

# **Michaywé Owners Association Bylaws**

**20<sup>th</sup> Amended & Restated**

**Approved by the MOA Membership on June 22, 2019**

These amended and restated Bylaws for the Michaywé Owners Association are made as of **June 22, 2019**, that being the date of an election by the Michaywé Owners Association (MOA) Membership, approving by a majority vote a certain “Michaywé Owners Association Bylaws, dated June 23, 2018, be amended as so authorized at Article XIII, Section 13.01, of those prior Bylaws. Accordingly, those prior Bylaws are hereby amended and restated to now read, in their entirety, as follows:

## **Article I. Name**

The name of the Corporation is Michaywé Owners Association, herein called the "Association."

## **Article II. Offices**

The registered office of the Association shall be at such place in the State of Michigan, as the Board of Directors (“Board”) shall from time to time determine. The Association may also have offices at such other places in Michigan and in other states as the Board may determine from time to time.

## **Article III. Purpose**

The specific purpose or purposes for which the Association is formed are stated in the Articles of Incorporation. In general, the Association is formed to manage and administer the affairs of an Association of Owners of property in a planned unit development known as Michaywé; to promote the welfare of its Members by maintaining and beautifying the several developments and subdivisions in which its Members own or possess real property interests; to enforce building and use restrictions; to represent Members before governmental Boards or bodies; to promote social and recreational activities; and to engage in such other activities as are incidental thereto and not forbidden by the laws of the State of Michigan.

## **Article IV. Membership**

Section 4.01 Scope of Membership. Membership in the Association shall consist of the following:

The interest acquired automatically through ownership of a property unit in the planned unit development known as Michaywé, as more particularly defined in the “Declaration of Master Covenants, Conditions and Restrictions for the Michaywé Restricted Property” (hereinafter referred to as the “Master Deed Restrictions”), and as subsequently amended and/or restated.

### Section 4.02 Voting.

(a) When voting at Members’ Meetings, only one owner, in good standing, may vote for each lot or other property unit owned;

(b) Any Member with enforcement powers, as defined by MCL 436.1523<sup>1</sup>, shall not have a vote in matters involving the sale, service, use, or consumption of alcoholic beverages.

(c) Voting procedure by Members:

(i) All propositions for Membership approval shall be noticed out in advance in accordance with §6.05.

(ii) The framing of a proposition may take place by action of the Members, or by the Board.

(1) If framed by the Board, the proposition is noticed out, and the vote shall take place at a Members' Meeting.

(2) If framed by a petition (to the Board) of five percent of the Members in good standing, for consideration at an Annual Meeting, the proposition is noticed out, and the vote shall take place at that Meeting. Note: If the proposal is to have the Members vote on the proposition at a Special Meeting, the petition requirements of §6.04 would have to be complied with.

(iii) Once noticed for a vote (whether by the Board, or the Members), there shall be no motions that would result in amending, withdrawing, or deferring the vote to a subsequent date (other than a deferral for lack of quorum).

(iv) All propositions:

(1) Shall not offer any amendments conflicting with the terms of Association credit agreements that could trigger a default and a demand, from the lender, for prepayment.

(2) Shall not offer any changes which will create insolvency of the Association. This would be validated by the Association's independent certified public accountants.

(3) Shall be subject to the MOA attorney's approval prior to signature collection to ensure the proposed action is not in violation of the law.

(d) Votes needed to carry a proposition: A proposition, other than the appointment of Directors, is adopted upon approval by a majority of the votes cast (in person or by proxy), unless a greater vote is required by the Articles of Incorporation, another provision in these Bylaws, in the "Master Deed Restrictions", or in the "Declaration of Covenants, Conditions, and Restrictions for the Michaywé Common Properties" (hereinafter referred to as "Common Property Deed Restrictions"), and amendments and restatements thereto. Directors shall be elected based on a plurality of the votes cast.

(e) All proxies must be directed (i.e. specific). Directed proxies bind the proxy holder to specific terms, allowing the proxy giver to control the vote.

(f) Election Challenges and Certification. In accordance with the MCL 450.2431<sup>2</sup>, the Board may appoint the Association Election Chairperson and/or an alternate as Election Inspectors. The Election Inspector(s) may not be Board Members or a Member running for election to the Board. At the conclusion of an election, the Inspector(s) shall report the preliminary results. The Inspector(s) shall also provide a final written Election Results Report to the Board President no more than 5 days after the election. Election challenges must be delivered to the Board President no more than 10 days after the date of the Election Results Report.

Section 4.03 Voting Records. Each Member shall furnish to the Association the physical address to which all notices shall be sent. The Association shall maintain a record of the names and addresses of the Membership.

## **Article V. Finances**

Section 5.01 Association Dues. Each Member shall pay to the Association the annual dues required by the restrictions applicable to the real property owned by the Member.

Section 5.02 Amount The amount of said annual dues shall be established and may be adjusted from year to year by the Board of Directors of the Association, as the needs of the Association may in their judgment require, but in no event, shall such a charge be more than the most recently approved Dues Cap per property unit, or other

property interest, giving rise to Membership in the Association. The Dues Cap may only be changed with approval by a majority vote of those Members voting in person or by proxy at a Members' Meeting, which vote shall make any such change in the Dues Cap binding upon all of the Members. The notice of the Meeting shall provide complete information on the proposed change.

**Section 5.03 Special Assessments.** Special assessments may be levied by the Board of Directors in furtherance of the purposes and activities of the Association; provided, however, that no special assessment shall be levied against the Members of the Association without having the approval by two-thirds vote of those Members voting in person or by proxy at a Members' Meeting. The notice of the Meeting shall provide complete information on the proposed increase. In no case shall special assessments exceed Five Hundred (\$500) Dollars per lot or other property interest in any one fiscal year.

Funds from special assessments shall be used only for the purposes described in the notice for the special assessment. Brief and relevant information describing full business effects shall be provided to Members to provide an informed vote. Separate accounting of such funds and expenditures shall be used. Excess funds in any significant amount at the completion of the project shall be returned to the Members in good standing.

**Section 5.04 Failure to Pay Fees or Assessments.** Any Member who shall be thirty (30) days or more in default in the payment of the annual dues or any special assessment, shall not be in good standing and shall not be entitled to vote at any Meeting of the Association nor to hold office in the Association until all such delinquencies have been paid. Delinquent payments of any dues or special assessment shall accrue interest at seven percent (7%) per annum and late fees of \$25 per quarter from the date due until paid. The annual dues and any special assessment shall be a lien and encumbrance on the land with respect to which the charges and assessments are made. A certificate in writing issued by the Treasurer of the Association or its Agent(s) shall be given on demand to any Member liable for said charges and assessments setting forth the status thereof. The Association shall have the power and right in its own name to take and prosecute all suits, which may, in the opinion of the Board of Directors or its agent(s), be necessary or advisable for the collection of such charges and assessments (including attorney's fees), and to take such other steps, as it deems expedient to impose a lien upon such land.

**Section 5.05 Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors.

## **Article VI. Members' Meetings**

**Section 6.01 Place of Meeting.** Members' Meetings shall be held at such place in the State of Michigan as the Board of Directors may determine. In the absence of a determination by the Board, any Meeting properly called shall be held at the registered office in the State of Michigan County of Otsego.

**Section 6.02 Annual Meeting.** The Annual Meeting of the Association shall be held during the month of June; in each year, beginning with the year 1972 on such date and time and at such place as shall be determined by the Board of Directors and specified in the notice thereof.

**Section 6.03 Order of Business of Annual Meeting.** The order of business at the Annual Meeting of the Members shall be as follows:

- (a) Roll call and determination of quorum
- (b) Reading of notice and proof of mailing
- (c) Reading of minutes of last preceding Meeting
- (d) Closing of Polls for Election of Directors
- (e) Reports of Officers and Committees

- (f) Review of new and revised policies
- (g) Unfinished Business
- (h) New Business
- (i) Report of the election results by the Election Committee Representative
- (j) Adjournment

Section 6.04 Special Members' Meetings. A Special Members' Meeting may be called at any time by the President or by a majority of the Board of Directors, or upon the written request of ten percent (10%) of the Members in good standing when submitted in writing to the Secretary.

Section 6.05 Notice of Members' Meeting At least thirty (30) days prior to the date of any Meeting written notice of the time and place of such Meeting shall be mailed by first class mail to each Member in good standing at the address shown on the records of the Association. The notice of a Special Meeting shall state the matters to be considered and no action may be taken on any matter not set forth in the notice of Special Meeting.

Section 6.06 Quorum Ten percent (10%) of the Members in good standing attending in person or represented by proxy shall constitute a quorum; however, the Members in good standing present at a Meeting shall constitute a quorum if no proposition is noticed out for action at that Meeting.

Section 6.07 Chairman The President or Vice-President shall act as Chairman of every Members' Meeting if present, unless otherwise directed by the President.

## **Article VII. Board of Directors**

Section 7.01 Number and Terms of Directors. The business, property, and affairs of the Association shall be managed by a Board of Directors composed of seven (7) persons.

Each Director shall be elected to a term of three (3) years with three (3) Directors elected one year and (2) two Directors elected in each of the other two years in a three-year staggered election cycle. No Director may serve more than two (2) consecutive elected terms of two (2) or more years.

Directors shall be Members in good standing of the Association as defined in the Declaration of Master Covenants, Conditions, and Restrictions for the Michaywé Restricted Property provided, however, that no person who holds enforcement powers pursuant to MCL 436.1523<sup>1</sup> shall be eligible to serve as either an Officer or Director of the Association.

Section 7.02 Vacancies. Vacancies on the Board of Directors shall be filled by appointment made by the remaining Directors for the interim period until the next Annual Meeting, at which time an election for the remainder of the term shall be conducted.

Section 7.03 Election. The candidates receiving the highest number of votes at the Annual Meeting shall fill the three-year terms. The remaining candidates shall fill any existing vacancies of whatever term length with the remaining candidate receiving the highest number of votes elected to fill the longest term, and the next remaining candidate receiving the next highest votes elected to fill the next highest term, and so on. If there is a tie, a member of the Elections Committee will toss a coin to determine the order.

Section 7.04 Action by Unanimous Written Consent. If, and when, the Directors shall severally or collectively unanimously consent in writing to any action to be taken by the Association, such action shall be as valid as though it had been authorized at a Meeting of the Board of Directors.

Section 7.05 Power to Elect Officers. The Board of Directors shall select a President, a Vice President, a Secretary, and a Treasurer who shall be Members of the Board of Directors. Officers shall hold office for the term of one (1) year or until their successors are elected and qualify.

Section 7.06 Power to Appoint Other Officers and Agents. The Board shall have the power to appoint such other Officers and Agents as the Board may deem necessary for the transaction of business of the Association.

Section 7.07 Meetings of the Board of Directors. Regular Meetings of the Board of Directors shall be held at such times and places as the majority of the Board of Directors may from time to time determine. Special Meetings of the Board of Directors may be called at any time by the President or Secretary or by a majority of the Board of Directors. All Directors shall be notified in writing of the time, place, and purpose of Special Meetings of the Board at least five (5) days prior thereto. Any Director shall, however, be deemed to have waived such notice by his attendance at any Meeting.

Section 7.08 Quorum and Voting Authorities. A quorum for the Board is four Members. Each Member shall have one vote.

Section 7.09 Approval Requirements for Actions by the Board of Directors. A Board action requires approval by a majority vote of the Board Members in attendance with a quorum present, except for major expenditures. Any Member of the Board may request a recorded vote by name.

(a) Major Expenditures For major expenditures and/or commitments, defined as matters involving projects, capital expenditures, annual interest and principal payments on loans, leases, contracts and/or any other type of commitment or expenditure exceeding 25% of total annual dues and revenues, approval by at least four Board Members and a recorded vote by name are required. The same level of majority approval is also required for revisions and changes to previous actions. These major expenditures and/or commitments shall be based on the total, not incremental, expenditures, and commitments.

(b) Annual Budget The Board shall not approve an annual operations budget in which the projected expenses are in excess of the projected income (revenue) unless approved by a majority vote of the Members voting in person or by proxy at a Members' Meeting. The notice of the Meeting shall provide complete information on the annual budget.

Section 7.10 Open Meetings. Except for executive sessions, Board Meetings and Meetings of its Committees shall be open to all Members as observers. However, from time to time at their discretion, the Board or Committee may ask for limited participation of Association Members on specific subjects.

Section 7.11 Responsibilities of the Board of Directors. The overall responsibility of the Board of Directors in managing the affairs of the Association is to act in the best interest of the Association and its Members. In addition, the Board shall perform all other duties specified or implicit in the Michaywé Deed Restrictions, Association Articles of Incorporation, these Bylaws, other Association governing documents, and as provided by law.

Section 7.12 Communication. The Board, in its sole discretion, shall use methods of communication with the Members, such as Town Hall Meetings, newsletters, and other reports, to keep the Members informed.

Section 7.13 Committees of the Board. The Board shall have the power to appoint committees, composed of Members of the Association, as the Board shall deem necessary or desirable.

Section 7.14 Reimbursement of Directors and Committee Members. Board and committee Members may be reimbursed for direct expenses incurred related to the conduct of the Association business. Fees, compensation, and perquisites for Directors are prohibited. The Board may establish policies for advance and final approval of expenses.

Section 7.15 Board Member Recall. Any Board Member may be removed from office by a majority vote at an Annual or Special Meeting, following submission of a petition complying with the requirements of Association Bylaw Section 4.02(c)(ii)(2).

### **Article VIII. Officers**

Section 8.01 President. The President shall be the Chief Executive Officer of the Association. The President shall preside over all Meetings of the Board and of the Members. The President shall have general and active supervision of the business of the Association, subject, however, to the right of the Board of Directors to delegate any specific power, except such as may be by statute exclusively conferred upon the President, to any other Officer or Director of the Association. The President shall be an ex-officio Member of all Committees.

Section 8.02 Vice-President. In case the office of President shall become vacant by death, resignation, or otherwise or in case of the absence of the President or their disability to discharge the duties of the office, such duties shall for the time being devolve upon the Vice-President, who shall do and perform such other acts as the Board of Directors may, from time to time, authorize them to do.

Section 8.03 Secretary. The Secretary shall attend all Members' Meetings and Board Meetings and the Secretary or designated Agent shall preserve in books of the Association, true minutes of the proceedings of all such Meetings. The Secretary or a designated Agent shall give all notices required by statute, bylaw, or resolution. The Secretary shall perform such other duties as may be delegated to the Secretary by the Board of Directors.

Section 8.04 Treasurer. The Treasurer or designated Agent shall have custody of all Association funds and shall keep, in books belonging to the Association, full and accurate accounts of all receipts and disbursements. The Treasurer or a designated Agent shall deposit all monies in the name of the Association in such depositories as may be designated for that purpose by the Board of Directors. The Treasurer or a designated Agent shall disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the Board of Directors at the Regular Meeting of the Board and at the Annual Meeting of the Members an account of all Association transactions and of the financial condition of the Association. The Board of Directors may require the Treasurer to give bond for the faithful performance of their duties.

### **Article IX. Checks and Other Instruments**

Section 9.01 All checks, drafts, or demands for money, and notes of the Association shall be signed by each Officer or Officers or designated Agent(s)

Section 9.02 The Board of Directors of the Association may in any instance designate the Officers and Staff who shall have authority to execute any contract, conveyance, or other instrument on behalf of the Association or may ratify or confirm any execution. When the execution of any instrument has been authorized without specification of the executing Officers or Agents, the President or Vice President, and the Secretary Treasurer may execute the same in the name of and on behalf of this Association.

### **Article X. Books and Records - Reports to Members**

Section 10.01 The proper Officers and Agents of the Association shall keep and maintain such books, records, and accounts of the Association's business and affairs and such lists of Members as the Board of Directors shall deem

advisable and as shall be required by the laws of the State of Michigan.

Section 10.02 The Directors and/or Officers of the Association shall prepare and upon request mail to all Members of the Association such reports and statements as they deem advisable, and as shall be required by the laws of the State of Michigan. Included in those reports/statements shall be the following:

- (a) Association Balance Sheet, effective as of the end of the preceding fiscal year.
- (b) Association Statement of Income for the preceding fiscal year.
- (c) Association Statement of Source and Application of Funds for the previous fiscal year, if one was prepared.

Section 10.03 The following records of the Association shall be available for inspection (and/or copying) by the Members in accordance with a written policy adopted and revised from time to time by the Board for the purpose of minimizing the burden on, and disruption to, the Association Staff and Management in responding to record requests:

- (a) Minutes of Members' Meetings.
- (b) Minutes of Board Meetings, except those of Executive Sessions.
- (c) Independent Auditor's Annual Financial Statements and/or Reports.
- (d) Written policies adopted by the Board.
- (e) Records expressly authorized by the Board of Directors.
- (f) The following records are subject to the policy, but also require a statement of proper purpose be included on the MOA Records Request Form.
  - (i) Record of Members (i.e. their names and last known addresses).
  - (ii) Existing Association contracts (except employment contracts,) promissory notes, and security instruments; and
  - (iii) Prior fiscal year filed tax return (or other governmental filings) excluding any personnel information.

Section 10.04 Executive Sessions are Closed Meetings of the Board relating to employee discipline, Member misconduct, personal matters relating to a Member or employee, business or legal strategy, communications with (or relating to) legal counsel, contract negotiations, or other matters which are deemed by the Board to have a potential negative impact on the Association if disclosed.

#### **Article XI. Notices and Waivers of Notice**

All notices of meetings required to be given to any Member or Director, may be given in writing by mail, electronically, or by any method allowed by law to such Member or Director at his last address as it appears on the books of the Association. Such notice shall be deemed to be given at the time when the same shall be mailed or otherwise dispatched.

#### **Article XII. Amendments**

These Bylaws may be amended, altered, changed, added to or repealed by approval by a majority vote of the Members in good standing voting in person or by proxy at any Regular or Special Members' Meeting if notice of the proposed amendment, alteration, change, addition or repeal be contained in the notice of the Meeting; provided, however, no amendments may be made to these Bylaws which would contradict, restrict, or otherwise conflict with any of the restrictions recorded for the Subdivisions within the jurisdiction of this Association.

#### **Article XIII. Parliamentary Authority**

The rules contained in the current edition of Robert's Rules of Order Newly Revised and any statutes applicable to this Association shall be used as a general guideline by the Association in any cases in which they are applicable

and in which they are not inconsistent with these Bylaws and any special rules of order the Association may adopt. Failure to conform to the letter of Robert's Rules of Order Newly Revised shall not affect action taken at a Meeting as long as the fundamental concepts of fairness and due process are observed.

#### **Article XIV. Audits**

**Annual Audit/Review.** A financial audit/review shall be conducted annually on the financial affairs of the Association by qualified independent auditors. The purpose of the audit/review is to verify conformance to Generally Accepted Accounting Principles (GAAP), correctness of information and reports, and compliance with the MOA Governing Documents and all applicable state and federal laws. A financial review is only an option when the most recent full audit receives an unqualified "clean" opinion. A full audit must be conducted at least every third year.

#### **Foot Notes:**

<sup>1</sup> Michigan Liquor Control Code of 1998, Act 58 of 1998, 436.1523 Liquor licenses; ineligibility of law enforcement officers; exception; "law enforcement personnel" defined.

#### Section 523

(1) A person who holds or whose spouse holds, either by appointment or election, a public office which involves the duty to enforce any of the penal laws of the United States, or the penal laws of this state, or a penal ordinance or resolution of any municipal subdivision of the state, except civil defense volunteer police, mayors or council members of cities, or village presidents, or mayors of home rule cities whose law enforcement authority under the city charter is restricted to emergency situations, or the state treasurer of this state when acting in the capacity of custodian of the assets of the state retirement systems created by the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408; the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69; the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648; and the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and members of these state retirement systems only if the state treasurer makes an investment in the name of the respective retirement system to which such members belong, shall not be issued a license, or have an interest, directly or indirectly, in a license if the activity regulated by the license occurs in the same local unit of government within which the person enforces those state or local penal laws unless the official is contractually prohibited from enforcing this act. This subsection does not apply to a spouse of an appointed or elected official holding an office which involves the duty to enforce a penal law described in this subsection if the spouse held a license or an interest in a license for not less than 3 years before marrying the appointed or elected official or if the spouse has voting rights in a public or private club holding the license, which voting rights are derived from ownership of shares to the club, and the spouse participates as a member in good standing of the public or private club or of an advisory board but does not participate in the day-to-day operation of the club. In the case of any licensee excepted from the general prohibition contained in this section, the commission may periodically review all circumstances of the licensee and his or her spouse regarding the exception. The commission has the authority to review and monitor any complaints it receives regarding inappropriate enforcement of this act by or against a person excepted from this section. However, a nonprofit fraternal organization incorporated under the laws of this state, whose membership is not totally composed of law enforcement personnel or public officeholders charged with the duty of enforcing any penal laws or ordinances of a governmental body, may be issued a club liquor license if the organization is otherwise qualified.

(2) As used in this section, "law enforcement personnel" does not include the mayor of a city or the state treasurer of this state when acting in the capacity of custodian of the assets of the state retirement systems created by the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408, the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648, and the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and members of these state retirement systems only if the state treasurer makes an investment in the name of the respective retirement system to which such members belong.

<sup>2</sup> Nonprofit Corporation Act (excerpt), Act 162 of 1982, 450.2431 Inspectors at shareholders' or members' meeting; waiver; appointment and duties; failure to appoint; vacancy; report; evidence.

#### Section 431.

(1) If the bylaws require inspectors at a shareholders' or members' meeting, the requirement is waived unless compliance therewith is requested by a shareholder or member present in person or by proxy and entitled to vote at the meeting. Unless otherwise provided in the bylaws, the board, in advance of a shareholders' or members' meeting, may appoint 1 or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' or members' meeting may, and on

request of a shareholder or member entitled to vote shall, appoint 1 or more inspectors. In case a person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding.

(2) The inspectors shall determine the number of shares outstanding and the voting power of each or the members entitled to vote, the shares or members entitled to vote represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders or members. On request of the person presiding at the meeting or a shareholder or member entitled to vote, the inspectors shall make and execute a written report to the person presiding at the meeting of any of the facts found by them and matters determined by them. The report is prima facie evidence of the facts stated and of the vote as certified by the inspectors.