Kalamazoo, William D. Johnston and William U. Parfet, and (b) any gift instruments under which donors have or will make donations to the Corporation.

3. To receive, invest, manage, and administer the fund from which the Corporation will pay the grant(s) to the City described in subsection (b)(ii) above.

4. To buy, own, sell, manage, invest, receive, administer, mortgage, pledge and lease real estate, personal property, and other assets.

5. To hire or engage, consistent with its Bylaws, any employees, agents and/or volunteers to conduct any and all such activities and to exercise any and all such powers as are necessary to the achievement of the foregoing and in furtherance of the purposes of the Corporation set forth herein.

C. The funds paid to the City by the Corporation may be used by the City Commission, in its discretion, for any of the following purposes consistent with its adopted budget:

1. To accomplish priorities established, from time to time, by the City Commission to set the course for the City of Kalamazoo's future direction, including, but not limited to, the following priorities (a) create long-term fiscal stability/sustainability given new realities; (b) build a high performance organizational culture by engaging the workforce; (c) create a shared vision/future direction using intentional community engagement; (d) continue to provide exceptional "core" municipal services; and (e) foster collective action to reduce unacceptable poverty-especially among children.

2. To provide budget stability to the City of Kalamazoo resulting from the City's reduction of the *ad valorem* tax rate on real and personal property located in the City and the loss or reduction in payments by the State to the City.

3. To provide for aspirational projects which the City of Kalamazoo wishes to undertake, based on the recommendations of the City Manager and approval of the City Commission, after receiving resident and stakeholder input, including the input derived from current and future visioning processes such as Imagine Kalamazoo 2025, that are intended to develop a shared vision for the Kalamazoo community, create its future direction and identify the resources needed to advance and achieve those ongoing

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visions. The aspirational projects may include, but are not limited to (a) develop and commit resources to address generational poverty, promote youth development and remove barriers to employment opportunities for youth, under-employed and unemployed individuals, and persons seeking re-entry to the Kalamazoo community; (b) address capital and human infrastructure improvement and/or maintenance needs as identified by ongoing studies and by the City of Kalamazoo's designated Capital Improvement Program; and (c) develop and implement neighborhood improvement efforts and projects which reimagine and reinvest public spaces to attract and connect people.

4. To perform any of the following activities in furtherance of and in support for those purposes listed above:

a. At the request of the City Commission and within any limits established by the City Commission, to work with the City Manager to explore budgetary savings that may be realized by shared service delivery with regional governmental units, educational institutions, and private partners.

b. At the request of the City Commission and within any limits established by the City Commission, to work with the City Manager to develop best practices and measures intended to show the impact of grants made by the Corporation on the efforts and initiatives of the City to achieve the priorities established from time to time by the City Commission, with the assistance of the Corporation for the future direction of the City of Kalamazoo.

Unless the City Commission gives its prior written consent, the Corporation shall not engage in any activity other than those described in this Article.

D. The Corporation shall be responsive to the needs of the City of Kalamazoo. This requires that the officers and Directors of the Corporation maintain a close and continuous working relationship with the City Commission. To satisfy this requirement, the City Commission shall have a significant voice in the investment policies of the Corporation, the timing of the distribution of funds by the Corporation to the City, the manner in which the Corporation makes funds available to the City and in otherwise directing the use of the income and assets of the Corporation; provided, however, that such funds may be awarded upon a demonstration by the City through its budgeting process that such distribution of funds is consistent with the goals and needs of the City, as reflected by these Articles. The City Commission may appoint City employees and agents to work with and to obtain such information from the Corporation as the City Commission believes it may need in order to provide the City Commission with the significant voice required by this Section.

The provisions of this Article II, D are modeled after the Responsiveness Test established by the Internal Revenue Service in Treasury Regulation 1.509(a)-4(i)(3) and the proposed Regulations thereunder. These Treasury Regulations and their interpretations by the Internal Revenue Service and the courts shall be used to interpret the terms of this Article II and establish the relationship that must exist between the City and the Corporation.

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E. The Corporation shall make the rights, privileges, and activities of its programs as well as services, employment, and volunteer participation available to persons regardless of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital or family status, physical or mental disability, sexual orientation or gender identity or any other status that is protected by the State of Michigan or federal law or by ordinance adopted by the City Commission for the City of Kalamazoo.

F. The Corporation is organized exclusively to perform those charitable, religious, educational, and scientific purposes permitted under Section 501(c)(3) of the Code or corresponding provision of any future federal tax code, including the making of gifts and contributions to the City of Kalamazoo that are made exclusively for public purposes.

Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activity not permitted to be carried on: (1) by an organization which is described in Section 501(c)(3) of the Code and which is exempt from federal income tax under Code Section 501(a) or (2) by an organization, contributions to which are deductible under Code Section 170(c)(2).

G. The Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or against any candidate for public office.

H. No substantial part of the activities of the Corporation shall be in attempt to influence legislation or the approval or defeat of a ballot proposal.

I. The Directors of the Corporation and the Corporation as an institution shall not knowingly support any organization whose purpose or activities are terrorist in nature or subversive to the national security of the United States of America or its populace.

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## ARTICLE III

A. The Corporation is organized upon a nonstock basis.

B. The assets which the Corporation possess are:

Real Property — None

Personal Property — None

C. The Corporation is organized on a Directorship basis.

The City of Kalamazoo shall nominate all Directors to serve on the Corporation's Board of Directors, as described in the Corporation's Bylaws, as these may be amended from time to time.

D. The Corporation is intended to have a perpetual existence.

## ARTICLE IV

Until the Corporation is recognized as a tax exempt organization by the Internal Revenue Service, the Incorporators shall constitute the Board of Directors of the Corporation. Upon such recognition by the Internal Revenue Service, and within sixty (60) days of receipt of the actual written notice from the Internal Revenue Service of such tax-exempt status, a regularly elected Board of Directors shall be constituted in the manner set forth in these Articles of Incorporation and the Bylaws of the Corporation.

The Board of Directors shall then consist of fifteen ~~thirteen~~ (15~~3~~) members. The number of Directors may be increased or decreased only with the concurrence of the Michigan Attorney General Charitable Trust division or its successor.

The Directors serving on the first fifteen (15) member Board of Directors shall be elected by those persons who signed the Corporation's Articles of Incorporation (the "Incorporators") from those persons whom the City Commission has nominated to fill these positions using the procedure set forth below. Thereafter all Director positions, except those of the *Ex officio* Directors, shall be filled by vote of the Board of Directors following nomination by the City Commission.

A. **City Directors**. The City Directors consist of (1) the Mayor of the City of Kalamazoo and the City Manager of the City of Kalamazoo (these positions are referred to as "*Ex o~~O~~fficio* Positions," and the persons holding these *Ex o~~O~~fficio* Positions are referred to as "*Ex officio* Directors") who shall have full voting and participatory rights as Directors, (2) two (2) persons who are current Commissioners on the City Commission (the Commissioners who are elected to the Board are referred to as the "Commission Directors"), and (3) one person nominated and elected by the City Commission who shall be chosen from the Kalamazoo community, who shall not be directly connected to any of the Stakeholder Groups or their members (the "At-Large City Director"), nor be an employee or elected official of the City.

For the first ~~thirteen~~ fifteen (15~~3~~) member Board of Directors, upon the incorporation of the Corporation, the City Commission shall provide the Incorporators with the names of the *Ex offico* Directors, the Commission Directors and the At-Large City Director and the initial term of office for the Commission Directors and the At-Large City Director. The Incorporators shall elect those persons as part of the first ~~thirteen~~ fifteen (15~~3~~) member Board of Directors to the terms designated for each.

As the initial terms of office for the Commission Directors and the At-Large City Director expire or as positions held by Commission Directors or the At-Large City Director become vacant or are about to become vacant, all future appointments to these positions shall be made by the City Commission. The City Commission shall nominate people to be considered to fill the position(s) of Commission Director and/or At-Large City Director and shall nominate persons to fill any vacant positions.

B. **Stakeholder Directors**. The Board of Directors shall consist of ten ~~eight~~ (10~~8~~) positions reserved for Stakeholder Directors. The City Commission shall nominate the Stakeholder Directors using the following procedure:

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1. Each Stakeholder Director shall represent one of the eight groups/sectors. (each group is herein referred to as a "Stakeholder Group"). Each Stakeholder Group shall be composed of individuals, organizations and businesses that play important roles in the City of Kalamazoo. It is the intent of the Corporation that the Stakeholder Directors be of current relevance to the City of Kalamazoo and be primarily the product of local leadership and control. From time to time, the Board may recommend to the City Commission the restructuring and identification of Stakeholder Groups to reflect this intent.

2. Governance Facilitator shall have, among other things, the following duties.

a. Governance Facilitator and First Election. The Incorporators shall contract with a third-party entity, such as the Kalamazoo Community Foundation, to act as a Governance Facilitator which Governance Facilitator shall be responsible for the coordination, identification, and selection of Stakeholders to be recommended to the City Commission for nomination to the first fifteen (15) member Board of Directors and election by the Incorporators.

b. Governance Facilitator and Subsequent Elections. Thereafter the Board shall contract with a Governance Facilitator to convene each Stakeholder Group for which there will be a vacancy at least 60 days prior to the Corporation's Annual Meeting, or as otherwise provided in these Articles, for the purpose of caucusing to reach consensus on the representatives whom the Governance Facilitator shall present to the City Commission as recommended candidates at least 30 days prior to the Annual Meeting of the Corporation, to nominate Directors.

~~a.~~c. Governance Facilitator; Scope of Work The Governance Facilitator shall conduct the Stakeholder recommendation process to achieve diversity across sectors, diverse perspectives, and abilities to conduct the duties of the Board.

~~The Kalamazoo Community Foundation (as used herein, "Kalamazoo Community Foundation" includes any successor organization) shall be responsible for coordination, identification, and selection of Stakeholders to be nominated to the Board of Directors of the Corporation for election as Directors. Members comprising each Stakeholder Group shall be convened by the Kalamazoo Community Foundation at least 60 days prior to the Corporation's Annual Meeting, or as otherwise provided in these Articles, for the purpose of caucusing to reach consensus on the representatives whom the Kalamazoo Community Foundation shall present to the City Commission as recommended candidates at least 30 days prior to the Annual Meeting of the Corporation, to elect Directors.~~

3. In turn, the City Commission shall make the formal nomination from those recommended representatives of each Stakeholder Group constituency to the Board of Directors for election pursuant to the Articles of Incorporation or Bylaws.

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The City Commission shall review the candidates' qualifications and shall formally nominate them to serve as Stakeholder Directors on the Board of Directors. The City Commission may vote to reject any recommended candidate, in which case the Governance Facilitator~~Kalamazoo Community Foundation~~ shall propose a new candidate for the City Commission to review and to nominate as a Stakeholder Director.

4. For the first fifteen ~~thirteen~~ (15~~3~~) member Board of Directors, using the procedure described above, the names of the persons selected to be the City Directors and Stakeholder Directors shall be communicated to the Incorporators together with the initial term of office for each Stakeholder Director, and the Incorporators shall elect these persons as the initial City Directors and Stakeholder Directors for designated staggered terms. After the initial fifteen ~~thirteen~~ (15~~3~~) member Board of Directors has been elected by the Incorporators, all future elections of Stakeholder Directors shall be made as described above.

5. If a Stakeholder Director's term of office as a Director is about to expire or if the Director's position held by a Stakeholder Director is vacant or about to become vacant, the Stakeholder Group that nominates persons to this Director position shall be convened by the Governance Facilitator~~Kalamazoo Community Foundation~~. The nominee can be the person who is currently serving as a Stakeholder Director, provided, however, that this person is not barred from being reelected and serving an additional term, as described in Article IV D hereinafter.

6. The Governance Facilitator shall ~~Each Stakeholder Group may~~ prepare and adopt a procedure for the selection~~ing~~ of prospective Stakeholder ~~its~~ nominees. ~~and submit this to the Kalamazoo Community Foundation~~. If a Stakeholder Group fails to nominate a candidate for a Stakeholder Director position, then the Governance Facilitator~~Kalamazoo Community Foundation~~ may propose a nominee to fill the Stakeholder Director position.

7. Initially the Stakeholder Directors, for the purpose of the Articles of I~~i~~ncorporation and Bylaws, shall include representation from the following community constituencies:

a. Affinity Organizations Stakeholder. The stakeholder representing local affinity organizations as may be identified from time to time by the City Commission, shall be drawn from a group of persons representing nonprofit organizations whose mission or purpose as stated in its Articles of Incorporation is to advocate for and/or provide supportive services to local families and individuals; provided, however, the representative shall not include a person from any of the other Stakeholder Groups as herein identified.

b. Arts Community Stakeholder. The stakeholder from the local arts community shall be drawn from a local nonprofit art, music or performing arts organization.

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c. Business/Banking Stakeholder. The stakeholder representing the business and banking community shall be a respected business person whose principal place of business is located in the City of Kalamazoo. Preference shall be given to someone involved in banking and financial institutions that have a significant corporate presence in the City of Kalamazoo, which may include national banks, state chartered banks, state chartered trust banks, and credit unions.

d. Education Stakeholder. The education stakeholder shall be drawn from local educational institutions including, but not limited to, Kalamazoo Public Schools, Kalamazoo Valley Community College, Kalamazoo College, Western Michigan University (including the Stryker School of Medicine and Cooley Law School), and other private educational institutions as may be identified from time to time by the City Commission.

e. Faith-Based Organizations Stakeholder. The faith-based organizations stakeholder shall include local ministers or laypersons from local religious institutions, churches, mosques, synagogues, and such other faith-based providers of religious and social services as may be identified from time to time by the City Commission.

f. Healthcare Stakeholder. The healthcare stakeholder shall be drawn from representatives of Borgess Hospital Corporation, Bronson Methodist Hospital, and other major providers of healthcare services operating within the City of Kalamazoo as may be identified from time to time by the City Commission.

g. Housing Sector Stakeholder. The housing sector stakeholder shall be drawn from nonprofit and for-profit entities whose core function or purpose is the provision of affordable housing.

h. Neighborhood Stakeholder. Th~~e~~ree neighborhood stakeholders shall be ~~a~~ persons living in ~~one~~ three ~~of the~~ neighborhoods in the City of Kalamazoo with an organized neighborhood association. Best efforts shall be made to seek stakeholders from various neighborhoods on a revolving basis, with priority given to those neighborhoods where at least 51% of households have incomes at or below 80% of the area median income. No neighborhood shall have more than one representative on the Board at any time.

8. It is the intent of the Corporation that the Stakeholder Directors be of current relevance to the City of Kalamazoo and be primarily the product of local leadership and control. From time to time the Board may recommend to the City Commission, without need of amending this Article, the restructuring and identification of Stakeholder Groups to reflect this intent.

C. **Qualifications**. At least nine (9) members of the Board of ~~A majority of all~~ Directors shall be residents of the City of Kalamazoo.

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A City Director shall be a registered elector of the City of Kalamazoo.

A Stakeholder Director shall be a resident of the City of Kalamazoo or an employee, Officer, Director, or executive of a Stakeholder business or entity. No person may serve as a City Director or Stakeholder Director if he or she could cause the Corporation to be determined to be a private foundation pursuant to Internal Revenue Code Section 501(c)(3), ~~or~~ corresponding provisions of any future Code, its related provisions and Regulations. No person may serve on the Board who is in default to the City of Kalamazoo.

D. **Terms of Office**. Those City Directors who are *Ex officio* Directors shall serve on the Board of Directors for as long as they hold the position that makes them *Ex officio* Directors. This may result in an *Ex officio* Director serving on the Board of Directors for an indeterminate period of time. If a person ceases to hold a position that allows him or her to be an *Ex officio* Director (regardless of how this occurs or the reason for such action), such person shall immediately cease to be an *Ex officio* Director and shall cease to serve on the Board of Directors. When this person's replacement is chosen or elected this replacement shall assume the *Ex officio* Director position held by his/her predecessor.

Each Commissioner elected as a Commission Director shall serve a term established by the City Commission, but which shall not be longer than such Commissioner's current term of office as a Commissioner. If a person ceases to be a City Commissioner, either through expiration of his or her term of office as a Commissioner or otherwise, this person shall also cease to be a Commission Director and this person's position as Commission Director shall become vacant and the City Commission shall appoint a Commissioner to serve as Commission Director. If a Commissioner who previously served as a Commission Director is reelected to the City Commission, he or she may be reelected to the Board of Directors as a Commission Director. There is no limit on the length of time that a Commission Director can serve on the Board; provided, however, the Commission may adopt a resolution to limit the length of time that a Commissioner can serve on the Board of Directors.

Those persons elected as Stakeholder Directors and as the At-Large City Director (the Stakeholder Directors and At-Large City Director are collectively referred to as the "General Directors" and individually as a "General Director") shall each serve on the Board for a three (3) year term with the terms of one-third of the General Directors expiring each year. To accomplish this, one-third of the initial General 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 City of Kalamazoo, acting through the City Commission, designating which of the initial General Directors will serve terms of one, two or three years. As the terms of the General Directors expire, those persons elected to fill these positions shall be elected for three (3) year terms. The City Commission, using the procedure set forth in Article IV B, shall nominate to elect and/or appoint General Directors to fill the positions that are vacated or about to become vacant.

If, at the end of a General Director's scheduled term of office, the City Commission has not nominated a candidate to fill this Director's position, either by renomination of the current General Director (if the General Director can be reelected and is not subject to term limits as provided herein) or by nomination of a new person recommended by the Governance

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FacilitatorKalamazoo Community Foundation to serve in this position, the General Director shall continue to serve until the Board of Directors votes to fill this position.

At the recommendation of the City Commission, the Board of Directors may elect persons to serve as General Directors, with their terms of office to begin on a date that may be several weeks or months following the date of the election. For example, the City Commission may recommend in November to elect General Directors whose term of office will commence in the following January.

A General Director may serve two (2) consecutive three year terms. Except as provided herein, after a General Director has served two (2) consecutive three year terms, this General Director must wait one year before he/she can be reelected or reappointed as a General Director. If a General Director serves two (2) consecutive full terms, but one of these terms is less than three (3) years, then this General Director may be reelected for a third consecutive term of three (3) years and then must wait one year before he/she can be reelected or reappointed as a General Director.

## ARTICLE V

The Corporation is to be financed by gifts, grants, contributions, donations, dues, investment income and revenues, earnings, and fees from its activities.

## ARTICLE VI

A. The address and the mailing address of the initial registered office is:

c/o City Attorney's Office
241 West South Street
Kalamazoo, MI 49007

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

Clyde J. Robinson, Esq.

## ARTICLE VII

The names and addresses of the Incorporators are as follows:

| Name | Residence or Business Address |
|---|---|
| Bobby J. Hopewell, Mayor<br>City of Kalamazoo | 241 West South Street<br>Kalamazoo, MI 49007 |
| James K. Ritsema, City Manager<br>City of Kalamazoo | 241 West South Street<br>Kalamazoo, MI 49007 |

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The above-named Incorporators have been authorized to execute these Articles of Incorporation by Resolution No. 17-xx adopted by the City Commission of the City of Kalamazoo in regular session on August 21~~7~~, 2017, acting pursuant to MCL 117.4o of the Home Rule City Act (P.A. 1909, No. 279, §4o).

## ARTICLE VIII

No part of the net earnings of the Corporation shall be distributed to, or inure to the benefit of, any Director or Officer of the Corporation, any member of the City Commission of the City of Kalamazoo, any Stakeholder or any contributor, member or individual as prohibited by Code Section 501(c)(3), except that the Corporation may pay reasonable compensation for services rendered and make reasonable payments in furtherance of the purposes set forth in Article II hereof.

## ARTICLE IX

A. To the fullest extent permitted under the MNCA as the same presently exists or may hereafter be amended, a director and a volunteer officer of the Corporation shall not be personally liable to the Corporation or its members for money damages for any action taken or any failure to take any action as a director or volunteer officer, except liability for any of the following:

1. The amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled.

2. Intentional infliction of harm on the Corporation or its members.

3. A violation of Section 551 of the MNCA.

4. An intentional criminal act.

5. A liability imposed under Section 497(a) of the MNCA.

B. To the fullest extent permitted under Section 209(1)(d) of the MNCA, as the same currently exists or may hereafter be amended, the Corporation assumes all liability to any person other than the Corporation or its members for all acts or omissions of a volunteer director occurring on or after the date on which this Article IX becomes effective in accordance with the pertinent provisions of the MNCA, incurred in the good faith performance of the volunteer director's duties as such. Pursuant to Section 541(6) of the MNCA, as the same presently exists or may hereafter be amended, a claim for monetary damages for a breach of a volunteer director's duty to any person other than the Corporation or its members shall not be brought or maintained against the volunteer director, but such a claim shall be brought or maintained instead against the Corporation, which shall be liable for any breach of the volunteer director's duty, except as provided herein.

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C. In addition to the Corporation's assumption of liability pursuant to subsection B above, to the fullest extent permitted under Section 209(1)(e) of the MNCA, as the same currently exists or may hereafter be amended, the Corporation assumes the liability for all acts or omissions of each volunteer director, each volunteer officer or any other volunteer occurring on or after the date that this Article IX becomes effective in accordance with the pertinent provisions of the MNCA if all of the following are met:

1. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.

2. The volunteer was acting in good faith.

3. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.

4. The volunteer's conduct was not an intentional tort.

5. 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, 1956 PA 218, MCL 500.3135.

Pursuant to Section 556 of the MNCA, as the same currently exists or may hereafter be amended, a claim for monetary damages for a volunteer director, volunteer officer or other volunteer's acts or omissions shall not be brought or maintained against a volunteer director, volunteer officer or other volunteer. The claim shall be brought and maintained against the Corporation.

D. The terms "volunteer director" and "volunteer" shall have the same definitions as set forth in the MNCA, as the same currently exists or may hereafter be amended.

The term "volunteer director" is defined in the MNCA to mean a director who does not receive anything of more than nominal value from the Corporation for serving as a volunteer director other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by the volunteer director in his or her capacity as a volunteer director.

The term "volunteer" is defined in the MNCA to mean an individual who performs services for a corporation, other than services as a volunteer director, who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.

Any repeal, amendment or other modification of this Article IX shall not adversely affect any right or protection of a director, officer or other volunteer of the Corporation existing at the time of such repeal, amendment or other modification. If the MNCA is amended, after this Article IX becomes effective, then the liability of directors, officers and other volunteers shall be eliminated or limited to the fullest extent permitted by the MNCA as so amended.

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## ARTICLE X

In the event of the dissolution of the Corporation, after the Corporation has paid or made provision for the payment of the Corporation's liabilities, all of the Corporation's assets, real and personal, shall be distributed to an organization or organizations as the Board of Directors may select, with the concurrence of the Michigan Attorney General's Charitable Trust Division or its successor, which organization or organizations are described in Section 501(c)(3) of the Code, as exempt from federal income tax under Section 501(a) of the Code or corresponding provisions of any subsequent federal income tax laws and are organized, and at all times to be operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the City of Kalamazoo.

Any such assets not so disposed of, for whatever reason, shall be disposed of by order of the Circuit Court for the County of Kalamazoo to such organization or organizations, as said Court shall determine, which are described in Section 501(c)(3) of the Code, as exempt from federal income tax under Section 501(a) of the Code or corresponding provisions of any subsequent federal income tax laws and are organized, and at all times to be operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the City of Kalamazoo. If the Court is not able to find a qualifying organization, the assets shall be distributed to the Kalamazoo Community Foundation to be used by it exclusively for a public purpose in the City of Kalamazoo.

## ARTICLE XI

In the event that the Corporation is determined to be a "private foundation," as that term is defined in Section 509(a) of the Code, then for the purpose of complying with the requirements of Section 508(e) of the Code, the Corporation shall:

A. Distribute such part of its income and such part of its capital as may be required by law for each taxable year at such time and in such manner as not cause the Corporation to become subject to the tax on undistributed income imposed by Section 4942 of the Code as it exists today or as it may be later modified.

B. Not engage in any act of self-dealing as defined in Section 4941 of the Code.

C. Not retain any excess business holdings as defined in Section 4943 of the Code.

D. Not make any investments in such manner as to subject it to tax under Section 4944 of the Code.

E. Not make any taxable expenditure as defined in Section 4945 of the Code.

## ARTICLE XII

These Articles of Incorporation, as they now exist and as they may be further amended, upon unanimous vote of the Board of Directors and the concurrence of the City Commission and the Michigan Attorney General's Charitable Trust Division or its successor. This reservation of powers to the City Commission is granted pursuant to MCL 450.2209(f) and is intended to limit

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the discretion or powers of the Corporation's Board of Directors on those specific matters which are to be decided by the City Commission or on which the City Commission has the power to act.

IN WITNESS WHEREOF, the undersigned, the Incorporators of the above-named Corporation, have signed these Articles of Incorporation on the day _____of _____, 2017.

BY:_____
Bobby J. Hopewell, Mayor
Incorporator

BY:_____
James K. Ritsema, City Manager
Incorporator

After filing return to:

Clyde J. Robinson, Esq.
c/o David M. Thoms, Esq.
Warner Norcross & Judd LLP
401 East Michigan Avenue
Suite 200
Kalamazoo, MI 49007

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