

**CEDAR CREST COLLEGE  
BYLAWS**

As amended June 22, 2009

**BYLAWS of  
CEDAR CREST COLLEGE**

ARTICLE I

POWERS OF TRUSTEES

The Board of Trustees (the “Board”) of Cedar Crest College (the “College”) shall have and exercise the institutional powers prescribed by law and serves as the final legal authority within the institution. Its primary functions shall be policy making and responsibility for sound management of the College’s resources. The Board of Trustees shall further determine the general, educational, financial and strategic policies, and shall have the responsibility to promote financial solvency and preserve institutional integrity, and carry out any other functions which are permitted by these Bylaws or by the College’s Charter, except as limited by law. These powers shall include but shall not be limited to the following:

- 1.) Determine and periodically review the vision and the mission of the College.
- 2.) Insure that college-wide long range plans are initiated, and review and approve the plans.
- 3.) Review and approve changes in the educational programs of the College, consistent with its mission, plans and financial resources.
- 4.) Establish policies regarding appointment, promotion, tenure and dismissal of faculty and act on promotion and tenure recommendations.
- 5.) Assure that the human resources of the College are effectively developed.
- 6.) Recruit and appoint the President, who shall be the Chief Executive Officer of the College, in accordance with these Bylaws, and appraise the President’s performance, based on criteria established by the Trustees in consultation with the President, and remove the President for just cause.
- 7.) Support and participate in the College’s development, fundraising and advancement efforts, and represent the College to the community at large and to regional and national audiences.
- 8.) Approve and authorize all earned degrees upon recommendations of the faculty and honorary degrees upon recommendation of the Trustees’ Honorary Degree Committee.
- 9.) Approve the budget of the College and major financial transactions not provided for in the budget, and review ongoing financial performance. Establish and approve an investment policy commensurate with the college’s risk profile, and exercise periodic review of those investments.

- 10.) Authorize any changes in the tuition and fees within the College.
11. Authorize the incurring of debts by the College and securing thereof by mortgage and pledge of real and/or personal property, tangible and/or intangible.
- 12.) Authorize the purchase, sale, rental, lease, management and use of all land, buildings or major equipment.
- 13.) Authorize the construction of new buildings and major renovations of existing buildings.
- 14.) Authorize officers or agents of the College to accept gifts of bequests on behalf of the College.
- 15.) Ensure continuity and effectiveness of the Board by electing members consistent with the Board's goals, the strategic direction of the College, and the College's mission and vision.

## ARTICLE II

### MEMBERSHIP OF THE BOARD OF TRUSTEES

#### Section 1.

The Board of Trustees of the College shall consist of such number, not to exceed 40, as may from time to time be determined by the Board of Trustees. A minimum number of:

Six (6) of these positions shall be Cedar Crest College Alumni/Alumnae; five (5) of these six (6) positions shall be nominated by the Cedar Crest College Alumnae Association and the sixth shall be the Alumnae Association President. The nominations shall be forwarded to the Committee on Trustees who will make recommendations for election to the full Board.

One (1) of these positions shall be a full-time matriculated student at Cedar Crest College, usually the President of Student Government Association at the time of her election;

One (1) of these positions shall be the President of the College who shall be a Trustee for the term of her/his incumbency in office.

One (1) of these positions shall be a Cedar Crest College faculty member.

All of the Trustees shall be selected and elected to the Board by the Board.

Section 2.

Current Life Trustees shall have the privilege of attending all meetings of the Board and participating in the proceedings with the right to vote.

Section 3.

Trustees, except for the one student trustee and Life Trustees, shall serve for three-year terms and until their successors are elected and take office. Trustees may succeed themselves up to three consecutive terms in office. A Trustee in the position occupied by the student shall serve for a one-year term and may not succeed herself in office unless she is re-elected as President of the Student Government Association.

With the exception of the President of the College, no Trustee, who has served for nine consecutive years, shall be eligible for reelection until one full year (or the period of time between one Annual Meeting and the next) has elapsed from the conclusion of the ninth year of service. The Chair of the Board, however, may, from time to time, recommend that a Trustee be eligible to serve an additional three year term. These exceptions require a two-thirds vote of the Board. With the exception of the President of the College, no Board member may serve more than four consecutive terms.

Section 4.

New members of the Board of Trustees shall be elected by a two-thirds vote of the Trustees in attendance at any regular meeting of the Board.

Section 5.

Any member of the Board of Trustees may be removed from office following due process as defined in the Standing Rules, if such action is deemed to be in the best interests of the College, at any meeting of the Board by affirmative vote of two-thirds of the Trustees then in office.

## ARTICLE III

### MEETING OF THE BOARD OF TRUSTEES

Section 1.

Regular meetings of the Board of Trustees shall be held on the main campus of the College or at such other place as is indicated in the official notice of the meeting, at least three times annually at such times as may be designated by the President and Board Chair. The last meeting in each fiscal year shall be designated as the Annual Meeting. (The fiscal year is July 1- June 30.)

Section 2.

A special meeting of the Board may be called at any time on request of the Chairperson of the Board or of any five members of the Board. Written notice of a special meeting, the actions to be taken, and voting instructions, shall be issued by the Chairperson and distributed to each

member by certified mail not less than ten (10) days prior to the date of such a meeting. No business shall be transacted at any special meeting except such as shall be indicated in the notice thereof.

Section 3.

Written notice of every meeting of the Board of Trustees shall be given to each member not less than fifteen (15) working days prior to the date of the same meeting unless otherwise provided for in these Bylaws.

Section 4.

A majority of the Board of Trustees shall constitute a quorum for the purpose of doing business.

Section 5.

The latest edition of *Robert's Rules of Order* shall govern all proceedings of the Board and all committees.

## ARTICLE IV

### OFFICERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1.

The business and affairs of the College shall be managed by the Board of Trustees. The officers of the Board shall be a Chairperson, one or more Vice Chairpersons, and such other assistant officers as the Board from time to time shall deem necessary to appoint.

Section 2.

All officers shall be elected by members of the Board of Trustees at the Annual Meeting for a one-year term. The Chairperson and Vice Chairperson(s) must be members of the Board of Trustees; the Secretary and Treasurer shall be appointed by the Board, but need not be members.

Section 3.

The Board of Trustees may appoint such other officers and such agents as it may deem advisable and they shall hold their offices or positions at the pleasure of the Board, which shall prescribe their duties.

Section 4.

The Chairperson of the Board of Trustees shall be the principal officer of the College. S/he will preside whenever the Board is in session, shall execute, with the Secretary attesting, contracts or instruments authorized or issued by authority of the Board. S/he may, with the consent of the Board, delegate power to take actions and execute documents in performance of actions authorized by the Board to the President of the College, or to other officers of the Board.

Section 5.

In case of the absence of or inability of the Chairperson of the Board to perform his/her duties, a Vice Chairperson shall have all the powers and perform all the duties of the Chairperson. The Board may assign such other duties to the Vice Chairperson as it may deem fit.

ARTICLE V

COMMITTEES OF THE COLLEGE

Section 1.

The Chairperson of the Board shall designate the trustee chairpersons and committee members of all committees except as defined by these bylaws. Trustees shall be elected by the Board at the Annual Meeting. The Chairperson of the Board and the President of the College shall be ex-officio members of all standing committees.

Section 2.

Except where otherwise provided in this Article, additional members, including persons who are not on the Board of Trustees, may be appointed as Committee members by the Chairperson of the Board. In those instances in which faculty and students are designated as members of standing committees, they shall be elected respectively by the college faculty and student government.

Section 3.

The chair of any Trustee Committee and a majority of its members shall be Trustees.

Section 4.

There may be special or ad hoc committees as the Chairperson of the Board may from time to time establish for the discharge of particular duties.

Section 5.

All committees, except for the Executive Committee, may act by telephone, mail or other electronic communication technologies. The Executive Committee shall act at meetings in which members participate either in person or by means of conference telephone or similar communications equipment in which all persons participating in the meeting hear each other or by the unanimous written consent of all members of the Executive Committee.

Section 6.

The Standing Committees of the College specified in this Article, Sections 7-17, are:

- Executive
- Academic Affairs
- Advancement
- Audit
- Committee on Trustees
- Compensation
- Enrollment Management and Student Affairs
- Facilities and Property
- Finance and Endowment
- Honorary Degrees

Section 7.

Except as otherwise provided in this Article, all standing committees shall meet at least two times annually and report to the Board of Trustees on a regular basis, on their work and recommendations.

Section 8.

A simple majority of the voting members of the committee shall constitute a quorum for the transaction of committee business.

Section 9.

Committees of the board shall give counsel and assistance to the Board of Trustees and to the officers of the College.

Section 10.

The Executive Committee shall be comprised of the following: the Chairperson, Vice Chairperson of the Board, President of the College, President of the Alumnae Association, and chairs of the following committees: compensation, academic affairs, advancement, enrollment management and student life, finance and endowment. In addition, the Chairperson of the Board may appoint up to two ad hoc members to serve on the Executive Committee. The Chairperson may invite other Board members to attend Executive Committee meetings as needed when relevant expertise is required.

The Chairperson of the Board shall be the Chair of the Executive Committee. The Executive Committee shall possess and exercise all executive and supervisory powers of the Board of Trustees in the intervals between meetings of the Board, subject, however, to the regulations, instructions and authorizations as may from time to time be made and given by the Board. Meetings may be convened to set the agenda for the coming academic year or to advise the President and Board Chair. Special meetings may be called by the Chairperson of the Board or upon the request of any two members of the Executive Committee. At least three (3) days notice of the convening of a special meeting of the Executive Committee shall be given by the Secretary, except in cases of extreme emergency. Minutes of the Proceedings of the Executive

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Committee and a report of its actions shall be distributed by the Secretary to Trustee members in advance of the next convened meeting of the Board and according to established procedures.

Section 11.

The Academic Affairs Committee shall include at least five (5) members of the Board and the Provost. In addition, there may be two tenured members of the faculty who hold the rank of full professor and one student who is a member of the Senior Class. The Committee shall, in accordance with the general policy of the College and under the instruction of the Board of Trustees, report and recommend to the Board matters relating to faculty, personnel, and governance, and the educational program of the College.

Section 12.

The Advancement Committee shall include at least five (5) members of the Board, two (2) members of the faculty, two (2) students, and the Vice President for Institutional Advancement, ex-officio. The committee shall review and recommend fundraising and public relations programs that are necessary to enable the College to carry out its purposes, and take a leadership role among trustees in specific advancement initiatives.

Section 13.

The Audit Committee shall include at least three (3) members of the Board of Trustees appointed by the Chairperson of the Board, none of whom may be the Chairperson of the Finance and Endowment Committee or the Treasurer of the College. The Audit Committee shall meet at least once a year and report to the Board no less than annually. The Committee shall recommend the designation of an independent auditor every year to appraise the financial controls and accounting systems and practices of the College. The Committee shall follow standard practices of independent interview and recommend to the Board any changes that, according to the independent auditor's opinion, are appropriate. It shall cause to be prepared and submitted to the Board of Trustees at least once a year an audited statement of the financial condition of the College as of the close of the fiscal year (June 30) and of the receipts and expenditures for each year.

Section 14.

The Committee on Trustees shall consist of no fewer than five (5) trustee members. It shall:

1. Develop a plan of board composition relevant to the strategic direction of the college.
2. Consult with alumnae, faculty and students to identify candidates for the Trustee seats assigned to its respective class. The Committee's approval of the nominees forwarded by each constituency shall not be unreasonably withheld.
3. Review thoroughly the credentials of all candidates, including their professional and educational background, specific skills and expertise, opinions of qualified third parties, and the candidates' interest in Cedar Crest College and her mission.
4. Develop and manage a network of new trustee candidates. Recruit acceptable candidate trustees and recommend those candidates for election by the full Board of Trustees.
5. Develop strategies, policies, and practices that orient, educate, organize, motivate, and assess the performance of trustees.
6. Appraise the contributions and performance of trustees in order to recommend trustee reappointments. Trustees shall excuse themselves from any vote on their own performance or reappointment.
7. Periodically review Board committees' compositions and their chairs and provide recommendations to the Chair as appropriate.
8. Present to the Board of Trustees nominations for Chair, Vice-Chair(s) and other officers as deemed advisable.
9. Develop programs that continue the commitment of former trustees.
10. Ensure that the Board adheres to its rules of conduct, including conflict of interest and disclosure policies, and that it maintains the highest levels of integrity in all activities.
11. Periodically review the adequacy of the Board's bylaws and governance policies and practices.
12. Report to the Board at the Annual Meeting and otherwise as circumstances dictate.

Section 15.

The Compensation Committee, chaired by the Vice-Chair of the Board, shall consist of at least five (5) independent members of the Board, including the Chair of the Board. At least two of the five members must not be current members of the Executive Committee. No employed staff, faculty, or students may serve on the Compensation Committee. The Committee shall meet at least once a year and annually to appraise the College President based on mutually agreed upon criteria, and provide feedback to the President. The Committee is responsible for determining the compensation of the President. The Committee shall also annually review the President's succession plans for his/her key executive positions.

Section 16.

The Enrollment Management and Student Affairs Committee shall include at least five (5) members of the Board, one of whom shall be the student trustee. The Vice President of Enrollment Management and Student Affairs will serve as an ex-officio, non-voting member of the committee.

With respect to enrollment management, the committee will be apprised, as appropriate, on the College's admissions programs, processes and goals, including financial aid and scholarship status and projections; be kept abreast of national and regional trends in admissions, demographics, financial aid, best practices and peer activity as they relate to the College's enrollment targets and admissions programs; and advise on marketing and communications strategies. The Committee may recommend to the Board matters relating to College admissions for all categories of students. When reviewing matters associated with enrollment management or marketing and communication, the committee can invite the Director of Lifelong Learning and the Director of College Relations for discussion.

With respect to student affairs, the committee shall review and advise on all aspects of student life on campus, including co-curricular quality of life issues that affect student retention, safety and satisfaction for traditional, nontraditional, and graduate students. It shall report to the Board on these matters and, where appropriate, make recommendations to the Board with regard to enhancement of student satisfaction. When reviewing matters associated with student affairs, the committee may invite the Dean of Student Affairs, the faculty advisor to student government, and two additional students.

Section 17.

The Facilities and Property Committee shall include at least five (5) members of the Board, two members of the faculty, one student elected to the Board, the Executive Vice President for Finance & Administration, ex-officio, and the Director of Facilities, ex-officio. The Committee, acting in accordance with the general policy of the College and under the instructions of the Board of Trustees, shall recommend policy to the Board in regard to alterations, improvement and expansion of the College campus, and long-range campus planning.

Section 18.

The Finance and Endowment Committee shall include at least five (5) members of the Board and the Treasurer of the Corporation. Two of the members may be a student member and a faculty member of the Board, both of whom may serve with voice but no vote. The Committee shall review the current budget, proposed budget, and long-range budget projections, and shall receive such information as may be required in order to arrive at appropriate recommendations with respect to all fiscal matters. It shall have within the scope of its duties and responsibilities the review of fund performance of the Endowment in relation to Board-approved guidelines. The Treasurer working with staff shall furnish reports on the Endowment Fund quarterly to the Committee, and at each regular Board meeting. The Committee shall recommend to the Board changes in the Fund management to achieve the desired results for fund performance. The Committee may, in consultation with the Board chairman, the President and the Committee chair, organize endowment management as a sub-committee.

Section 19.

The Committee on Honorary Degrees shall include at least three (3) members of the Board, two members of the faculty and one student. The Committee on Honorary Degrees shall recommend to the Board persons worthy of honorary degrees. The Committee will use the following criteria in making recommendations: (1) Persons who have demonstrated outstanding qualities of creativity, innovation, leadership and achievement; (2) Persons who have distinguished themselves in service to others, including service or contribution to the College; (3) Persons who have made significant contributions in the fields of arts and sciences and public service.

## ARTICLE VI

### SEAL

The common or corporate seal of the College, until otherwise ordered by the Board of Trustees, shall consist of two concentric circles, in the outer one of which are the words "CEDAR CREST COLLEGE," and in the inner circle the words, "Religio, Libertas et Scientia," above three figures representing Religion, Liberty and Learning, and below the figures are the numbers "1867" denoting the year of the founding of the College.

## ARTICLE VII

### ADMINISTRATION OF THE COLLEGE

Section 1.

The administration of the College shall include a President, a Provost, an Executive Vice President for Finance & Administration, a Treasurer, a Secretary and such other officers or assistants as the Board of Trustees may from time to time authorize.

Section 2.

The President of the College shall be elected by the Board of Trustees for an indefinite term; S/he shall be directly responsible to the Board. The President shall act as the executive head of the College in all matters relating to educational program, student life, internal management, and long-range planning and development. S/he shall be the official medium of communication between the administration and the Board of Trustees, between the faculty and the Board of Trustees and between the students and the Board of Trustees. S/he shall recommend to the Board the appointment of other officers of the College, and all promotions and appointments of the Faculty. S/he shall sign all diplomas and confer all degrees. S/he shall be responsible for the discipline of the College and for carrying out all measures officially agreed upon by the faculty concerning matters committed to the faculty by the Board, and for executing such measures concerning the internal administration of the College as the Board of Trustees may direct. S/he may specifically delegate such responsibility, as a matter of routine procedure, to other officers of administration or agencies created for the purpose, subject to the approval of the Board of Trustees, but shall be held accountable therefore. The President shall make reports to the Board of Trustees at each regular meeting of the Board, on the work and condition of the College, and shall present for the consideration of the Board such measures as s/he shall deem necessary or expedient for the welfare of the College.

Section 3.

In the event of the death, incapacity or prolonged absence of the President, the Provost shall discharge the powers and duties of the President until such time as the Board of Trustees shall take action in the matter.

Section 4.

The Secretary shall have custody of the seal of the College, and shall keep a full and correct record of the proceedings of the meetings of the members of the Board of Trustees and of the Executive Committee, and shall give the necessary notices of all meetings of the members of the Board of Trustees and of the Executive Committee. S/he shall perform such other duties as customarily appertain to the office of the Secretary, or as the Board of Trustees or the Executive Committee may prescribe.

Section 5.

The Treasurer shall be the custodian of all funds and securities coming to the College from any source. S/he shall (1) deposit all funds and securities coming to the College in such depositories as the Board shall designate and shall disburse the same pursuant to the order of the Board; (2) keep an accurate account of all receipts, disbursements and other financial transactions which shall at all times be open to inspection by any member of the Board or by the President of the College; (3) annually have an audit made by a certified public accountant and prepare a printed report of the financial operations of the College, which shall be available to each member of the Board. The Treasurer shall file a bond for the faithful performance of his/her duties in such sum as shall be fixed by the Board, with some responsible surety company approved by the Board, the premium on the bond to be paid by the College.

## ARTICLE VIII

### THE FACULTY OF THE COLLEGE

#### Section 1.

The Faculty shall consist of the President of the College, the Provost, the Professors, Associate Professors, Assistant Professors, Instructors, Lecturers, and such other officers and staff of the College as the President of the College may determine.

#### Section 2.

The Faculty of the College shall be concerned with matters of instruction, the formulation of the curriculum and the advancement of academic standards of the College. The members of the Faculty may be called upon for committee and advisory service related to the educational and disciplinary life of the College. Those members of the Faculty who are chairpersons of departments shall be responsible to the President through the Provost for the work and personnel of their departments. The members of departments shall be responsible to the President and the Provost through the chairpersons of their respective departments.

## ARTICLE IX

### INDEMNIFICATION

Section 9.1. Third-party Actions. The College shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the College), by reason of the fact that s/he is or was a representative of the College, or is or was serving at the request of the College as a representative of another domestic or foreign college for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with the action or proceeding if s/he acted in good faith and in a manner s/he reasonably believed to be in, or not opposed to, the best interests of the College and, with respect to any criminal proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement or 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 that s/he reasonably believed to be in, or not opposed to, the best interests of the College and, with respect to any criminal proceeding, had reasonable cause to believe that his /her conduct was unlawful.

Section 9.2 Derivative and Corporate Actions. The College shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of the College to procure a judgment in its favor by reason of the fact that s/he

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is or was a representative of the College or is or was serving at the request of the College as a representative of another domestic or foreign college for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of the action if s/he acted in good faith and in a manner s/he reasonably believed to be in, or not opposed to, the best interests of the College. Indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the College unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the College is located or the court in which the action was brought determines 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 indemnify for such expenses that the court of common pleas or other court shall deem proper.

Section 9.3. Advancing Expenses. Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in Section 9.1 (relating to third-party actions) or Section 9.2 (relating to derivative and corporate actions) shall be paid by the College in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that s/he is not entitled to be indemnified by the College as authorized in this Article or otherwise.

Section 9.4 Procedure for Effecting Indemnification and Advancing Expenses. Unless ordered by a court, any indemnification or advancement of expenses under Section 9.1 (relating to third-party actions), Section 9.2 (relating to derivative and corporate actions) or Section 9.3 (relating to advancing expenses) shall be made by the College only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because s/he has met the applicable standard of conduct set forth in those sections. The determination shall be made:

- (a) by a majority vote of the Trustees who are not parties to such action, suit or proceeding, even though less than a quorum;
- (b) by a committee of such Trustees designated by a majority vote of such Trustees, even though less than a quorum; or
- (c) if there are no such Trustees, or if such Trustees so direct, by independent legal counsel in a written opinion.

Section 9.5. Supplementary Coverage.

(a) General Rule. The indemnification and advancement of expenses provided by or granted pursuant to Section 9.1 (relating to third-party actions), Section 9.2 (relating to derivative and corporate actions) or Section 9.3 (relating to advancing expenses) shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any agreement, vote of Trustees who were not parties to the action or proceeding, or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding that office. Section 5728 of the PaNPCL (relating to interested trustees or officers) shall be applicable to any contract or transaction authorized by the Trustees under this section. The College may create a fund of any nature, which may, but need not, be under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this section or otherwise.

(b) When Indemnification is not to be Made. Indemnification pursuant to subsection (a) shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

(c) Grounds. Indemnification pursuant to subsection (a) under any agreement, vote of Trustees or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the College would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the College.

(d) Trust Property. This Article shall not affect the liability of a representative with respect to the administration of assets held by the College pursuant to its authority to take and hold trust property.

Section 9.6. Power to Purchase Insurance. The College shall have power to purchase and maintain insurance on behalf of any person who is or was a representative of the College or is or was serving at the request of the College as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the College would have the power to indemnify him/her against that liability under the provisions of this Article.

Section 9.7 Application to Surviving or New Corporations. For the purposes of this Article, references to "the College" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving or new corporation as s/he would if s/he had served the surviving or new corporation in the same capacity.

Section 9.8 Application to Employee Benefit Plans. For the purposes of this Article:

- (a) References to "other enterprises" shall include employee benefit plans;
- (b) References to "serving at the request of the College" shall include any service as a representative of the nonprofit corporation that imposes duties on or involves services by the representative with respect to an employee benefit plan, its participants or beneficiaries;
- (c) Excise taxes assessed on a person with respect to any employee benefit plan pursuant to applicable law shall be deemed "fines;"

(d) Action with respect to an employee benefit plan taken or omitted in good faith by a representative of the College in a manner he reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the College.

Section 9.9. Duration and Extent of Coverage. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a representative of the College and shall inure to the benefit of the heirs and personal representative of that person.

## ARTICLE X <sup>1</sup>

### EXERCISE OF POWERS GENERALLY

- (a) General rule. – In discharging the duties of their respective positions, the Board of Trustees, committees of the Board and individual Trustees of a nonprofit college may, in considering the best interests of the college, consider to the extent they deem appropriate:
- (1) The effects of any action upon any or all groups affected by such action, including members, employees, suppliers, customers and creditors of the College, and upon communities in which offices or other establishments of the College are located.
  - (2) The short-term and long-term interests of the College, including benefits that may accrue to the College from its long-term plans and the possibility that these interests may be best served by the continued independence of the College.
  - (3) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the College.
  - (4) All other pertinent factors.
- (b) Consideration of interests and factors.—The Board of Trustees, committees of the Board and individual Trustees shall not be required, in considering the best interests of the College or the effects of any action, to regard any College interest or the interests of any particular group affected by such action as a dominant or controlling interest or factor. The consideration of interests and factors in the manner described in this subsection and in subsection (a) shall not constitute a violation of section 5712 of the Nonprofit Corporation Law of 1988 (the “Nonprofit Corporation Law”) (relating to standard of care and justifiable reliance).
- (c) Specific applications – In exercising the powers vested in the College, including, without limitation, those powers pursuant to section 5502 of the Nonprofit Corporation Law

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<sup>1</sup> Article X is subject to changes in Pennsylvania state law governing Nonprofit Corporations. Any changes in the law will supersede this version of the Article.

(relating to general powers), and in no way limiting the discretion of the Board of Trustees, committees of the Board and individual Trustees pursuant to subsections (a) and (b), the fiduciary duty of Trustees shall not be deemed to require them to act as the Board of Trustees, a committee of the Board or an individual Trustee solely because of the effect such action may have on an acquisition or potential or proposed acquisition of control of the College or the consideration that might be offered or paid to members in such an acquisition.

(d) Presumption – Absent breach of fiduciary duty, lack of good faith or self-dealing, any act as the Board of Trustees, a committee of the board or an individual Trustee shall be presumed to be in the best interests of the College. In assessing whether the standard set forth in section 5712 of the Nonprofit Corporation Law has been satisfied, there shall not be any greater obligation to justify, or higher burden of proof with respect to any act as the Board of Trustees, any committee of the Board or any individual Trustee relating to or affecting an acquisition or potential or proposed acquisition of control of the College than is applied to any other act as a Board of Trustees, any committee of the Board or any individual Trustees. Notwithstanding the preceding provisions of this subsection, any act as the Board of Trustees, a committee of the board or an individual Trustee relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested Trustees shall have assented shall be presumed to satisfy the standard set forth in section 5712 of the Nonprofit Corporation Law, unless it is proven by clear and convincing evidence that the disinterested Trustees did not assent to such act in good faith after reasonable investigation.

(e) Definition – The term “disinterested Trustee” as used in subsection (d) and for no other purpose means:

- (1) A Trustee of the College other than:
  - (i) A Trustee who has a direct or indirect financial or other interest in the person acquiring or seeking to acquire control of the College or who is an affiliate or associate, as defined in section 2552 of the Business Corporation Law of 1988 (relating to definitions), of, or was nominated or designated as a Trustee by a person acquiring or seeking to acquire control of the College.
  - (ii) Depending on the specific facts surrounding the Trustee and the act under consideration, an officer or employee or former officer or employee of the College.

- (2) A person shall not be deemed to be other than a disinterested Trustee solely by reason of any or all of the following:
- (i) The ownership by the Trustee of a membership in or shares of the College.
  - (ii) The receipt as a member of or holder of shares of any class of any distribution made to all members of or holders of shares of that class.
  - (iii) The receipt by the Trustee or Trustee's fees or other consideration as a Trustee.
  - (iv) Any interest the Trustee may have in retaining the status or position of Trustee.
  - (v) The former business or employment relationship of the Trustee with the College.
  - (vi) Receiving or having the right to receive retirement or deferred compensation from the College due to service as a Trustee, officer or employee.

## ARTICLE XI

### AMENDMENTS

#### Section 1.

These Bylaws may be amended by a two-thirds vote of the members present at a meeting of the Board of Trustees provided notice of said amendment has been given at the previous meeting or at least thirty (30) days prior to the meeting at which the amendment(s) is (are) to be considered.

As amended June 22, 2009

