

**MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES**

Date Received

(FOR BUREAU USE ONLY)

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

Name

Rachel Brochert Roe, Smith Haughey Rice & Roegge

Address

202 E. State St., Ste. 100

City

Traverse City

State

MI

Zip Code

49684

EFFECTIVE DATE:

Document will be returned to the name and address you enter above.

If left blank document will be mailed to the registered office.

RESTATED ARTICLES OF INCORPORATION

For use by Domestic Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Restated Articles:

1. The present name of the corporation is:

Northwest Michigan Horticultural Research Foundation

2. The identification number assigned by the Bureau is:

786010

3. All former names of the corporation are:

4. The date of filing the original Articles of Incorporation was: March 21, 1978

The following Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the corporation:

ARTICLE I

The name of the corporation is:

Northwest Michigan Horticultural Research Foundation

ARTICLE II

The purpose or purposes for which the corporation is organized are:

(see attached)

ARTICLE III

1. The corporation is organized upon a nonstock basis.
(stock or nonstock)
2. If organized on a stock basis, the aggregate number of shares which the corporation has authority to issue is _____ . If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences, and limitations of the shares of each class are as follows:
3. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")
Real property located in Bingham Township, Leelanau County, Michigan, along with buildings and other improvements affixed thereto: \$1,114,900.00

and the description and value of its personal property assets are: (if none, insert "none")
miscellaneous equipment and furnishings: \$70,167

(The valuation of the above assets was as of December 31 , 2008)
The corporation is to be financed under the following general plan:

The corporation is financed through grants and donations of funds from individuals and organizations and from income generated from carrying out its exempt purposes.

The corporation is organized on a directorship basis.
(membership or directorship)

ARTICLE IV

1. The address of the registered office is:
6686 Center Highway Traverse City , Michigan 49684
(Street Address) (City) (ZIP Code)
2. The mailing address of the registered office, if different than above:

(Street Address or P.O. Box) (City) (ZIP Code)
3. The name of the resident agent is: Jackie Baase

ARTICLE V (Additional provisions, if any, may be inserted here; attach additional pages if needed.)

(See attached)

5. COMPLETE SECTION (a) IF THE RESTATED ARTICLES DO **NOT FURTHER AMEND THE ARTICLES OF INCORPORATION; OTHERWISE, COMPLETE SECTION (b).**

- a. These Restated Articles of Incorporation were duly adopted on the _____ day of _____, _____, in accordance with the provisions of Section 642 of the Act by the Board of Directors without a vote of the members or shareholders. These Restated Articles of Incorporation only restate and **integrate and do not further amend** the provisions of the Articles of Incorporation as heretofore amended and there is no material discrepancy between those provisions and the provisions of these Restated Articles.

Signed this _____ day of _____, _____

By _____
(Signature of Authorized Officer or Agent)

(Type or Print Name)

- b. These Restated Articles of Incorporation were duly adopted on the _____ day of _____, _____ in accordance with the provisions of Section 642 of the Act. These Restated Articles of Incorporation restate, integrate, and **do further amend** the provisions of the Articles of Incorporation, and: (check one of the following)

were duly adopted by the shareholders, the members, or the directors (if organized on a nonstock directorship basis). The necessary number of votes were cast in favor of these Restated Articles of Incorporation.

were duly adopted by the written consent of **all** the shareholders or members entitled to vote in accordance with Section 407(3) of the Act.

were duly adopted by the written consent of **all** the directors pursuant to Section 525 of the Act as the corporation is organized on a directorship basis.

were duly adopted by the written consent of the shareholders or members having not less than the minimum number of votes required by statute in accordance with Section 407(1) and (2) of the Act. Written notice to shareholders or members who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders or members is permitted only if such provision appears in the Articles of Incorporation)

Signed this _____ day of _____, _____

By _____
(Signature of President, Vice-President, Chairperson or Vice-Chairperson)

(Type or Print Name) (Type or Print Title)

Preparer's Name Rachel Brochert Roe

Business telephone number (231) 929-4878

INFORMATION AND INSTRUCTIONS

1. The Articles of Incorporation cannot be restated until this form, or a comparable document, is submitted.
2. Submit one original of this document. Upon filing, the document will be added to the records of the Bureau of Commercial Services. The original will be returned to your registered office address, unless you enter a different address in the box on the front of this document.

Since this document will be maintained on electronic format, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.
3. This document is to be used pursuant to the provisions of Act 162, P.A. of 1982 for the purpose of restating the Articles of Incorporation of a domestic nonprofit corporation. Restated Articles of Incorporation are an integration into a single instrument of the current provisions of the corporation's Articles of Incorporation, along with any desired amendments to those articles.
4. Item 2 - Enter the identification number previously assigned by the Bureau. If this number is unknown, leave it blank.
5. Item 5 - Restated Articles of Incorporation which do not amend the Articles of Incorporation may be adopted by the Board of Directors without a vote of the shareholders by completing Item 5(a). Restated Articles of Incorporation which amend the Articles of Incorporation require adoption by the shareholders, by the members, or by the Board of Directors if organized on a nonstock directorship basis by completing Item 5(b). A nonprofit corporation organized on a nonstock directorship basis as authorized by Section 302 of the Act may or may not have members, but if it does, the members are not entitled to vote.
6. This document is effective on the date endorsed "filed" by the Bureau. A later effective date, no more than 90 days after the date of delivery, may be stated.
7. This document must be signed by: (COMPLETE Item 5(a) or 5(b), BUT NOT BOTH)
Item 5(a): must be signed in ink by an authorized officer or agent.
Item 5(b): must be signed in ink by the president, vice-president, chairperson or vice-chairperson of the corporation.
8. **NONREFUNDABLE FEE:** Make remittance payable to the State of Michigan. Include corporation name and Identification number on check or money order. **\$10.00**

To submit by mail:

Michigan Department of Labor & Economic Growth
Bureau of Commercial Services
Corporation Division
P.O. Box 30054
Lansing, MI 48909

To submit in person:

2501 Woodlake Circle
Okemos, MI
Telephone: (517) 241-6470

Fees may be paid by VISA or Mastercard when delivered in person to our office.

MICH-ELF (Michigan Electronic Filing System):

First time users: Call (517) 241-6470, or visit our website at <http://www.michigan.gov/corporations>
Customer with MICH-ELF Filer Account: Send document to (517) 636-6437

New expedited services beginning January 1, 2006.

Expedited review and filing, if fileable, is available for all documents for profit corporations, limited liability companies, limited partnerships and nonprofit corporations.

The expedited service fees are in addition to the regular fees applicable to the specific document:

Please complete a separate BCS/CD 272 form for expedited service for each document via in person, mail and MICH-ELF.

24-hour service - \$50 for formation documents and applications for certificate of authority.

24-hour service - \$100 for any document concerning an existing entity.

Same day service

- **Same day - \$100 for formation documents and applications for certificate of authority.**
Same day - \$200 for any document concerning an existing entity

Review completed on day of receipt. Document and request for same day expedited service must be received by 1 p.m. EST or EDT.

- **Two hour - \$500**

Review completed within two hours on day of receipt. Document and request for two hour expedited service must be received by 3 p.m. EST or EDT.

- **One hour - \$1000**

Review completed within one hour on day of receipt. Document and request for 1 hour expedited must be received by 4 p.m. EST or EDT.

First time MICH-ELF user requesting expedited service must obtain a MICH-ELF filer number prior to submitting a document for expedited service. BCS/CD-901

Changes to information on MICH-ELF user's account must be submitted before requesting expedited service. BCS/CD-901

ARTICLE II

The purpose or purposes for which the corporation is organized are: The corporation is organized exclusively as a charitable, scientific, and educational organization within the meaning of Internal Revenue Service Code ("IRC" or "Code") Section 501(c)(3), or the corresponding section of any future federal tax code, for the purpose of:

- i. providing a fund to hold property for the establishment and maintenance of a horticultural research field laboratory to be operated by the Michigan State University, Department of Agriculture, or by the United States Department of Agricultural, or any other nonprofit governmental research agency; but in no event to operate a school or schools;
- ii. to receive, hold, administer, and distribute the fund or funds exclusively for the scientific, educational, and public welfare purposes as permitted under Code Section 501(c)(3), and/or for exclusively public purposes either directly or by contribution to the State of Michigan or any one or more of its political subdivisions, or to the United States of America, or any one or more of its departments and/or agencies established for the purpose of horticulture research; and
- iii. doing all things and exercising all corporate powers necessary to carry out the corporation's purposes, with all the powers conferred upon it by the provisions of the Michigan Nonprofit Corporation Act, as amended (the "Act"), subject to these Articles, the bylaws of the corporation, and applicable law, provided, however, that all such activities shall be in furtherance of the corporation's exempt purposes as defined by Code Section 501(c)(3) and the regulations stated thereunder.

The corporation, including all activities incident to its purpose, shall at all times be conducted so as to be an organization described in Code Section 501(c)(3) or the corresponding section of any future federal tax code. Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on by:

- a. a corporation exempt from federal income tax under Section 501(c)(3) of the Code;
- b. a corporation, contributions to which are deductible under Section 170(c)(2), Section 2055(a)(2), or Section 2522(a)(2) of the Code; or
- c. a nonprofit corporation organized under the laws of the State of Michigan pursuant to the provisions of the Act.

ARTICLE V

No part of the assets or net earnings of the corporation shall inure to the benefit of or be distributable to its directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and provide reimbursement for expenses incurred in relation to such services, provided such services are reasonably necessary to carry out the purposes of the corporation, and the corporation shall be authorized to make payments and distributions in furtherance of the corporation's purposes.

ARTICLE VI

No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE VII

Notwithstanding any other provision of these Articles, the corporation shall in no manner be controlled or under the direction or acting in the substantial interest of any private individual, firm, corporation, partnership or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any dealing or transactions with the corporation.

ARTICLE VIII

No member of the Board of Directors of the Corporation who is a volunteer director, as that term is defined in the Act, and no volunteer officer, shall be personally liable to the Corporation or to its shareholders or members, if any, for monetary damages for a breach of the director's or officer's fiduciary duty; provided, however, that this provision shall not eliminate or limit the liability of a director or officer for any of the following:

1. A breach of the director's or officer's duty of loyalty to the corporation or to its shareholders or members, if any;
2. Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
3. A violation of Section 551(1) of the Act;
4. A transaction from which the director or officer derived an improper personal benefit;
5. An act or omission of a director who is a volunteer director or an act or omission of a volunteer officer occurring before filing these Articles;
6. An act or omission that is grossly negligent.

Furthermore, the Corporation hereby assumes all liability to any person other than the Corporation or its shareholders or members, if any, for all acts or omissions of a director who is a volunteer director (as defined in the Act) incurred in the good faith performance of the director's duties as such; provided, however, that the Corporation shall not be considered to have assumed any liability to the extent such assumption is inconsistent with the status of the Corporation as an organization described in Section 501(c)(3) of the Code, or results in the imposition of tax under Section 4958 of the Code.

ARTICLE IX

The Corporation hereby assumes the liability for all acts or omissions of a volunteer 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, Act No. 218 of the Public Acts of 1956, being Section 500.3135 of the Michigan Compiled Laws.

Provided, however, that the Corporation shall not be considered to have assumed any liability of a volunteer to the extent such assumption is inconsistent with the status of the Corporation as an organization described in Section 501(c)(3) of the Code, or results in the imposition of tax under Section 4958 of the Code.

ARTICLE X

If the Act is amended after filing these Articles to authorize the further elimination or limitation of the liability of directors or officers of nonprofit corporations, then the liability of members of the Board of Directors and of officers of the Corporation, shall be assumed by the Corporation or eliminated or limited to the fullest extent permitted by the Act as so amended, except to the extent such limitation, elimination or assumption of liability is inconsistent with the status of the corporation as an organization described in Section 501(c)(3) of Code, or results in the imposition of tax under Section 4958 of the Code. No amendment or repeal of Article IX shall apply to or have any effect on the liability or alleged liability of any member of the Board of Directors or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to the effective date of any such amendment or repeal.

ARTICLE XI

These Articles may be amended or repealed, or new Articles may be adopted in lieu thereof, upon the affirmative vote of a majority of the members of the Board of Directors of the Corporation then in office, provided such amendment does not alter the tax-exempt purpose of the Corporation or otherwise cause the Corporation to relinquish its status as a tax-exempt organization under Section 501(c)(3) of the Code, or the corresponding section of any future federal tax code.

ARTICLE XII

Upon the termination, dissolution or winding up of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the Corporation, distribute all assets of the Corporation to an organization designated by the Board of Directors that is exempt from taxation pursuant to Section 501(c)(3) of the Code, or the corresponding section of any future federal tax code.