

BYLAWS
of
BERRIEN COMMUNITY FOUNDATION, INC.

Article I
Purposes and Restrictions

Section 1. Purposes. The purposes of the corporation are as set forth in the Articles of Incorporation.:

To take and hold, by bequest, devise, gift, purchase or lease, either absolutely or in trust, any moneys, funds, or property, real personal or mixed, for the preservation of objects of historical or natural interest, or for religious, eleemosynary, philanthropic or benevolent purposes, or for public welfare, with full power to use and dispose of any such funds and property for the purposes aforesaid.

Section 2. Mission. The mission of the Berrien Community Foundation is to promote philanthropy, to build a spirit of community, and to enhance the quality of life in Berrien County through its stewardship of permanently endowed and other funds.

We shall accomplish our mission by:

- Building permanent endowments and other funds and providing a broad range of flexible and cost-effective donor services
- Investing and managing funds prudently and professionally
- Making grants to support a broad range of projects and programs that address community needs, with a focus on building a spirit of community/arts & culture, nurturing our children, and youth development and leadership
- Serving as a facilitative leader, catalyst, and resource for our communities

Section 3. Restrictions. No part of the net earnings of the corporation shall inure to the benefit of any member, trustee or officer of the corporation, but the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II of the Articles of Incorporation. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

Section 4. Prohibited Activities. Notwithstanding any other provision of the Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on:

by a corporation exempt from Federal income tax under section 501 (c) (3) of the Internal Revenue Code of 1954; or

by a corporation, contributions to which are deductible under section 170 (c) (2) of the Internal Revenue Code of 1954.

Section 5. Operations. This corporation is intended to be an organization which is exempt from Federal income tax under section 501 (c) (3) of the Internal Revenue Code of 1954 and which is a public charity. All terms and provisions of the Articles and the Bylaws of the corporation, and all operations of the corporation, shall be construed, applied and carried out in accordance with such intent. For purposes of the Articles and the Bylaws of the corporation:

“public charity” means a qualified charitable organization which is “other than a private foundation” within the meaning of section 509 (a) (1), (2) or (3) of the Internal Revenue Code of 1954;

“charitable purposes” means those purposes under section 501(c) (3) of the Internal Revenue Code of 1954 which are permitted of the corporation as a public charity under the Internal Revenue Code of 1954;

“qualified charitable organization” means an organization which is organized for charitable purposes and qualified as exempt from Federal Income tax under section 501(c)(3) of the Internal Revenue Code of 1954; and

reference to any section of the Internal Revenue Code of 1954 includes the corresponding provisions then in effect of any subsequent Federal tax laws.

Article II

Membership and Meetings of Members

Section 1. Membership, Election, and Number. A person to be qualified for membership must be 18 years of age and shall be elected by a majority vote of the Trustees present at either an annual meeting or a special meeting called for that purpose. The members of the Foundation shall be such number of members as may be elected from time to time, but not less than ten (10) members.

The Secretary shall keep a record showing the names and addresses of the members.

Section 2. Termination by Resignation or Death. Any member may, by notice in writing to the Board of this corporation, resign from membership. Failure to attend three (3) consecutive regular meetings of the members without excuse acceptable to the Board may, in the discretion of the Board, be considered as a tender of resignation.

Upon the resignation or death of a member, or termination of membership for any cause, his or her name shall be removed from the membership records.

Section 3. Suspension and Expulsion of Members. Any member of this corporation may be suspended or expelled by the Board for conduct unbecoming a member. S/he shall be given notice of the time and place of the meeting of the Board at which the charges against him or her are to be considered at least ten (10) days before such meeting, and s/he shall be given an opportunity to defend himself or herself and shall have the right to appeal from the decision of

the Board to the members, and upon his or her written request the Secretary shall call a special meeting of the members to consider such appeal.

Section 4. Powers and Duties of Members. The members of this corporation shall:

Elect members of the Board.

Upon request of the Board, consult and advise with it about any matters affecting the corporation.

Explain the purposes and method of operation of the corporation to others and seek to promote its growth.

Encourage awareness of the corporation in the community at large and among organizations eligible to receive grants.

As individuals, advise members of the Board and staff of the corporation of the resources, needs, problems and conditions that exist in the community; and, to the extent possible as a result of the member's familiarity with the area, help the corporation, its Board and staff in its activities and contacts.

Each year appoint auditors to examine the affairs of the Corporation and to report to the membership of the corporation.

Section 5. Annual Meeting of Members. The annual meeting of the members shall be held between May 1 and October 1 of each year at a time and date fixed by the Chair, or, in the case of the Chair's absence, death or disability, by the Vice-Chair.

Section 6. Special Meetings of Members. Special meetings of the members may be called by the Chair (or, in the case of his absence, death, or disability, by the Vice Chair), by the Board by action at a meeting, by a majority of the Board acting without a meeting, or by not fewer than 10% of the members.

Section 7. Notice of Meetings of Members. Notice of the time, place and purpose of each meeting of the members signed by the Chair or a Vice-Chair or the Secretary or an Assistant Secretary and stating the authority upon which issued, shall be served in writing upon each member of record entitled to vote at such meeting not less than 10 nor more than 60 days before the meeting; provided, that no notice of adjourned meetings need be given. If mailed, the notice shall be directed to each member entitled to notice at his or her address as it appears on records of the corporation unless the member shall have filed with the Secretary a written request that notices intended for him or her be mailed to some other address, in which case it shall be mailed to the address designated in such request. Such further notice shall be given as may be required by law. Meetings may be held without notice if all members entitled to vote thereat are present in person or by proxy or if notice of the time, place and purpose of such meeting is waived by telegram, radiogram, cablegram, or other writing, either before or after the holding thereof, by all members not present and entitled to vote at such meeting.

Section 8. Place of Meetings. All meetings of members shall be held in Berrien County, Michigan, at such place as the Chair (or, in the case of the Chair's absence, death, or disability, by the Vice-Chair), the Board of Trustees, or such other person or persons calling the meeting shall designate.

Section 9. Quorum and Voting. The presence in person or by proxy of five or more members shall constitute a quorum at any meeting of members. At every meeting of members each member shall be entitled to vote in person, or by proxy duly appointed by instrument in writing which is subscribed by such member and which bears a date not more than 11 months prior to such meeting, unless such instrument provides for a longer period. Each member of the corporation shall be entitled to one vote. Upon the demand of any member, the vote upon any question for the meeting shall be by ballot. All elections shall be had and all questions decided by a majority vote of the persons present in person or by proxy.

Section 10. Inspectors of Election. Whenever any person entitled to vote at a meeting of the members shall request the appointment of inspectors, the presiding officer shall appoint not more than three inspectors, who need not be members. If the right of any person to vote at such meeting shall be challenged, the inspectors shall determine such right. The inspectors shall receive and count the votes either upon an election or for the decision of any question and shall determine the result. Their certificate of any vote shall be prima facie evidence thereof.

Section 11. Action by Written Consent of All Members. Any action required to be taken at a meeting of the members of the corporation, or any other action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members entitled to vote with respect to the subject matter thereof.

Article III

Board of Trustees

Section 1. Number and Qualifications. The Board of Trustees shall consist of not less than nine nor more than thirteen members who shall be United States citizens. Members of the Board of Trustees shall be elected on the basis of knowledge of the educational, cultural, civic, moral, public, and other charitable needs of Berrien County, Michigan, and on the basis of activity in or representation of public institutions or organizations in Berrien County which are concerned with charitable, educational, social welfare and/or natural resources needs. The purpose of this provision is to make the Board of Trustees generally representative of the public interests in these needs in Berrien County. Members of the Board of Trustees shall serve without compensation except for reasonable expenses incurred for this corporation.

Section 2. Term of Office. The term of office of trustees shall be six years or until their successors are elected. The terms of any trustees elected to fill new trustee positions shall be fixed at such term as may be appropriate with a view to making one-third of the trustees elected each even-numbered year. No trustee shall be elected to serve for more than two consecutive six-year terms plus any unexpired term such trustee may fill. After serving two consecutive six-year terms, a trustee shall automatically serve as an advisory trustee without vote until such advisory trustee dies, resigns, or is removed from office. Such advisory trustee shall be eligible to be elected again as a regular trustee after serving as an advisory trustee for a period of at least a year.

Section 3. Vacancies, Resignation, and Removal of Trustees. Whenever any vacancy shall have occurred in the Board of Trustees by reason of death, resignation, removal, increase in the number of trustees or otherwise, a majority of the trustees then in office, though less than a quorum, may fill such vacancy at any meeting, and the person so elected shall serve out the unexpired term. The resignation of a trustee shall be effective upon its receipt by the corporation or a subsequent time as set forth in the notice of resignation. A trustee or the entire Board of Trustees may be removed, with or without cause, by vote of a majority of the members entitled to vote at an election of trustees.

Section 4. Powers and Duties of Trustees.

Except as otherwise provided in the Articles of Incorporation or in these Bylaws, all the powers, duties and functions of the corporation conferred by the Articles of Incorporation, these Bylaws, State statutes, common law, court decisions, or otherwise shall be exercised, performed or controlled by the Board of Trustees.

The Board of Trustees shall have general charge of the affairs, property and assets of the corporation. It shall be the duty of the Board of Trustees to carry out the aims and purposes of this corporation, and to this end, to manage and control all of its property or assets.

The Board of Trustees may, from time to time, appoint, as Advisors, persons whose advice, assistance and support may be deemed helpful in determining policies and formulating programs for carrying out the corporation's purposes.

The Board of Trustees is authorized to employ such persons, including an executive officer, attorneys, agents and assistants, as in its opinion are needed for the administration of the corporation and to pay reasonable compensation for services and expenses thereof.

The Board may contract with independent investment advisors, independent counsel or managers, banks, or trust companies to act in place of the Board in investment and reinvestment of funds.

Section 5. Annual Meeting of Trustees. The annual meeting of the Board of Trustees for the election of officers and the transaction of such business as may properly come before the meeting shall be held without other notice than this By-Law, immediately after, and at the same place as, the annual meeting of members.

Section 6. Meetings of Trustees. The Board shall hold at least 3 regular meetings at such time and place as may be fixed by the Board, or at such time and place as may be fixed by the Chair. Special meetings of the Board may be called by the Chair and shall be called by him or her upon the request of any two Directors. The date, time, and place of any meeting of trustees shall be fixed by the person or persons calling such meeting.

Section 7. Notice of Regular or Special Meetings of Trustees. Notice of any meeting shall be given at least forty-eight hours previous thereto by oral notice or by written notice delivered personally or mailed to each Board of Trustees member at his/her last known address, or by telegram or other electronic means. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon

prepaid. If notice be given by telegram or electronic means, such notice shall be deemed to be delivered when the notice is delivered to the telegraph company or verified electronically. Any member of the Board of Trustees may waive notice of any meeting. The attendance of a trustee at any meeting shall constitute a waiver of notice of such meeting, except where a trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Neither the business to be transacted nor the purpose need to be specified in the notice or waiver of notice of such meeting.

Section 8. Quorum and Voting. A majority of the trustees then in office shall constitute a quorum for the transaction of business, and the action of a majority of the trustees present at a meeting at which a quorum is present shall be the action of the Board of Trustees, except as action by a majority of the trustees then in office may be specifically required by other sections of these Bylaws, the statute, or the Articles of Incorporation.

Section 9. Action by Unanimous Written Consent. If and when all of the trustees shall severally or collectively consent in writing to any action to be taken by the corporation either before or after the action is taken, such action shall be as valid corporate action as though it had been authorized at a meeting of the trustees and the written consents shall be filed with the minutes of the proceedings of the Board of Trustees.

Section 10. Execution of Documents. The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute or deliver any conveyance or other instrument in the name of the corporation, and such authority may be general or confined to specific instances. When the execution of any contract, conveyance, or other instrument has been authorized without specification of the officers authorized to execute, the same may be executed on behalf of the corporation by the Chair or any Vice Chair, by the Secretary, an Assistant Secretary, the Treasurer, Assistant Treasurer, or the President.

Article IV

Section 1. Nominating Committee. A Nominating Committee composed of five members shall be appointed by the Board of Trustees. The Nominating Committee shall present to the members nominations for trustees.

Section 2. Other Committees. The Board of Trustees may provide for such standing or special committees as it deems desirable and discontinue the same at its pleasure. Each such committee shall have such powers and perform such duties, not inconsistent with law, as may be delegated to it by the Board of Trustees. Vacancies in such other committees shall be filled by the Board of Trustees or as the Board of Trustees may provide.

Article V

Officers

Section 1. Election or Appointment. The Board of Trustees shall elect a Chair, a Secretary, and a Treasurer of the corporation at each annual meeting, and may elect one or more Vice Chairs, Assistant Secretaries and Assistant Treasurers. The same person may hold any two or more offices, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The trustees may also appoint such other officers and agents as they may deem necessary for the transaction of the business of the corporation.

Section 2. Term of Office. The term of office of all officers shall commence upon their election or appointment and shall continue until the next annual meeting of the corporation and thereafter until their respective successors are chosen or until their resignation or removal. Any officer may be removed from office at any meeting of the trustees, with or without cause, by the affirmative vote of a majority of the trustees, whenever in their judgment the best interests of the corporation will be served thereby. An officer may resign by written notice to the corporation. The resignation shall be effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation. The trustees shall have power to fill any vacancies in any offices occurring from whatever reason.

Section 3. Duties of Officers. The officers of this corporation shall have such authority and shall perform such duties as are customarily incident to their respective offices and such other and further duties as may from time to time be required of them by the Board of Trustees.

Section 4. President. The President shall do and perform such duties as may from time to time be assigned by the Chair or the Board of Trustees. The Board of Trustees shall determine and fix the compensation to be paid the President.

Article VI

Gifts to the Foundation

Section 1. Gifts. Donors may make gifts to the corporation by naming or otherwise identifying the corporation, whether or not a fiscal agent is nominated to have custody of the property contributed. Gifts shall vest in the corporation upon receipt and acceptance by it (whether signified by an officer, employee, or agent of the corporation).

Section 2. Fiscal Agents. The corporation may enter into agreements with fiscal agents having custody of funds of the corporation specifying additional terms of such custody. A donor may nominate one or more fiscal agents of the corporation to have custody of and administer as to the investment of a gift, and if more than one, the portions of the gift to be held and administered as to investment by each. The Board of Trustees may in each case appoint one or more agents to have custody of and administer the investment of the gift, and if more than one, the portions to be so held and administered by each.

Section 3. Terms of Gift. Each donor by making a gift to the corporation accepts and agrees to all the terms of the Articles of Incorporation and these Bylaws, and provides that the fund so created shall be subject to the provisions of these Bylaws for the presumed intent of donors, variance from a donor's restrictions and amendments and termination, and to all other terms of the Articles of Incorporation and these Bylaws and any agency agreement between the corporation and agents having custody of the funds of the corporation, each as from time to time amended.

Section 4. Gifts in Trust. If a gift is made in trust to make income or other payments for a period, of a life or lives or other period, to any individuals or for non-charitable purposes, followed by payments to the corporation, or in trust to make income or other payments to the corporation, followed by payments to any individuals or for non-charitable purposes, only the payments to the corporation shall be regarded as subject to the corporation's Articles of Incorporation and these Bylaws, and then only when the corporation becomes entitled to their use. The Board of Trustees may take such actions as it from time to time deems necessary to protect the corporation's rights to receive such payments.

Section 5. Restrictions. Any donor may, with respect to the gift made by such donor to the corporation, provide at the time of the gift restrictions, which are not inconsistent with the charitable purposes of the corporation, as to (1) the field of charitable purposes or particular charitable organizations or purposes to be supported, (2) the manner of distribution including amount, times and conditions of payments and whether from principal and/or income, (3) the geographical limits or use of the gift, including use in or for areas outside Berrien County, and (4) the name, as a memorial or otherwise, for a fund given, or addition to a fund previously held, or anonymity for the gift. All such restrictions by donors shall be followed except as provided in sections 7 and 8 of this Article VI or in other provisions of these Bylaws or in the Articles of Incorporation or by law.

Section 6. Common Investment. No gift shall be required to be separately invested or held unless so provided by a restriction of the donor, or it is necessary in order to follow any other restriction of the donor as to purpose or investment, or in order to prevent tax disqualification, or it is required by law. Restrictions for naming a fund as a memorial or otherwise may be satisfied by keeping under such name accounts reflecting appropriately the interest of such fund in each common investment.

Section 7. Presumed Intent. Each gift to and fund of the corporation shall be presumed to be intended (1) to be used only for charitable purposes, (2) to be productive of a reasonable return of net income which (except during the period referred to in section 3 of this Article VI) is to be distributed at least annually, or if accumulated is to be accumulated only in a reasonable amount and for a reasonable period for a charitable purpose or purposes, and (3) to be used only for such of those purposes and in such manner as not to disqualify the gift or fund from deduction as a charitable contribution, gift, or bequest in computing any Federal income, gift, or estate tax of the donor or his/her estate and not to disqualify the corporation from exemption from Federal income tax as a qualified charitable organization and from classification as a public charity; and each gift and fund shall not be otherwise applied. If a restriction by the donor, however expressed, would, if followed, result in use contrary to the intent so presumed, or if the Board of Trustees is advised by counsel that there is substantial risk of such result, the restriction shall not be followed, but shall be varied by the Board of Trustees so far as necessary to avoid such result, except that if the donor has clearly stated that compliance with the restriction is a

condition of the gift, then the gift shall not be accepted in case of such advice, unless an appropriate judicial or administrative body first determines that the condition and restriction need not be followed. Reasonable charges and expenses of counsel for such advice and proceedings shall be proper expenses.

Section 8. Alteration of Restrictions. Whenever the Board of Trustees decides that conditions or circumstances are such or have so changed since a restriction by the donor as to purpose, manner of distribution, use, or investment was provided, that literal compliance with the restriction is unnecessary, undesirable, impractical, or impossible, or the restriction is not consistent with the corporation primarily serving effectively the charitable needs of Berrien County, the Board may, by affirmative vote of at least three-fourths of the Trustees, order such variance from the restriction and such application of the whole or any part of the principal or income of the fund, as in its judgment is then necessary more effectively to serve the charitable purpose of the corporation.

Article VII

Distributions and Disbursements

Section 1. Distributions and Disbursements.

The Board of Trustees not less frequently than yearly shall (1) determine all distributions to be made from net income and principal of this corporation (including funds held by agents of the corporation) pursuant to provisions of the Articles of Incorporation and these Bylaws, and recommend, make, or authorize and direct the respective agents having custody of funds of this corporation to make, payments to organizations or persons to whom payments are to be made, in such amounts and at such times and with such accompanying restrictions, if any, as it deems necessary to assure use for the charitable purposes and in the manner intended; and (2) determine all disbursements to be made for administrative expenses incurred by the Board of Trustees and direct the respective agents having custody of funds of this corporation as to payment thereof and funds to be charged.

All determinations shall be by affirmative vote of the Board of Trustees unless otherwise expressly provided in these Bylaws or by a donor's restriction at the time of the gift (which is nevertheless subject to variance as provided in Article VI.)

Determinations may be made to distribute capital from funds given without restrictions as to principal or income as well as pursuant to provisions expressly permitting use of principal. With respect to funds of this corporation in the custody of an agent, the Board of Trustees deems practicable so as to permit the agent to adjust its investment policies accordingly, and may, upon advice from the agent as to how the desired distribution and any necessary liquidation of investments can most economically be accomplished, adjust its directions so far as it deems practicable accordingly.

Section 2. Investigation and Research.

The Board of Trustees shall gather and analyze facts and conduct investigation and research as from time to time is necessary in order to determine the most effective agencies and

means for meeting the needs of the Berrien County area through distribution of funds given for charitable purposes, and may direct disbursements for such fact-gathering and analysis, investigation, and research from funds given for such purposes or from funds given without restriction as to purpose. Disbursements for other proper administrative expenses incurred by the Board of Trustees, including salaries for such professional and other assistance as it from time to time deems necessary, shall be directed to be paid so far as possible, first from any funds which are available for such purposes, and any balance out of other available funds of the corporation.

The Board of Trustees may, in furtherance of the corporation's charitable purposes when needs therefore have been determined and with appropriate provisions to assure use solely for such purposes, recommend or direct distributions to such persons, organizations, governments, or governmental agencies as in the opinion of the Board of Trustees can best carry out such purposes or help create new qualified charitable organizations to carry out such purposes.

Article VIII

Indemnification

Section 1. Indemnification: Third Party Action. The corporation shall indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not for profit, against expenses including attorneys' fees, judgements, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe that conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nob contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation of its shareholders or members and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 2. Indemnification: Action by or in Right of Corporation. The corporation shall indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise whether for profit or not against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the

corporation or its shareholders or members. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses which the court considers proper.

Section 3. Reimbursement.

Unless otherwise provided by law or its articles of incorporation or bylaws, to the extent that a director, trustee, officer, employee, or agent of the corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 1 or 2, or in defense of a claim, issue, or matter in the action, suit, or proceeding, the successful party shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred in connection with the action, suit, or proceeding and in any action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

An indemnification under section 1 or 2, 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 trustee, director, officer, employee, or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in sections 1 and 2. This determination shall be made in any of the following ways:

By a majority vote of a quorum of the board consisting of trustees who were not parties to the action, suit, or proceeding.

If the quorum described in subdivision (1) is not obtainable, then by a majority vote of a committee of trustees who are not parties to the action. The committee shall consist of not less than 2 disinterested trustees.

By independent legal counsel in a written opinion.

By the members.

If a person is entitled to indemnification under section 1 or 2 for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement but not for the total amount thereof, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

Section 4. Advancement of Expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding described in section 1 or 2 may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, trustee, officer, employee, or agent to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the corporation. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

Section 5. Not Exclusive Remedy: Limitations, Persons Protected. The indemnification or advancement of expenses provided under sections 1 to 4 is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

The indemnification provided in Sections 1 to 4 of this Article continues as to a person who ceases to be a director, trustee, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

Section 6. Insurance. The Board of Trustees may, in the exercise of its discretion, from time to time authorize by resolutions duly adopted, purchase and maintain insurance on behalf of any person who is or was a trustee, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his/her status as such, whether or not the corporation would have power to indemnify him or her against such liability under Sections 1 and 2 of this article.

Section 7. Merger and Reorganization. For the purposes of Sections 1 through 6 of this Article, references to the corporation include all constituent corporations absorbed in a consolidation or merger and the resulting or surviving corporation, so that a person who is or was a director, trustee, officer, employee or agent of such constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as s/he would if s/he had served the resulting or surviving corporation in the same capacity.

Section 8. Application of Article. The provisions of this Article shall apply except to the extent they may be inconsistent with and prohibited by the Internal Revenue Code and the Regulations promulgated thereunder or any other applicable law or regulation.

Article IX

Annual Audit

Section 1. The independent auditor appointed or approved by the members shall at such time as the Board of Trustees may determine but at least annually, prepare for the corporation a financial statement, including a statement of assets and liabilities, and a statement of income, expenses, and distributions, and a list of projects and/or organizations to or for which funds were used or distributed for charitable purposes, and such other additional reports or information as may be ordered from time to time by the Board of Trustees. The auditor shall also prepare such financial data as may be necessary for returns or reports required by state or federal government to be filed by the corporation. The auditor's charges and expenses shall be proper expenses.

Section 2. The Board of Trustees shall at least annually make such distribution of a report of its financial condition, activities, and distributions to representative persons and organizations in the Berrien County area, as will, in the opinion of the Board of Trustees, reasonably inform the interested public of the operations of the corporation.

Section 3. The Board of Trustees shall take all other appropriate actions to make the corporation and its purposes known to the people of Berrien County and in that connection to seek gifts to the corporation from a wide segment of the population of Berrien County.

Article X

Miscellaneous Provisions

Section 1. Fiscal Year. The fiscal year of the corporation shall be the calendar year.

Section 2. Voting Shares in Other Corporations. Unless otherwise ordered by the Board of Trustees, the Chair shall have full power and authority on behalf of the corporation to vote either in person or by proxy at any meeting of shareholders of any corporation in which this corporation may hold shares, and at any such meeting may possess and exercise all of the rights and powers incident to the ownership of such shares which, as the owner thereof, this corporation might have possessed and exercised if present. The Board of Trustees may confer like powers upon any other person and may revoke any such powers as granted at its pleasure.

Section 3. Corporate Seal. The Board may provide a corporate seal.

Section 4. Notice. Any notice required by statute or by these Bylaws to be given to the members, to the trustees or to any officers of the corporation, unless otherwise provided herein or in any statute, shall be sufficient if given by depositing the same in a United States post office box or receptacle in a sealed, postpaid wrapper, addressed to such member, trustee, or officer at his or her last address as the same appears on the records of the corporation, and such notice shall be deemed to have been given at the time of such mailing.

Section 5. Participation of Trustees or Members by Remote Communication. Participation of trustees or members in a meeting by conference telephone will be deemed to include other means of remote communications by which all persons in the meeting may communicate with each other. Participation pursuant to this section will constitute presence in person at the meetings.

Section 6. Definition of Electronic Transmission. As used in these Bylaws, electronic transmission refers to any form of communication that does not directly involve the physical transmission of paper, creates a record that may be retained and retrieved by the recipient and may be directly reproduced in paper form by the recipient through an automated process.

Section 7. Use of Electronic Transmission. As used in these Bylaws, "written" or "writing" will include communications by electronic transmission, including but not limited to fax and email. Notices of meetings, waivers of notice of meetings, proxies, and written consents may be transmitted by electronic transmission. When a notice or communication is transmitted electronically, the notice or communication is deemed to be given when electronically

transmitted to the person entitled to the notice or communication in a manner authorized by the person. A trustee or member will be deemed to have consented to the use of email upon providing the Berrien Community Foundation, Inc. with a valid email address.

Article XI

Amendments

These Bylaws may be altered or repealed or new Bylaws may be adopted in lieu thereof: (1) by the affirmative vote of a majority of the members entitled to vote and present or represented at any annual or special meeting of members, if a notice of the proposed alteration, repeal or substitution be contained in the notice of such meeting; or (2) by the affirmative vote of a majority of the Board of Trustees then in office at any regular or special meeting of the Board, if a notice of the proposed alteration, repeal or substitution be contained in the notice of such meeting.

BCF:BYLAW/1992—as amended June 23, 2004, September 15, 2004, June 22, 2005, September 10, 2008