



**MID-CENTRAL COLLEGE  
CONFERENCE**

*OPERATING AGREEMENT*

**2009-2010**

## **OPERATING AGREEMENT FOR MID-CENTRAL COLLEGE CONFERENCE, LLC**

THIS OPERATING AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and among the undersigned parties, as initial members ("Initial Members") of Mid-Central College Conference, LLC, an Indiana limited liability company.

### **Preliminary Statement**

Mid-Central College Conference, LLC, an Indiana limited liability company (the "Company" or "Conference"), was organized on July 25, 2008. J. D. Collins (the "Designated Agent") acted as organizer to form the Company under the laws of the State of Indiana by the filing of Articles of Organization (the "Articles") for the Company pursuant to the Indiana Business Flexibility Act (the "Act") on behalf of its Initial Members. The Initial Members now desire to adopt this Operating Agreement to govern certain aspects of the operations of the Company and to set forth the rights and obligations of the Initial Members and any Additional Member or Substitute Member (as defined below), and their respective successors and assigns.

### **Terms and Conditions**

In consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound thereby, the undersigned parties hereby agree to the following terms and conditions.

### **ARTICLE I**

#### **DEFINITIONS**

Unless the context or rule of grammar otherwise require or unless otherwise expressly provided in this Agreement, the capitalized terms used in this Agreement shall have the meanings specified in this Article I, as set forth below:

"Act" means the Indiana Business Flexibility Act (Ind. Code 23-18. et seq.), as the same may be amended from time to time.

"Affiliate" means any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Member. The term "control", as used in the immediately preceding sentence, means, with respect to corporations, the right to exercise, directly or indirectly, more than 50% of the voting rights of such corporation and, with respect to any other person, the possession, directly or indirectly, of the power to direct or cause the direction of the management of policies thereof.

"Agreement" means this Operating Agreement, as originally executed and as amended from time to time.

"Articles" means the Articles of Organization filed by the Company with the Indiana Secretary of State as amended or restated from time to time.

"Bankruptcy" means (i) the entry of a decree for relief against the Member by a court of competent jurisdiction in any involuntary case brought against the Member under any bankruptcy, insolvency or other similar law (collective, "Debtor Relief Laws") generally affecting the rights of creditors and relief of debtors now or hereafter in effect, (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for the Member or for any substantial part of its assets or property (iii) the ordering of the winding up or liquidation of the Member's affairs, assets or property, (iv) the filing of a petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 303 of the Federal Bankruptcy Code (or any general assignment for the benefit of its creditors).

“Capital Contribution” means the total value of any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or perform services that a person transfers to the Company in the capacity as a member. Any reference in this Agreement to the Capital Contribution of a member shall include all capital contributions previously made by any prior member, and shall be reduced by any distribution(s) to such prior member.

“Code” means the Internal Revenue Code of 1986, as amended. All references in this Agreement to Code Sections shall include any and all corresponding provisions of succeeding law.

“Council of Presidents” or “COP” means that body consisting of each of the Member Representatives.

“Event of Dissolution” means the withdrawal, death, retirement, resignation, removal, bankruptcy or dissolution of a Member, or the assignment by a Member of such Member’s interest following which the assignee of such interest becomes a Member pursuant to Section 10.4.

“Former Member” means the Member whose actions, conduct or status has resulted in an event of dissolution, and thereafter such person is no longer a member.

“Initial Members” refer to the following College and University members represented by their respective Presidents as of the Effective Date of this Agreement: Bethel College, Goshen College, Grace College, Huntington University, Indiana Wesleyan University, Marian College, Spring Arbor University, Taylor University, and the University of Saint Francis.

“Member” means a college or university admitted to membership in the Company in accordance with the Act, the Articles and this Agreement, and as to whom an event of dissolution has not occurred.

“Member Representative” means the President or Chief Executive Officer of the Member

“NAIA” means the National Association of Intercollegiate Athletics.

“Substitute Member” means any person who or which is admitted into membership upon written consent of all members pursuant to Section 10.4 of this Agreement.

## **ARTICLE II**

### **ORGANIZATION AND TERM**

Section 2.1. Formation. The Company was formed pursuant to the Act. The rights and liabilities of the members shall be as provided under the Act, the Articles and this Agreement. The members agree to each of the provisions of the Articles.

Section 2.2. Name. The name of the Company is *Mid-Central College Conference, LLC*.

Section 2.3. Principal Place of Business. The principal place of business of the Company shall be at, 2277 S. Angling Pike, Hartford City, IN 42348 or such other address as may be established by the consent of a majority in interest of Members.

Section 2.4. Registered Office and Registered Agent. The Company’s registered office shall be at its principal place of business set forth in Section 2.3, and the name of its initial registered agent at such address shall be J. D. Collins. The Company may designate another registered office or agent at any time by following the procedures set forth in the Act.

Section 2.5. Purpose. The purpose of the Company shall be as set forth in the Articles.

Section 2.6. Term. The term of the Company shall commence on the date of formation as registered with the Secretary of State for Indiana and shall continue in perpetuity, unless the Company is earlier dissolved in accordance with Section 11.1 of this Agreement.

Section 2.7. Other Instruments. Each member hereby agrees to execute and deliver to the Company within ten (10) days after receipt of a written request therefore, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Company deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

Section 2.8. National Association of Intercollegiate Athletics. The Company is an NAIA affiliated Conference and as such is responsible, and the members agree, to align this Agreement, and all other governing documents, with NAIA minimum standards. As such, the Council of Presidents will make amendments to this Agreement as necessary to align it with such standards as they may be amended from time to time.

### **ARTICLE III**

#### **MEMBERS AND CAPITAL CONTRIBUTIONS**

Section 3.1. Names and Addresses of Members. All members of the Company, past and present, and their last known business, residence or mailing address shall be listed on the attached Exhibit A. The members shall be required to update Exhibit A from time to time as necessary to accurately reflect the information therein.

Section 3.2. Capital Contributions and Equality of Members. The initial capital contributions to the Company are set forth on Exhibit A. Any subsequent capital contributions shall be in such amounts and in such types or property as may be agreed upon by all of the members. All members have equal representation in the Company and one vote. Notwithstanding, any member that has not made agreed upon contributions shall not be entitled to a vote.

Section 3.3. Capital Calls. The members shall be obligated to make capital contributions other than the initial capital contributions set forth on Exhibit A only upon approval of a two-thirds majority of the members. If any of the other members shall fail to make such additional capital contributions, the Company may pursue any available remedy provided by the Act, or any other law, regulation or rule, to ensure contribution of the required amount by the defaulting member. The member shall be given notice of the request for additional capital 30 days prior to the date any additional capital contributions are to be remitted to the Company. Execution of this Agreement by a member shall constitute an enforceable promise to make additional capital contributions in accordance with this Section 3.3.

Section 3.4. New Members. New members may be admitted in accordance with Company policy. When electing a new member college to the Mid-Central College Conference, said election shall be by secret ballot. Each member school shall have one vote. Election to the Conference shall not be accomplished if more than two (2) dissenting votes are registered.

Section 3.5 Membership Participation Requirements. Membership in this Conference requires participation in at least six (6) of the sponsored sports. In the men's division the minimum participation is three (3) sports with basketball and baseball required of all member colleges. In the women's division the minimum participation is three (3) sports with basketball and volleyball required of all member colleges.

Section 3.6. Good Standing. Membership in good standing in this Conference is rendered to every college which abides by the spirit and stipulations of this Agreement. Membership can be placed in jeopardy when any member college is determined, in a full meeting of the Council of Presidents, to be in violation of the provisions stated herein and the policies adopted pursuant to this Agreement. Members in violation of this Agreement or policies adopted pursuant to this Agreement, may, by a two-thirds majority of the Council of Presidents, be removed from membership.

## **ARTICLE IV**

### **MEETINGS OF MEMBERS**

**Section 4.1. Meetings.** Meetings of the Members shall be held, at least annually, at a time and place mutually agreeable to the Members on such date as selected by the Members or on such other date or place as may be designated by a majority interest of the Members. For purposes of this Agreement, "meetings of the Members" or "Member's meetings" means meetings of the Council of Presidents ("COP").

**Section 4.2. Special Meetings.** Special meetings of the Members may be called by a majority interest of the Members. Special meetings of the Members shall be called upon delivery to each Member Representative of notice of a special meeting of the Members given in accordance with Section 4.3 signed and dated by a majority of the Members.

**Section 4.3. Notice of Meetings.** The Company shall deliver or mail written notice stating the date, time and place of any Members meetings and, in the case of a special Members meeting or when otherwise required by law, a description of the purposes for which the meeting is called, to each Member Representative of record entitled to vote at the meeting, at such address as appears in the records of the Company and at least two, but no more than 30 days, before the date of the meeting.

**Section 4.4. Waiver of Notice.** A Member may waive notice of any meeting, before or after the date and time of the meeting as stated in the notice, by delivering a signed waiver to the Company for inclusion in the minutes. A Member's attendance at any meeting, in person or by proxy (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Member objects to considering the matter when it is prepared.

**Section 4.5. Voting by Proxy.** A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by the Secretary or other officer or agent of the Corporation authorized to tabulate votes. The general proxy of a fiduciary is given the same effect as the general proxy of any other Member. A proxy appointment is valid for 11 months unless otherwise expressly stated in the appointment form.

**Section 4.6 Action by Consent.** Any action required or permitted to be taken at a Member's meeting may be taken without a meeting if the action is taken by all the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all of the Members entitled to vote on the action, and delivered to the Company for inclusion in the minutes.

**Section 4.7. Presence.** Any or all Members may participate in any annual or special Member's meeting by, or through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

**Section 4.8. Conduct of Meetings.** At any Member's meeting, the chair, or in his or her absence the vice-chair, or in his or her absence a Member elected for the purpose, shall preside at the meeting, and the secretary shall prepare minutes of the meeting which shall be placed in the minutes of the Company. The Conference Commissioner shall also be present at any meetings unless the Chair or presiding officer requests his or her absence.

**Section 4.9 Voting.** Each Member institution shall be entitled to one (1) vote by the Member Representative or his or her designee. A two-thirds majority of the voting Members shall constitute a quorum.

## **ARTICLE V**

## **COUNCIL OF PRESIDENTS RESPONSIBILITIES**

**Section 5.1 Officers.** The COP elects a chair and a vice chair. The chair and the vice-chair shall be elected by majority vote and serve two-year terms, with the vice chair serving as chair-elect. These officials will bring business items to the entire COP as deemed necessary. The chair will preside at all meetings and will appoint or employ a secretary. The secretary shall keep the record of the minutes, including a tally of all votes. The Chair will be encouraged to attend all COP meetings during his/her tenure as chair.

**Section 5.2 Duties.** The Council of Presidents will give final approval to matters of fundamental policy such as financial aid, national affiliation, membership, budget approval, employment and supervision of the Conference Commissioner, approval of the conference strategic plan and other matters affecting basic nature, purpose, and direction of the Conference. The COP is the final authority on all Conference matters. Nevertheless, much of the day-to-day business of the Conference will be delegated to the Conference Commissioner, the Administrative Committee, the Faculty Athletic Representatives Committee, and respective sport groups.

**Section 5.3. Cooperation.** While it is understood that the intercollegiate athletic program at each member institution is the full responsibility of its Chief Executive Officer, it is imperative that the Council of Presidents and the entire Conference constituency work together toward promoting the student-athlete philosophy of the National Association of Intercollegiate Athletics. Further, it is agreed that the Conference shall align this Agreement as well as all Conference policies with NAIA minimum standards. Therefore, each Chief Executive Officer will establish within his or her respective institution a liaison whereby regular reports of Conference activities are received and discussed.

## **ARTICLE VI**

### **RIGHTS OF MEMBERS**

**Section 6.1. Rights of Members.** The Members shall have the following rights, except as otherwise provided in the Act, the Articles or this Agreement:

- (a) The right to amend the Articles of this Agreement, provided that such amendment complies with the Act, the Articles and Article XII of this Agreement;
- (b) The right to approve a merger of the Company, or the sale, exchange or other disposition of all or substantially all of the Company's property, when such merger, sale, exchange or other disposition is, or is part of, a single transaction or plan, pursuant to the written consent of all the members;
- (c) The right to dissolve the Company by the written consent of all Members; and
- (d) Any and all rights and powers of Members under the Act.

**Section 6.2. Waiver of Partition.** Each Member on behalf of such Member, its successors, and its assigns, hereby waives any right to have any Company property partitioned.

**Section 6.3. Withdrawal.** A Member may not withdraw from the Company without the consent of all the remaining Members. Further, unless specifically authorized by all the remaining Members, a Member may not withdraw unless (i) the Member has contributed the full amount of money or other consideration which constitutes the Member's capital contribution as agreed; and (ii) following the Member's withdrawal there will be at least two remaining Members of the Company. The Company may recover damages for breach of this Section 6.3 and may offset the Company's damages against any amount owed to a Member or former Member for distributions or otherwise.

Section 6.4. Notice of Withdrawal. Any MCC college considering withdrawal from the Conference will give the conference notice of their intentions prior to September 1st of the year preceding withdrawal.

Section 6.5. Reimbursement of Expenses. Each Member shall be entitled to reimbursement from the Company of all expenses of the Company reasonably incurred and paid by such Member on behalf of the Company. Any questions as to whether a member is entitled to reimbursement of expenses under this Section 6.4. shall be determined by a two-thirds majority in interest of the Members.

Section 6.6. Organization Expenses. The Company shall pay all expenses incurred in the organization of the Company.

Section 6.7. Dissolution upon Termination or Withdrawal of Member. Upon the termination or withdrawal of membership by or of any Member, the Company shall be dissolved and its affairs wound up in accordance with Article XI of this Agreement, unless the remaining Members unanimously agree to continue the business of the Company, within 90 days of the aforesaid termination or withdrawal.

## **ARTICLE VII**

### **OPERATIONS**

Section 7.1. Administrative Committee. There shall be an Administrative Committee consisting of the athletic director from each Member. The chair and vice-chair of the Administrative Committee shall be elected by the Members of the Administrative Committee for two (2) year alternating terms. The chair shall be elected at the Fall meeting in even-numbered years, shall preside at all Administrative Committee meetings and shall act as Commissioner in the event of the Commissioner's unavailability or incapacity or in the absence of a duly appointed Commissioner. The vice-chair shall be elected at the Fall meeting in odd-numbered years and shall act as chairperson in the event of the absence or incapacity of the chair. The chair shall appoint or employ a secretary to take the minutes of all meetings. The Conference Commissioner shall be an ex-officio member of the Administrative Committee without voting privileges, *except* to break a tie. The Administrative Committee reports directly to the Commissioner.

#### Section 7.2 Administrative Committee Duties.

a) **Functions.** The duties of the Administrative Committee shall be to oversee all functions with regard to Competition, Scheduling, Safety and Sport Administration, as well as to act as a clearing house for all matters of business not delegated to the Council of Presidents, Commissioner or Faculty Athletic Representative Committee. The Administrative Committee shall create, adopt and modify all policies of the Conference, except those adopted by the COP, and of its own internal operations.

b) **Appeals from Commissioner Discipline.** The Administrative Committee shall hear all appeals of decisions of the Commissioner regarding charges of violations of Conference rules, policies or procedures. All appeals of the decisions of the Commissioner shall be submitted to the Administrative Committee chair or acting chair within thirty (30) days of the decision. Appeals shall be in writing, detailing all of the evidence submitted in the case and the appealing party's statement of the rule, policy or procedure he or she believes the Commissioner violated. The Administrative Committee shall review the written record and return its decision within thirty (30) days. No re-hearing or review of the facts will be had unless requested by the Administrative Committee. The chair or acting chair of the Administrative Committee shall notify the COP in writing of the decision in the matter. For matters of fundamental policy, as outlined in Section 5.2 above, any member of the COP may request the COP to review the decision of the Administrative Committee. The COP may request the Administrative Committee to submit all documentation on the matter to the Chair of the COP for its review. The COP may, in its sole and unfettered discretion, hear the matter. Nevertheless, any such hearing by the COP must be had within sixty (60) days of the decision of the Administrative Committee. The decision of the COP will then be final.

Section 7.3 Faculty Athletic Representative Committee. There shall be a Faculty Athletic Representative Committee (FARC) consisting of one Faculty Athletic Representative from each Member.

The chair and secretary of the FARC shall be elected by the members of the FARC for two (2) year alternating terms. The chair shall be elected at the Fall meeting in even-numbered years, shall preside at all FARC meetings. The secretary shall be elected at the Fall meeting in odd-numbered years and shall take the minutes of all meetings. The FARC reports directly to the Commissioner.

#### Section 7.4 FARC Duties.

a) **Functions.** The duties of the FARC shall be to oversee all functions regarding Student Athletic Eligibility, Academics and Financial Aid. The FARC may also adopt policies and procedures regarding its own internal operations.

b) **Discipline.** All charges regarding athlete eligibility, violation of Conference rules or policies regarding academics and all issues regarding financial aid shall be submitted to the Chair of the FARC within one (1) week of the discovery of the alleged infraction. A copy of the charges shall be sent to the Faculty Athletic Representative of the school in which the alleged violation occurred and the FARC of the other member colleges, one (1) week prior to the FARC meeting. The FARC shall give due consideration to each case, shall make whatever investigation it deems necessary, and shall take appropriate action as quickly as possible. Appeal of all decisions of the FARC shall be to the Conference Commissioner within thirty (30) days of the decision.

c) **Student Athlete Eligibility Sub-committee.** There shall be a sub-committee of the FARC known as the Student Athlete Eligibility Sub-committee (SAEC) consisting of at least three members of the FARC. All members of the SAEC shall be appointed by the Chair of the FARC, The Chair of the FARC shall also be the Chair of the SAEC. The SAEC shall perform whatever functions of the FARC that the FARC chooses to assign to it.

Section 7.5. Commissioner. The members may select a Commissioner from time to time whose responsibilities shall include overseeing the day-to-day operations of the Company, overseeing the Administrative and Faculty Athletic Representative Committees and such other duties as are assigned by the members from time to time. The Commissioner shall be directly responsible for oversight of officials, public relations and matters involving ethics and discipline. The Commissioner shall also hear charges and appeals as outlined below. The initial Commissioner is Mr. J.D. Collins. The Commissioner reports directly to the chair or acting chair of the COP.

#### Section 7.6. Powers of the Commissioner.

a. The Commissioner shall have the right and authority to take all actions which the Commissioner deems necessary, useful or appropriate for the day-to-day management and conduct of the Company's business, and that are in accordance with this Agreement and the policies and procedures duly adopted pursuant thereto. Subject to the restrictions set forth in Section 5.2 the Commissioner may exercise all powers of the Company to do all such lawful acts and things as are required to be exercised or done by the Members. However, all instruments, contracts, agreements and documents providing for the acquisition, mortgage or disposition of property of the Company shall be valid and binding on the Company if ratified by the Members in writing. All instruments, contracts agreements and documents of whatsoever type executed on behalf of the Company shall be executed in the name of the Company by the Commissioner. The Commissioner shall also act as the treasurer of the Conference.

b. All charges regarding violation of Conference rules, policies or procedures not delegated to the FARC shall be heard by the Commissioner. Such charges shall be submitted to the Commissioner within one (1) week of the discovery of the alleged infraction. The Commissioner shall give due consideration to each case, shall make whatever investigation he or she deems necessary, and shall take appropriate action, in accordance with Conference policies and procedures, as quickly as possible. Appeals of the Commissioner's decisions shall be to the Administrative Committee.

c. The Commissioner shall also hear all appeals from decisions of the FARC. Said appeals shall be in writing, detailing all of the evidence submitted in the case and the appealing party's statement of the rule or policy he or she believes the FARC violated. The appeal should be

submitted to the Commissioner within thirty (30) days of the FARC's decision. The Commissioner shall review the written record and return his or her decision within thirty (30) days. No re-hearing or review of the facts will be had unless requested by the Commissioner. The Commissioner shall notify the chair or acting chair of the COP in writing of his or her decision in the matter. For matters of fundamental policy, as outlined in Section 5.2 above, any member of the COP may request the COP to review the decision of the Administrative Committee. The COP may request the Commissioner to submit all documentation on the matter to the chair or acting chair of the COP for its review. The COP may, in its sole and unfettered discretion, hear the matter. Nevertheless, any such hearing by the COP must be had within sixty (60) days of the decision of the Commissioner. The decision of the COP will then be final

Section 7.7. Salaries. The Company may pay to the Commissioner or other persons, compensation and/or bonus as payment for services rendered to the Company. Such compensation and/or bonuses shall be treated as expenses of the Company and shall not be deemed to constitute distribution to the recipient of any profit, loss or capital of the Company.

## **ARTICLE VIII**

### **ACCOUNTING AND RECORDS**

Section 8.1. Records and Accounting. The fiscal year of the Company for financial reporting and for Federal income tax purposes shall be the calendar year. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded in accordance with the accounting methods elected to be followed by the Company for Federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. The Company shall keep the following records and information at its principal office:

- (a) A list with the full name and last known mailing address of each Member of the Company from the date of organization.
- (b) A copy of the Articles of Organization and all amendments;
- (c) Copies of the Company's Federal, state and local income tax returns and financial statements for the three (3) most recent years, or if the returns and statements were not prepared, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their Federal, state and local tax returns for the same period;
- (d) Copies of this Agreement and all amendments and copies of any written operating agreements no longer in effect; and
- (e) A written document setting out the following:
  - (i) The amount of cash, if any, and a statement of the agreed value of any other property or services contributed by each Member and the times at which or events upon the happening of which any additional contributions agreed to be made by each Member are to be made.
  - (ii) The events, if any, upon the happening of which the Company is to be dissolved and its affairs wound up.
  - (iii) Any other writings required by this Agreement.

Section 8.2. Access to Accounting Records. Each Member, and the Member's duly authorized representative, shall have the right, at the Member's own expense, to inspect and copy the records listed in Section 8.1 at the principal office of the Company, upon reasonable request, during ordinary business hours.

Section 8.3. Annual Financial and Tax Information. The Commissioner shall use his or her best efforts to cause the Company to deliver to each Member within 90 days after the end of each fiscal year all information necessary for the preparation of such Member's Federal and state income tax returns. The Commissioner shall also use his or her best efforts to cause the Company to prepare 90 days after the end of each fiscal year, a financial report of the Company for such fiscal year containing a balance sheet as of the last day of the year ended, an income statement for the year then ended, a statement of sources and applications of funds, and a statement of reconciliation of the capital accounts of the members.

Section 8.4. Accounting Decision. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Commissioner. The Commissioner may rely upon the advice of the Company's public accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

Section 8.5. Federal Income Tax Elections. The Company may make any and all elections for Federal income tax purposes, including, but not limited to, the following:

- (a) To the extent permitted by applicable law and regulations, an election to use an accelerated depreciation method with respect to any depreciable asset of the Company; and
- (b) In case of a transfer of all or part of the interest of an member, an election to adjust the tax basis of the assets of the Company pursuant to Code Section 734, 743, and 754.
- (c) Election of non-profit status under 501(c)(3) of the Code.

## **ARTICLE IX**

### **CAPITAL ACCOUNT; ALLOCATIONS; DISTRIBUTIONS**

#### Section 9.1. Capital Account

- (a) No Member shall have the right to withdraw that Member's capital contribution, or to receive any return or interest on any portion of that Member's capital contribution, or to demand and receive property of the Company or any distribution in return for that Member's capital contribution, except as may be specifically provided in this Agreement or as required by law. No Member shall receive out of Company property any part of the Company, except liabilities to Members, unless all liabilities have been paid or there remains property of the Company sufficient to pay them, and the consent of all Members is obtained, unless the return of the capital contribution may be rightfully demanded as provided in the Articles, this Agreement or the Act.
- (b) Subject to the provisions in Section 9.1(a) and Article XI, a Member may rightfully demand the return of the Member's capital contribution (i) on the dissolution of the Company, or (ii) as may otherwise be provided in the Articles, this Agreement or the Act. A Member shall have only the right to demand and receive cash in return for the Member's capital contribution.

Section 9.2. Allocation of Net Income, Loss or Capital Gains. Except as may be expressly provided otherwise in this Article IX, and subject to the provisions of Code Section 704(c) or any other provision of the Code, the net income (taking into account all salaries, bonuses, or guaranteed payments made to Members, loss or capital gains of the Company) for each fiscal year of the Company shall be allocated as the Members agree by a two-thirds majority vote.

Section 9.3. Allocation of Income and Loss and Distributions in Respect of Interests Transferred. Notwithstanding any provision in this Agreement to the contrary, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning interests in the Company as of the date such sale or other disposition occurs and shall be in accordance with their respective percentage interests on such date.

## ARTICLE X

### RESTRICTIONS ON TRANSFER OF INTERESTS

Section 10.1. Restrictions on Transfer and Assignment of Member's Interest. No Member shall be entitled to assign, convey, sell, transfer, pledge, encumber or in any way alienate all or any part of its interest, except with the prior written consent of all the other Members, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act) as the remaining Members may determine in their sole discretion. Transfers in violation of this Section 10.1 shall only be effective to the extent set forth in Section 10.3(b) of this Agreement.

Section 10.2. Further Restriction on Transfer. In addition to the restrictions set forth in Section 10.1, no Member shall assign, convey, sell, encumber or in any way alienate all or any part of his interest in the Company: (a) without registration under applicable federal and state securities laws, unless it delivers an opinion of counsel satisfactory to the Company that registration under such laws is not required; or (b) if the interest to be sold or exchanged, when added to the total of all other interests sold or exchanged in the preceding 12 consecutive months prior thereto, would result in the termination of the Company for tax purposes under Code Section 708.

Section 10.3. Substitute Members. A transferee shall have the right to become a substitute Member if (a) the requirements of Section 10.1 and 10.2. of this Agreement are met, (b) such entity executes an instrument satisfactory to the remaining Members accepting and adopting the terms and provisions of this Agreement, and (c) such entity pays any reasonable expenses in connection with its admission as a remaining Member.

#### Section 10.4. Effect of Transfer.

- (a) Any permitted transfer of all or any portion of a Member's interest in the Company will take effect on the first day of the month following receipt by the Members of written notice of transfer. Any transferee of an interest in the Company shall take subject to the restrictions on transfer imposed by this Agreement.
- (b) Upon any transfer of a Member's interest in the Company in violation of this Agreement, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, and such transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to which the transferor of such interest in the Company would otherwise be entitled.

## ARTICLE XI

### DISSOLUTION AND WINDING UP

Section 11.1. Dissolution. The Company shall be dissolved and its affairs wound up on the first of the following to occur:

- (a) At the time or on the occurrence of events specified in the Articles of this Agreement;
- (b) All of the Members in writing consent to the dissolution of the Company;
- (c) An event of dissolution occurs, unless all the remaining Members elect to continue the business of the Company within 90 days of the date of the event of dissolution; or
- (d) A decree of judicial dissolution is entered pursuant to Ind. Code § 23-18-9-2.

Section 11.2. Winding Up. Upon dissolution, the Commissioner shall proceed to wind up and liquidate the business and affairs of the Company, and the Company may only carry on business that is

appropriate to wind up and liquidate the business and affairs of the Company, including the following: (a) collecting the Company's assets; (b) disposing of properties that will not be distributed in kind to members; (c) discharging or making provisions for discharging liabilities; (d) distributing the remaining property among the Members; and (e) doing every other act necessary to wind up and liquidate the business and affairs of the Company. The Commissioner shall follow the procedure for disposing of known claims set forth in Ind. Code § 23-18-9-8 and shall publish notice of the dissolution of the Company pursuant to Ind. Code § 23-18-9-9.

Section 11.3. Distribution of Assets. Upon the winding up of the Company, the assets shall be distributed as follows:

- (a) To creditors, including Members and Commissioners who are creditors to the extent permitted by law, to satisfy the liabilities of the Company whether by payment or by the establishment of adequate reserves, excluding distribution to members pursuant to Section 9.3; then
- (b) To Members and former Members to satisfy the liabilities for distributions pursuant to Section 9.3; then
- (c) As decided by a two-thirds majority vote of the Members.

## **ARTICLE XII**

### **AMENDMENT**

Section 12.1. Proposal of Amendments. Amendments to the Articles and this Agreement may be proposed in writing by any Member or by the Commissioner. If required by the Company, any such proposed amendment must be accompanied by an opinion of counsel as to the legality and effect on the Members. Copies of any amendments proposed to be made pursuant to this Section 12.1 shall be sent to the Members.

Section 12.2. Amendments by Members. A proposed amendment shall be voted upon at either a regular scheduled meeting or a special meeting of the Members duly called for the purposes of voting on the amendment. Such votes shall be exercised as provided in Article IV. Amendments shall be approved by a two-thirds majority in interest of the Members, and upon approval of any amendment, all Members, whether or not they consented to such amendment, shall be deemed to have consented to and shall be bound by the terms and provisions thereof as if they had so consented.

Section 12.3. Amendments by Commissioner. Notwithstanding any provision of this Agreement, amendments to this Agreement which, in the opinion of counsel to the Company, are necessary to maintain the status of the Company as taxable as a partnership for purposes of Federal or state law or for other tax purposes, may be made by the Commissioner without the necessity of a vote of the Members.

## **ARTICLE XIII**

### **MISCELLANEOUS**

Section 13.1. Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to its subject matter. This Agreement and the Articles replace and supersede all prior agreements by and among the Members or any of them. This Agreement and the Articles supersede all prior written and oral statement and no representation, statement or condition or warranty not contained in this Agreement or the Articles will be binding on the Members or have any force or effect whatsoever.

Section 13.2. Governing Law. This Agreement and the rights of the parties under this Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of Indiana.

Section 13.3. Binding Effect; Conflicts. Subject to the provisions of this Agreement related to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective distributees, successors and assigns. This Agreement is subject to, and governed by, the Act and the Articles. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act or the provisions of the Articles, the provisions of the Act or the Articles, as the case may be, will be controlling.

Section 13.4. Headings; Interpretation. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires.

Section 13.5. Severability. If any provision of this Agreement is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, unreasonable, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, unreasonable, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable provisions as may be possible and be legal, valid, reasonable and enforceable.

Section 13.6. Multiple Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof with respect to this Agreement it will be necessary to produce only one copy hereof signed by the party to be charged.

Section 13.7. Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

Section 13.8. No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Members and their respective successors and assigns subject to the express provision of this Agreement related to successors and assigns; and no other person will have the right, interest, or claims under the Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 13.9. Notices. Any notice to be given or to be served upon the Company or any Member in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified on Exhibit A. Any Member of the Company may, at any time by giving five-day prior written notice to the other Members and the Company, designate any other address in substitution of the foregoing address to which such notice will be given.

Section 13.10. Title and Company Property. Legal title to all property of the Company will be held and conveyed in the name of the Company.

Section 13.11. Reliance on Authority of Person Signing Agreement. Neither the Company nor any Member will (a) be required to determine the authority of the individual signing the Agreement to make any commitment or undertaking on behalf of such person or to determine any fact or circumstance bearing upon the existence of the authority of such individual, or (b) be required to see to the application or distribution of proceeds paid or credited to individuals signing the Agreement on behalf of such entity.

IN WITNESS WHEREOF, the Initial Members have executed this Agreement to be effective as the date the Articles of Organization of the Company are accepted for filing by the Secretary of State of the State of Indiana.

**INITIAL MEMBERS**

**Bethel College**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Goshen College**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Grace College**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Huntington University**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Indiana Wesleyan University**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Marian University**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Spring Arbor University**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Taylor University**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**University of Saint Francis**

By: \_\_\_\_\_

Its: \_\_\_\_\_