

Amended and Restated Articles of Incorporation  
of  
Brookview School, a Montessori Community

**ARTICLE I**

**NAME**

The name of the Corporation is: Brookview School, a Montessori Community.

**ARTICLE II**

**PURPOSE**

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

1. To operate exclusively for religious, charitable, scientific, literary or educational purposes, including, but not limited to, operating a non-profit educational institution incorporating the Montessori method of instruction for children, including a child care center, and a primary, elementary and junior high school with educational, social, intellectual and recreational training and instruction, in compliance with Sections 170 to 177 of Act 327, Public Acts of 1931, dealing with educational corporations.
2. To solicit, receive and accept property to be applied to the operation of the Corporation.
3. To do and engage in any and all lawful activities that may be incidental or reasonably necessary to any of the foregoing purposes, and to have and exercise all other powers and authority now or hereafter conferred upon nonprofit corporations under the laws of Michigan.
4. Provided, however, that any references herein to any provision of the Internal Revenue Code shall be deemed to mean such provisions as now or hereafter existing, amended, supplemented or superseded, as the case may be.
5. Provided further, that in all events and under all circumstances, and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of this Corporation, voluntary or involuntary, or by operation of law, the following provisions shall apply:
  - a. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, shareholders, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually made to

or for this Corporation, and to make payments and distributions in furtherance of the purposes herein set forth,

- b. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, nor shall it in any manner or to any extent participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office; nor shall it engage in any activities that are unlawful under the laws of the United States of America, or the State of Michigan, or any other jurisdiction where such activities are carried on; nor shall it engage in any transaction defined at the time as "prohibited" under Section 503 of the Internal Revenue Code.
- c. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on: (a) by a corporation exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code; or (b) by a corporation, contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code.
- d. The Corporation shall never be operated for the purpose of carrying on a trade or business for profit. Neither the whole, nor any part or portion, of the assets or net earnings of the Corporation shall be used, nor shall the Corporation be organized or operated, for purposes that are not exclusively religious, charitable, scientific, literary or educational purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code.
- e. The Corporation shall not discriminate on the basis of race, religion, color, sex, national or ethnic origin or sexual preference in administering its educational policies and programs in any area of activity including, but not limited to, admissions, use of facilities or the exercise of student privileges, faculty and administrative staff, athletics, or scholarship and loan programs.

### **ARTICLE III**

- 1. The Corporation is organized on a nonstock basis.
- 2. As of May 31, 2009, the valuation of the Corporation's real property at 501 Zollar Drive, Benton Harbor, MI 49022 is \$1,116,990 and its personal property of furniture and equipment is \$161,243.
- 3. The Corporation is financed by tuition, fees, grants, bequests and contributions.
- 4. The corporation is organized on a membership basis

## **ARTICLE IV**

### **REGISTERED OFFICE AND REGISTERED AGENT**

1. The address of the registered office of Brookview School, a Montessori Community is: 501 Zollar Drive, Benton Harbor, Michigan 49022.
2. The name of the resident agent is Jennifer Spikner.

## **ARTICLE V**

### **DURATION**

The term of the Corporation is perpetual.

## **ARTICLE VI**

### **MEMBERSHIP**

1. There shall be one class of Members of the Corporation consisting of: (a) parents and/or legal guardians of the children enrolled in and attending the educational institution operated by the Corporation for the regular school year, provided that no more than two (2) parents and/or legal guardians of a child or children in the same family unit may be Members; and (b) those persons elected by the Board of Directors to be Members who shall be Members for such period of time and under such terms and conditions as shall be established by the Board of Directors. The following definitions shall apply:

a. The term "parents" and "legal guardians" as used herein shall mean a person or persons in lawful custody and control of a child or children enrolled in and attending the educational institution operated by the Corporation for the regular school year.

b. The term "family unit" as used herein shall mean a single unit collectively including the parent or parents, legal guardian or legal guardians together with the child or children enrolled in and attending the educational institution operated by the Corporation for the regular school year.

c. The term "regular school year" as used herein shall mean the period from August or September through May or June when the educational institution operated by the Corporation conducts its operations, but shall not include the summer session or other special or limited periods of operation.

d. The term "attending" as used herein shall include those children enrolled for the next regular school year in the educational institution operated by the Corporation on the date of the Annual Meeting of Members.

2. The Board of Directors shall establish rules, regulations and procedures for determining which parents and/or legal guardians are entitled to be Members and shall make the final determination as to the membership status of such parents and/or legal guardians.

3. Each Member shall have one vote on each matter submitted to a vote of Members. Voting by Members shall be in person and not by proxy.

4. The Corporation shall not discriminate against Members on the basis of race, religion, color, sex, national or ethnic origin or sexual preference in administering its educational policies and programs in any area of activity.

## **ARTICLE VII**

### **BOARD OF DIRECTORS**

1. The business and affairs of the Corporation shall be managed by the Board of Directors.

2. The number, term, manner of election and/or appointment of directors and the qualifications for service as a director shall be prescribed in the Bylaws.

3. The power to adopt, amend, or repeal the Bylaws is reserved exclusively to the Board of Directors.

## **ARTICLE VIII**

### **VOLUNTEER DIRECTORS**

1. To the fullest extent permitted under Section 209(c) of the Michigan Nonprofit Corporation Act (the "MNCA"), as the same presently exists or may hereafter be amended, a volunteer director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of the director's fiduciary duty. However, this provision does not eliminate or limit the liability of a director for any of the following:

- a. a breach of the director's duty of loyalty to the Corporation or its members;
- b. acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- c. a violation of Section 551(1) of the MNCA;
- d. a transaction from which the director derived an improper personal benefit;

- e. an act or omission occurring before this Article becomes effective in accordance with the pertinent provisions of the MNCA; or
- f. an act or omission that is grossly negligent.

Any volunteer director of the Corporation shall only be personally liable for monetary damages for a breach of fiduciary duty as a director of the Corporation, or its members, to the extent set forth in this section 1 of Article VIII.

2. To the fullest extent permitted under Section 209(c) of the MNCA, as the same presently exists or may hereafter be amended, the Corporation assumes all liability to any person other than the Corporation for all acts and omissions of a volunteer director occurring on or after the effective date of these Amended and Restated Articles of Incorporation, incurred in good faith performance of the volunteer director's duties as such. 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 a volunteer director; but such a claim shall be brought or maintained instead against the Corporation, which shall be liable for the breach of the volunteer director's duty.

3. The term "volunteer director" shall have the same definition as set forth in Section 110 (2) of the MNCA, as the same presently exists or may hereafter be amended.

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

## **ARTICLE IX**

### **NONDIRECTOR VOLUNTEERS**

1. To the fullest extent permitted under Section 209(e) of the MNCA, as the same presently exists or may hereafter be amended, the Corporation assumes the liability for all acts or omissions of a nondirector volunteer occurring on or after the effective date of these Amended and Restated Articles of Incorporation if any of the following are met:

- a. The volunteer was acting or reasonably believed that he or she was acting within the scope of his or her authority.
- b. The volunteer was acting in good faith.
- c. The volunteer's conduct did not amount to gross negligence or wilful and wanton misconduct.

- d The volunteer's conduct was not an intentional tort.
- e. 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.

A claim for monetary damages for a nondirector volunteer's acts or omissions shall not be brought or maintained against a nondirector volunteer, but shall be brought and maintained against the Corporation.

2. The term "nondirector volunteer" shall have the same definition as set forth in Section 108 (2) of the MNCA, as the same presently exists or may hereafter be amended.

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

## **ARTICLE X**

### **INDEMNIFICATION**

In addition to the provisions of Article VIII and Article IX, the Corporation shall indemnify its volunteer directors, nondirector volunteers, individuals or persons in the following manner:

1. To the fullest extent authorized or permitted by Michigan law, the Corporation shall indemnify any person, and such person's heirs, executors, administrators and legal representatives, who was or is made or threatened to be made a party to an action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that (i) such person serves or served as a director, officer, employee or agent of the Corporation or (ii) such person serves or served as a member on any committee of the Corporation or the Board of Directors, or (iii) such person serves or served at the request of the Corporation or the members as a trustee, member, officer, director, or shareholder of any other corporation, business corporation, partnership, joint venture, trust, association or any other enterprise against all expenses, including attorneys' fees and costs, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action

or proceeding, had no reasonable cause to believe such 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 reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

2. No indemnification shall be made in respect of any claim, issue or matter in which a director, officer, employee or agent of the Corporation shall have been found to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which the court shall deem proper.

3. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 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.

4. Any indemnification under this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, by independent legal counsel in a written opinion, or (iii) by the members. Notwithstanding the failure or refusal of the directors, counsel and the members of the Corporation to make provision therefore, such indemnification shall be made if a court of competent jurisdiction made a determination that the director, officer, employee or agent has a right to indemnification hereunder in any specific case upon the application of such director, officer, employee or agent.

5. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of a written agreement by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation.

6. The Corporation may purchase and maintain insurance on behalf of any person described above against any liability asserted against such person or incurred by such person in any such capacity or arising out of such person's status as such, whether or

not the Corporation would otherwise have the power to indemnify under the circumstances.

To the extent that any provision of this Article X conflicts with the provisions of Articles VIII and IX, the provision of Articles VIII and IX shall be controlling.

## **ARTICLE XI**

### **COMPROMISE OR ARRANGEMENT**

When a compromise or arrangement or a plan of reorganization of this Corporation is proposed between this Corporation and its creditors or any class of them or between this Corporation and its members, or any class of them, a court of equity jurisdiction within the state, on application of this corporation or of a creditor or member of the Corporation, or on application of a receiver appointed for the Corporation, may order a meeting of the creditors or class of creditors or of the members or class of members to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as the court directs. If a majority in number representing  $\frac{3}{4}$  in value of the creditors or class of creditors, or of the members or class of members to be affected by the proposed compromise or arrangement or a reorganization, agree to a compromise or arrangement or a reorganization of this Corporation as a consequence of the compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all creditors or class of creditors, or on all members or class of members and also on this Corporation.

## **ARTICLE XII**

### **DISSOLUTION**

In the event of the dissolution of the Corporation, all of the assets of the Corporation, real or personal, shall be distributed to such charitable organization or organizations as the Board of Directors may select, which are described in Section 501 (c) (3) of the Internal Revenue Code, which are exempt from Federal income tax under Section 501 (a) of the Internal Revenue Code or corresponding provisions of any subsequent federal income tax laws, and which engage in purposes similar to those of the Corporation. Any such assets not so disposed of, for whatever reason, shall be disposed of by order of the Circuit Court for the County of Berrien, State of Michigan, to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for purposes described in Section 501 (c) (3) of the Internal Revenue Code or corresponding provisions of any subsequent federal income tax laws, and which is exempt from Federal income tax under Section 501 (a) of the Internal Revenue Code or corresponding provisions of any subsequent federal income tax laws.

**ARTICLE XIII**

**MEETINGS OF MEMBERS**

1. Annual and special meetings of Members shall be held within the State of Michigan as provided in the Bylaws.
2. A quorum of Members at an annual or special meeting of Members shall be constituted when 20 Members entitled to vote are present in person at an annual or special meeting of Members.

**ARTICLE XIV**

**AMENDMENT**

These Articles of Incorporation may be amended by the vote of a majority of the Members present in person and entitled to vote at a meeting of the Members.

**CERTIFICATION OF ADOPTION AND EFFECTIVE DATE**

We do hereby certify that these Amended and Restated Articles of Incorporation were duly adopted on the 16<sup>th</sup> day of June, 2010, in accordance with the provisions of the Michigan Nonprofit Corporation Act and were duly filed with the Corporation Division of the Bureau of Commercial Services of the Department of Energy, Labor and Economic Growth of the State of Michigan and became effective on the 15<sup>th</sup> day of July, 2010.

Signed as of the 15<sup>th</sup> day of July, 2010

Brookview School, a Montessori Community

By                     /s/ Tamara Samuels                      
Tamara Samuels  
Its: President

And by                     /s/ Marc Thrum                      
Marc Thrum  
Its: Secretary

FINAL VERSION 4; 07/15/2010