

BY-LAWS
OF
HOWELL POINT ASSOCIATION

PENN TOWNSHIP, CASS COUNTY, MICHIGAN

Adopted _____, 2023

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OF
HOWELL POINT ASSOCIATION**

DEFINITIONS

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| <u>Association</u> | Howell Point Association, a Michigan Not-for-Profit Corporation |
| <u>Board</u> | The Association's Board of Trustees elected from among the Members. |
| <u>Board Member</u> | A member of the Board. |
| <u>By-Laws</u> | These By-Laws. |
| <u>Committee(s)</u> | A committee of Members appointed by the Board for a specific purpose which may be delegated certain authority otherwise reserved to the Board. |
| <u>Deed Restrictions</u> | The Deed Restrictions for Howell Point recorded by the Cass County Register of Deeds on September 1, 1938 as amended. |
| <u>Howell Point Park</u> | That parcel of real estate owned by the Association and located adjacent to Diamond Lake. Howell Point Park is referred to as Willow Beach and Park in the Deed Restrictions. |
| <u>Lot</u> | Each parcel of real estate subject to the Deed Restrictions. |
| <u>Member/Owner</u> | The title owner of one or more Lots. |
| <u>Membership Interest</u> | Membership Interest is determined by the number of Lots owned by a Member, the physical location of such Lots and the manner in which such Lots are improved. Members owning a single Lot shall have one (1) Membership Interest. Members owning more than one (1) contiguous Lot, or Lots that would be contiguous if not for a roadway separating the Lots, shall have one (1) Membership Interest provided that no more than one (1) residential dwelling is constructed upon said contiguous Lots. In the event that more than one (1) residential dwelling is constructed upon said contiguous Lots, the Member shall have one (1) Membership Interest for each Lot improved with a residential dwelling. Any Member who owns non-contiguous Lots shall have one (1) Membership Interest per Lot. |
| <u>Officer</u> | A Member elected to serve as president, secretary or treasurer of the Association or a Board Member appointed by the Board to fill any additional officer position created by resolution of the Board. |
| <u>Regular Assessment</u> | The assessment amount, assessed to each Membership Interest, that each Member is obligated to pay to the Association on an annual basis as determined by resolution of the Board. |

Rules and Regulations

Rules concerning the Association's affairs and use of Howell Point Park adopted by the Board from time to time.

Special Assessment

Any assessment amount which is due and payable in addition to the Regular Assessment and assessed against each Membership Interest.

ARTICLE I - NAME

The name of the Association is Howell Point Association.

ARTICLE II - OFFICES

The Association shall continuously maintain in the State of Michigan a registered office and a registered agent whose business office is identical with such registered office.

ARTICLE III - PURPOSE

The purpose of the Association shall be to:

- (a) enforce the Deed Restrictions for Howell Point recorded by the Cass County Register of Deeds on September 1, 1938 as amended; to
- (b) enforce these By-Laws;
- (c) enforce the Association's Rules and Regulations;
- (d) administer and operate Howell Point Park and all other property owned by the Association, including but not limited to, preserving the aesthetic nature of such property; and
- (e) take all other actions not prohibited by any applicable law.

ARTICLE IV - MEMBERS

SECTION 1. CLASSES OF MEMBERS, MEMBERSHIP AND TERMINATION

The Association shall have one (1) class of Members. Each Owner of a Lot shall be a Member of the Association, which membership shall terminate upon the sale or disposition of such Member's Lot, at which time the new Lot Owner shall automatically become a Member of the Association. Such termination shall not relieve or release any such former Owner from any obligation or liability incurred during the period of such ownership and membership.

A member's family members, guests and renters shall have the right to use Howell Point Park subject to the Association's Rules and Regulations. Members are responsible for the conduct of their family members, guests and renters and Members shall be held liable for any damage or violations caused by their family members, guests and renters.

SECTION 2. VOTING RIGHTS

Each Member shall have one (1) vote regardless of the number of Lots owned by such Member. If more than one (1) person holds an interest in a Lot, only one (1) of the multiple parties in interest shall be entitled to exercise the vote for said Lot as they may determine among themselves. With respect to a Lot owned by a corporation, an officer of the corporation designated in writing by the corporation shall be entitled to exercise said vote, if a Lot is owned by a limited liability company, a manager of the limited liability company designated in writing by the limited liability company shall be entitled to exercise said vote, if a Lot is owned by a partnership, a partner of the partnership designated in writing by the partnership shall be entitled to exercise said vote, and if a Lot is owned by a trust, the beneficiary of said trust, or a person designated in writing by the trustee shall be entitled to exercise the vote. In no event shall more than one (1) vote be cast with respect to any Lot or any Member. Voting rights shall be suspended for any period during which the Lot Owner is determined by the Board to be in violation of these By-Laws, the Deed Restrictions, the Association's Rules and Regulations or any applicable law.

SECTION 3. TRANSFER OF MEMBERSHIP

Membership in this Association is not transferable or assignable, except only as is provided in Article IV, Section 1 hereof.

ARTICLE V - MEETINGS OF MEMBERS

SECTION 1. ANNUAL MEETING

An annual meeting of the Members entitled to vote shall be held in Howell Point Park at 10:00 a.m. on the Saturday prior to Memorial Day unless otherwise specified by the Board. The purpose of the annual meeting of the Members shall be to elect Board members and Officers and for the transaction of such other business as may come before the meeting.

SECTION 2. SPECIAL MEETINGS

Special meetings of the Members may be called either by the president of the Board, or not less than twenty-five percent (25%) of the Members having voting rights, for the purpose or purposes stated in the call of the meeting.

SECTION 3. PLACE OF MEETING

The Board may designate any location in Cass County, Michigan, as the place of meeting for any annual or special meeting of the Members.

SECTION 4. MEETING RULES

Meetings of the membership will be governed by Rules adopted by the Board. In the absence of such Rules, meetings of the membership will be governed by the most current version of Roberts Rules of Order.

SECTION 5. NOTICE OF MEETINGS

With the exception of annual meetings held on the Saturday prior to Memorial Day, written notice stating the place, date, and hour of any meeting of Members shall be delivered to each Member not less than five (5) nor more than sixty (60) days before the date of such meeting. Members shall be required to provide the Board with an active email address for the purpose of receiving meeting notices. Any Member who fails to provide the Board with an active email address shall be deemed to have waived their right to receive meeting notices unless such Member has delivered written notice to a Member of the Board indicating that such Member does not elect to receive meeting notices by email and elects to receive meeting notices by regular U.S. Postal Service mailing. Meeting notices will be mailed by regular U.S. Postal Service mailing only to those Members who have specifically requested to receive notice by mail by making a request to the Board in writing. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Association, with postage thereon prepaid. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken.

SECTION 6. INFORMAL ACTION BY MEMBERS

Any action which may be taken at a meeting of Members entitled to vote, may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voting. If such consent is signed by less than all of the Members entitled to vote, then such consent shall become effective ten (10) days after notice of the Association action is delivered to those Members entitled to vote who have not consented in writing.

SECTION 7. QUORUM

Members holding twenty five percent (25%) of the votes entitled to be cast on a matter, represented in person, proxy, electronically submitted ballot or mail-in ballot shall constitute a quorum for consideration of such matter at any meeting of Members. If a quorum is present, the affirmative vote of a majority of the votes represented at the meeting shall be the act of the Members, unless the vote of a greater number of votes is required by these By-Laws or applicable law. "Votes entitled to be cast on a matter" shall not include any Member whose voting privileges have been suspended by the Board.

SECTION 8. PROXIES

An Owner may vote by proxy executed in writing by the Owner or by his duly authorized attorney in fact. The proxy must bear the date of execution and, unless the written proxy itself provides otherwise, the proxy is invalid after eleven (11) months from the date of its execution.

SECTION 9. VOTING

Voting on any question or in any election may be by voice unless any Member shall demand that voting be by ballot. Voting on any question or in any election may be conducted by E-MAIL, regular USPS mail or other means of delivery to the Board provided that the voting ballot shall

be mailed or otherwise distributed to Owners not less than five (5) and not more than sixty (60) days before the meeting date and such ballot is received by a member of the Board prior to the time of the meeting. An Owner who submits a ballot by E-MAIL, regular USPS mail or other means of delivery to the Board may request and cast a ballot in person at the meeting, and thereby void any ballot previously submitted by that Owner. Any voting ballots received by E-MAIL, regular USPS mail or other means of delivery shall be counted at the meeting.

ARTICLE VI - BOARD

SECTION 1. POWERS AND DUTIES

The affairs of the Association shall be managed by or under the direction of the Board which shall have the following powers and duties to:

- (a) administer the Association's affairs and to perform the Association's responsibilities and to exercise its rights as set forth in these By-Laws, the Deed Restrictions and the Rules and Regulations.
- (b) take all actions on behalf of the Association as may be permitted by law and not reserved to the Membership by these By-Laws.
- (c) maintain, manage, control and restrict the use of Howell Point Park by Members and their guests by adopting and publishing Rules and Regulations and establishing monetary penalties to enforce lack of compliance.
- (d) suspend a Member's voting rights and the right to use Howell Point Park if a Member is in default of these By-Laws, the Deed Restrictions or the Rules and Regulations.
- (e) employ attorneys, accountants, independent contractors, or such other employees as the Board may deem necessary.
- (f) levy and collect Regular Assessments and Special Assessments (with Membership approval as may be required by these By-Laws) against each Membership Interest.
- (g) maintain adequate liability and hazard insurance on all property owned by the Association and directors and officers liability insurance for all Board Members.
- (h) appoint committees and delegate the Board's authority to such committees.
- (i) enter into loan agreements and borrow funds on behalf of the Association as may be necessary to administer the affairs of the Association provided that any loan to the Association which is more than double the amount of all Regular Assessments charged to all Members during the immediately preceding calendar year shall be approved by the affirmative vote of not less than a majority of those Members present at any duly convened regular or special meeting of the Membership or by the written consent of not less than a majority of the entire Membership.

SECTION 2. NUMBER, TENURE AND QUALIFICATIONS

Each Board Member shall be a Member of the Association. The number of Board Members shall be seven (7). If a Board Member ceases to meet said qualifications, his/her status as a Board Member shall automatically terminate. In the event a Member is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any shareholder, officer or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity, may be eligible to serve as a Board Member.

At each annual election, the Members shall elect a president, a secretary and a treasurer to serve a term of one (1) year.

At each annual election, the Members shall elect one (1) Member to serve on the Board for a term of four (4) years.

SECTION 3. MEETINGS

Meetings of the Board may be called by or at the request of the president or any two (2) Board Members. The person or persons calling the Board meeting may fix any place in Cass County, Michigan as the place for holding such meeting.

SECTION 4. TELEPHONIC OR VIDEO-CONFERENCE MEETINGS

Board Members may participate in and act at any meeting of such Board through the use of telephone, video-conferencing or other communications equipment by means of which all persons participating in the meeting can communicate with each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

SECTION 5. NOTICE AND COMMUNICATIONS

Notice of any regular or special meeting of the Board shall be delivered to all Board Members not less than 48 hours prior to the time of such meeting unless all Board Members agree to waive such notice. The attendance of a Board Member at any meeting shall constitute a waiver of notice of such meeting, except where a Board Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws.

All notices and official Association communications will be delivered to the Members by E-MAIL unless a member has previously delivered a written and signed directive to the Board indicating that all notices and official communications sent to such Member shall be delivered by hand delivery or by the United States Postal Service.

SECTION 6. QUORUM

A majority of the the Board Members shall constitute a quorum for the transaction of business at any meeting of the Board.

SECTION 7. MANNER OF ACTING

Each Board Member shall have one (1) vote. The act of a majority of a quorum of the Board shall be the act of the Board, unless the act of the greater number is required by these By-Laws or applicable law. Any action that is required or permitted to be taken by the Board may be taken without a meeting only if the action is approved by written consent and such consent is filed in the Association's records.

SECTION 8. VACANCIES

Any vacancy occurring in the Board shall be filled by the remaining members of the Board. A Board Member appointed to fill a vacancy shall be elected for the unexpired term of his or her predecessor or for a period terminating no later than thirty (30) days following the filing of a petition signed by Members holding twenty-five percent (25%) of the votes of the Association requesting a meeting of the Members to fill the vacancy for the balance of the term; provided that a meeting of the Members shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of such petition.

SECTION 9. RESIGNATION AND REMOVAL OF BOARD MEMBERS

A Board Member may resign at any time by written notice delivered to the president or secretary of the Board. A Board member may be removed from the Board with or without cause by a majority vote of a quorum of the Board.

SECTION 10. COMPENSATION/EXPENSE REIMBURSEMENT

Board Members shall receive no compensation for their services. By resolution of the Board, Board Members may be reimbursed for their actual expenditures incurred on behalf of the Association.

ARTICLE VII – OFFICERS

SECTION 1. OFFICERS

The officers of the Association shall be a president, a treasurer, a secretary, and such other officers as may be elected or appointed by the Board. Officers whose authority and duties are not prescribed in these By-Laws shall have the authority and perform the duties prescribed, from time to time, by the Board.

SECTION 2. TERM OF OFFICE

The officers of the Association shall be elected annually by the Members at the annual election. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided or shall no longer qualify to serve as a Board Member.

SECTION 3. REMOVAL

Any officer may be removed from his or her officer position by a majority vote of a quorum of the Board. Such person shall remain a Board member unless the Board also votes to remove such person from the Board.

SECTION 4. PRESIDENT

The president shall be the principal executive officer of the Association. Subject to the direction and control of the Board, he or she shall be in charge of the business and affairs of the Association; he or she shall see that the resolutions and directives of the Board are carried into effect except in those instances in which that responsibility is assigned to some other person by the Board; and, in general, he or she shall discharge all duties incident to the office of president and such other duties as may be prescribed by the Board. He or she shall preside at all meetings of the Members and of the Board.

SECTION 5. TREASURER

The treasurer shall be the principal accounting and financial officer of the Association. He or she shall (a) have charge of and be responsible for the maintenance of adequate books of account for the Association; (b) have charge and custody of all funds and securities of the Association, and be responsible therefor, and for the receipt and disbursement thereof; (c) oversee collection of all amounts due to the Association and (d) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board.

SECTION 6. SECRETARY

The secretary shall (a) record the minutes of the meetings of the Members and of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be a custodian of the corporate records of the Association; (d) keep a register of the post office address, email address and phone number of each Member which shall be furnished to the secretary by such Member; (e) perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board; and (f) have the authority to certify the By-Laws, resolutions of the Members and Board and committees thereof, and other documents of the Association as true and correct copies thereof.

ARTICLE VIII - COMMITTEES

SECTION 1. COMMITTEES

The Board, by resolution, may appoint one or more committees and delegate to such committees the Board's authority to carry out certain duties of the Board.

SECTION 2. ARCHITECTURAL REVIEW COMMITTEE

The Architectural Review Committee described in the Deed Restrictions shall automatically be comprised of all Board Members. At the Board's discretion, Members who are not on the Board may be appointed to the Architectural Review Committee.

ARTICLE IX - CONTRACTS, CHECKS, DEPOSITS AND FUNDS

SECTION 1. CONTRACTS

The President or such other officer(s) as may be authorized by resolution of the Board shall have the authority to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

Upon receipt of a Member's written request, the Board shall provide such Member with a copy of any contract entered into by the Association within ten (10) business days of receiving such request.

SECTION 2. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by the treasurer or such other officer(s) as may be authorized by resolution of the Board.

SECTION 3. DEPOSITS

All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

SECTION 4. GIFTS

The Board may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

ARTICLE XIII - INDEMNIFICATION

SECTION 1. INDEMNIFICATION

The Association may indemnify 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 Association) by reason of the fact that he or she is or was a Board Member, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceedings, if such person 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 Association, 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 Association or, with respect to any criminal action or proceedings, that the person had reasonable cause to believe that his or her conduct was unlawful.

Any person seeking indemnification from the Association shall submit a written request for indemnification to the Board not later than ten (10) business days following the date on which such person first learns of any pending or threatened action, suit or proceeding. Upon receipt of

such request for indemnification, the Board shall cause a notice of intent to indemnify to be delivered to all Members within ten (10) business days. For a period of ten (10) business days following the date on which such notice of intent to indemnify was delivered, Members shall have an opportunity to oppose such indemnification by delivering written notice of their opposition to the Board so that such notice of opposition is received by the Board within the required ten (10) business day period. Unless more than fifty percent (50%) of the Membership has delivered a notice of opposition to the Board within the required ten (10) business day period, the Board shall have the discretion to approve the request for indemnification.

SECTION 2. RIGHT TO PAYMENT OR EXPENSES

To the extent that a Board Member has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 1 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by such person in connection therewith notwithstanding any Membership opposition.

SECTION 3. DETERMINATION OF CONDUCT

Any indemnification under Section 1 of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the Board Member is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 of this Article. Such determination shall be made ~~(a)~~ by the Board by a majority vote of a quorum consisting of Board Members who were not parties to such action, suit or proceeding.-If such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Board Members so directs, by the Members entitled to vote, if any.

SECTION 4. PAYMENT OF EXPENSES IN ADVANCE.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of a Board Member to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

SECTION 5. INDEMNIFICATION NOT EXCLUSIVE

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled and shall continue as to a person who has ceased to be a member of the Board and shall inure to the benefit of the heirs, executors and administrators of such a person.

SECTION 6. INSURANCE

The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as a member of the Board whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article.

ARTICLE XIV - FINANCES

- (a) The fiscal year of the Association shall be January 1 through and including December 31, unless otherwise fixed by resolution of the Board.
- (b) The Board shall post the Association's year-end financial statements on the Association's website.
- (c) The Board shall determine the annual Regular Assessment to be levied against each Membership Interest and the Board shall send notice of such Regular Assessment to all Members. Regular assessments must be delivered to the treasurer on the later of May 1st of each year or 30 calendar days after the date on which the Board sends notice of the Regular Assessments to the Members in order to avoid any late fees or penalties.
- (d) The Board, in its sole discretion, may determine that a Special Assessment shall be levied against each Membership Interest provided that the proceeds of such Special Assessment shall be used exclusively for maintaining, repairing or replacing real estate or personal property already owned by the Association at the time that such Special Assessment is levied or in response to any law, ordinance, court order or other governmental regulation requiring the Association to take action in order to comply with such law, ordinance, court order or other governmental action.

Special Assessments levied for any other purpose shall be approved by the affirmative vote of not less than a majority of those Members present at any duly convened regular or special meeting of the Membership or by the written consent of not less than a majority of the entire Membership.

The Board shall cause notice of any Special Assessment to be delivered to each Member. Such notice shall include each Member's proportionate share of the Special Assessment, the purpose of the Special Assessment and the deadline for submitting payment to the treasurer.

- (e) In the event that any Member fails or refuses to pay any annual Regular Assessment, Special Assessment or pier fees on or before the date that such payment is due, the Board may take any or all of the following actions:
 - i. Suspend such Member's right to use Howell Point Park until all amounts due the Association are paid in full.
 - ii. Suspend such Member's right to a pier slip until all amounts due the Association are paid in full.
 - iii. Suspend such Member's voting privileges.
 - iv. Record a lien against such Member's Lot(s).
 - v. Initiate a collection action against such Member.
- (f) Any Member who fails to pay any Regular Assessment or Special Assessment on or before the due date shall be charged \$10 per month until such Member makes the required payment. Delinquent balances shall accrue interest charges at a rate of ten percent (10%) per annum.

- (g) All costs incurred by the Association in connection with enforcing these By-Laws, the Deed Restrictions or the Rules and Regulations against any non-compliant Member shall be charged back to non-complaint Member and shall remain as a lien against such Member's Lot(s) until paid in full.

ARTICLE XV - AMENDMENTS

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the affirmative vote of not less than a majority of those Members present at any duly convened regular or special meeting of the Membership or by the written consent of not less than a majority of the entire Membership.

[END]