

**KANSAS WESLEYAN UNIVERSITY
BYLAWS**

Amended October 2020

ARTICLE I THE UNIVERSITY AND ITS MISSION

Kansas Wesleyan University (the "**University**") is a Kansas nonstock, not for profit corporation organized under the general corporation code of Kansas and is an accredited liberal arts university located in Salina, Kansas, and affiliated with The United Methodist Church. The mission of the University is to promote and integrate academic excellence, spiritual development, personal well-being, and social responsibility.

The University provides an educational program characterized by excellence, within a caring community, rooted in the liberal arts tradition. The call of the University is to develop both intellect and character, to stimulate creativity and discovery, to nurture the whole person--body, mind, and spirit. Diversity is encouraged in curriculum, faculty, and students.

The University prepares students not only for careers and professions, but also for lifelong learning. The University equips its students for responsible leadership in their communities, for useful service in and to the world, and for stewardship of the earth.

The University provides a setting in which faith and learning are integrated; encounter with the Christian proclamation is an integral part of the life of the University. The University fosters the lively discussion of faith and values, encouraging students to develop a thoughtful personal worldview informed by the Christian tradition.

The University serves the church, community, and the world by providing a variety of resources for educational, cultural, and spiritual enrichment. The aim of the University is to discover, to build, and to share a higher quality of life and a broader vision of the world.

The University has a Board of Trustees (the "**Board of Trustees**") comprised of certain Trustees ("**Trustees**"), which Trustees are also sometimes referred to as "members" of the Board of Trustees, and which Trustees also serve as the members of the University (each a "**Member**") for purposes of Kansas law, pursuant to and as provided in the University's articles of incorporation, which are sometimes referred to as the University's charter (as amended or restated from time to time, the "**Articles of Incorporation**"), and these Bylaws.

ARTICLE II OFFICERS AND RECORDS

2.01 **Corporate Offices.** The University may have such corporate offices and places of business anywhere within or without the State of Kansas as the Board of Trustees may from time to time designate or the business of the University may require. The principal office of the University shall be at such place in Salina, Saline County, Kansas, as may be designated from time to time by the Board of Trustees.

- 2.02 **Registered Office and Resident Agent.** The University shall have and continuously maintain a registered office and resident agent in the State of Kansas. The location of the registered office and the name of the resident agent in the State of Kansas shall be as stated in the Articles of Incorporation and as may be changed and determined from time to time by the Board of Trustees and on file in the appropriate public offices of the State of Kansas pursuant to the applicable provisions of law.
- 2.03 **Books, Accounts and Records and Inspection Rights.** The University shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Members, the Board of Trustees and each committee having any of the authority of the Board of Trustees. The University shall keep at its registered office a record of the name and address of each Trustee and each Member. All books and records of the University may be inspected by any Trustee or Member, or such Trustee's or Member's agent or attorney, for any proper purpose at any reasonable time.

ARTICLE III MEMBERS OF THE UNIVERSITY

- 3.01 **General.** The University shall have only one class of membership. The Members of the University shall consist of those persons who are from time to time serving as Trustees on the Board of Trustees of the University. Any individual who is at the time of the adoption of these Bylaws a Trustee or who shall be subsequently elected or appointed to the Board of Trustees shall automatically be a Member of the University. Any Member of the University who ceases to be a Trustee shall automatically, without further action, cease to be a Member of the University.
- 3.02 **Vacancies.** No vacancy created by any resignation or removal of a Member shall be filled unless and until another individual is elected, as a Trustee to fill the vacated Trustee position held by such Member, by a majority of the entire Board of Trustees.

ARTICLE IV THE BOARD OF TRUSTEES

- 4.01 **Duties and powers.** The Board of Trustees shall have and exercise the corporate powers prescribed by the laws of the State of Kansas and the Kansas Wesleyan University Bylaws. Kansas Wesleyan University honors the covenant relationship with The United Methodist Church. The essential function of the Board of Trustees shall be policy-making and assurance of sound management. The Board of Trustees has initial and ultimate responsibility in determining general, educational, financial, and related policies deemed necessary for the administration and development of the University in accordance with its stated purposes and goals.

The Board of Trustees shall elect a President who shall be the chief executive officer of the University and who shall serve as chief staff officer to the Board of Trustees.

- 4.02 **Periodic Evaluation.** To assure that every aspect of the management and operations of the University is being performed with due effectiveness and with the general policies approved by the Board of Trustees, there shall be conducted a yearly financial audit, an annual Presidential performance review focusing on goals set by the Board of Trustees,

and a review of the state of the University, emphasizing progress on strategic plan goals and priorities.

4.03 **Trustees.** The Board of Trustees shall consist of Trustees elected by the Members.

4.03.1 **Number and Terms of Trustees.** The Board of Trustees shall have not less than twelve (12) nor more than thirty-six (36) elected Trustees, each of whom shall serve a term of three (3) years but no more than three (3) successive terms without a one (1) year absence. The number of Trustees may be increased or decreased by amendment to these Bylaws, in accordance with the Articles of Incorporation and the applicable laws of the State of Kansas.

4.03.2 **Classes of Trustees.** The Committee on Trustees shall attempt to maintain three (3) equal classes of Trustees insofar as possible, including through use of one (1) and two (2) year appointments, provided that one (1) and (2) year appointments shall not count as a term.

4.03.3 **Access and Appointments by Bishop.** The Bishop of the Great Plains Conference of The United Methodist Church (the "**Bishop**") shall have access to address the Board of Trustees upon reasonable advance notice.

Three United Methodist persons nominated by the Bishop and approved by the Board of Trustees shall be voting Trustees, and subject to the provisions of paragraph 4.03.2.

4.03.4 **No Compensation.** No Trustee shall receive compensation from the University for any service such Trustee may render to the University as a Trustee. A Trustee may be reimbursed, however, for such Trustee's actual expenses reasonably incurred in attending meetings and in rendering service to the University in the administration of its affairs, to the extent provided for in the University's budget as approved by the Board of Trustees or as otherwise approved by a majority of the entire Board of Trustees.

4.03.5 **Trustee Emeriti.** The Board of Trustees has established a policy of awarding Trustee Emeritus status. The Committee on Trustees will receive recommendations for such recognition and present to the entire Board of Trustees the nomination for election by two-thirds (2/3) majority vote of the Board of Trustees to Trustee Emeritus status. The guidelines for bestowing such recognition are as follows:

- A. The Trustee Emeriti has retired from the Board of Trustees after serving nine years (3 complete terms) AND has given distinguished or meritorious service to the Board of Trustees and the University.
- B. The Trustee Emeriti seeks to continue their support of the University and its mission.

- C. Trustee Emeriti status is a five-year appointment and may be renewed thereafter for additional five-year terms, or may cease and be discontinued, upon review of the Committee on Trustees and action by the Board of Trustees.
- D. Trustee Emeriti will be invited to all regular meetings of the Board of Trustees, meetings of the Board Committees, and special functions of the Board of Trustees.
- E. Trustee Emeriti will have no vote on the Board of Trustees.
- F. Trustee Emeriti attendance at a Board of Trustees meeting will not be counted in the determination of the presence of a quorum for the meeting.
- G. Trustee Emeriti will receive no compensation from the University.

4.03.6 Trustee Resignation and Removal.

- A. Any Trustee may resign from the Board of Trustees upon written notice to the Secretary of the Board of Trustees or to the President of the University. Such resignation shall be in writing and shall be effective immediately or upon its acceptance by the Board of Trustees as such resignation may provide.
- B. Any Trustee absent for three (3) meetings of the Board of Trustees in any twelve-month period without permission from the Chairperson of the Board of Trustees may, by vote of a two-thirds (2/3) majority vote of the other Trustees, be deemed to have resigned such Trustee's office as a Trustee.
- C. Any Trustee may be removed as Trustee for substantial failure to comply with the Statement of Commitment and Responsibilities contained in the Board Operating Manual adopted by the Board of Trustees. Any such removal shall be by a two-thirds (2/3) majority vote of the Members then entitled to vote at an election of Trustees. The Trustee to be removed shall be notified at least ten (10) days before the matter is to be brought to the Board of Trustees for a vote of the action proposed and of the alleged grounds for removal. The Trustee to be removed shall be given an opportunity to respond in writing and in person at the meeting of the Trustees at which the vote is to be held, or as otherwise authorized in 6.05 of these Bylaws. Any vote for removal by the Board of Trustees shall be effective immediately or upon the time specified in such notice of removal.
- D. Any resignation, deemed resignation, or removal as a Trustee shall also constitute a resignation and removal of such Trustee from such Trustee's position as a Member of the University and from any committee, officer, or other positions that such Trustee may hold with the University or the Board of Trustees, or any Other Enterprise or governing body thereof on which such Trustee is serving at the request of the University, whether or not such resignation, deemed resignation, or removal so states.

ARTICLE V OFFICERS OF THE BOARD OF TRUSTEES

- 5.01 **Officers of the Board of Trustees.** The officers of the Board of Trustees shall be the Chairperson, the Immediate Past Chairperson, the Vice Chairperson, the Treasurer, and the Secretary. The Board of Trustees may appoint such other officers as it from time to time deems advisable upon recommendation of the Committee on Trustees.
- 5.02 **Election and Term of Office.** The above officers shall be elected by the Board of Trustees at its summer meeting by a majority of the Board of Trustees upon nomination by the Committee on Trustees from among voting Trustees. Each such officer shall assume office upon adjournment of the meeting at which they are elected.
- 5.02.1 The Chairperson and Vice Chairperson shall serve for a term of one (1) year, and no more than two (2) consecutive terms.
- 5.02.2 The Treasurer and Secretary shall serve for a term of one (1) year or until their successors are elected and qualified. The Treasurer and Secretary may be eligible for re-election; however, no Trustee shall serve in the same office as Treasurer or Secretary for more than six (6) consecutive one (1) year terms.
- 5.02.3 Any vacancy among the officers may be filled at any duly constituted meeting of the Board of Trustees upon nomination by the Committee on Trustees.
- 5.03 **Chairperson.** The Chairperson shall preside at all meetings of the Board of Trustees and shall perform the duties customary to that office.
- 5.04 **Immediate Past Chairperson.** The Immediate Past Chair shall provide experience and continuity to the work of the Chairperson and the Board of Trustees.
- 5.05 **Vice Chairperson.** The Vice-Chairperson, in the absence of the Chairperson, shall perform all duties incident to the office of the Chairperson, and shall assume that position when a vacancy in the office of Chairperson occurs.
- 5.06 **The Secretary.** The Secretary shall be Secretary of the University and shall perform the duties usually pertaining to that office.
- 5.07 **The Treasurer.** The Treasurer of the University shall serve as Chairperson of the Committee on Finance and Operations and perform all duties pertaining to that office.

ARTICLE VI MEETINGS

- 6.01 **Regular Meetings.** There shall be at least three (3) regular meetings of the Board of Trustees each calendar year, on dates and at times fixed by the Executive Committee in consultation with the President of the University. The Members of the University shall have a regular meeting at the summer meeting of the Board of Trustees.
- 6.02 **Special Meetings.** Special meetings of the Board of Trustees or Members may be called at any time upon fourteen (14) days' notice by the Chairperson of the Board of Trustees, or

by any two (2) officers of the Board of Trustees or upon written request of any five (5) Trustees or Members.

6.03 **Executive Session.** The Board of Trustees and each committee of the Board of Trustees may hold executive sessions as appropriate for Trustees to consider matters as Trustees.

6.04 **Waiver of Notice.** Whenever any notice is required to be given under the provisions of any law, under the provisions of the Articles of Incorporation, or under these Bylaws, a waiver in writing, signed by the person or persons entitled to notice, whether before or after the time stated, shall be deemed equivalent to notification.

6.05 **Meeting Format.**

6.05.1 Trustees, or a member of any committee of the Board of Trustees, may participate in a meeting of the Board of Trustees or meeting of such committee, as applicable, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting in such manner shall constitute presence in person at the meeting. Voting by proxy will not be permitted.

6.05.2 Any action required or permitted to be taken at any meeting of the Board of Trustees or of any committee thereof may be taken without a meeting if all members of the Board of Trustees or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Trustees or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person, whether or not then a Trustee, may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time, including a time determined upon the happening of an event, no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this section at such effective time so long as such person is then a Trustee and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

ARTICLE VII COMMITTEES OF THE BOARD OF TRUSTEES

7.01 **Committees of the Board of Trustees.** There shall be an Executive Committee, standing committees, and ad hoc committees of the Board of Trustees. Standing committees of the Board of Trustees shall include: Committee on Trustees, Committee on Academic Affairs, Committee on Student Life and Athletics, Committee on Finance and Operations, Committee on Enrollment, Committee on Institutional Advancement, and Committee on Strategic Thinking and Implementation. Other standing committees may be created from time to time by the Board of Trustees as required to oversee permanent Board of Trustee functions of a major character. Ad hoc committees of the Board of Trustees and members thereof may be created and appointed by the Chairperson of the Board of Trustees with the

approval of the Board of Trustees and shall each be for one (1) year duration unless otherwise fixed by the Board of Trustees.

- 7.02 **Executive Committee.** The Executive Committee shall be composed of the elected officers of the Board of Trustees, immediate past Chairperson of the Board of Trustees, and the President of the University. The Executive Committee shall exercise all powers of the Board of Trustees at such times as the Board of Trustees is not in session, except that it shall not have the power to alter or revoke any previous order, resolution or vote of a meeting of the Board of Trustees unless specifically granted such power by the Board of Trustees.
- 7.03 **Standing Committee Members.** The Chairperson of the Board of Trustees and members of all standing committees shall be appointed by the Chairperson of the Board of Trustees, in consultation with the Executive Committee and the President of the University, and reported to the full Board of Trustees prior to such committees being convened for the upcoming year. The chairpersons of standing committees shall be voting Trustees.
- 7.04 **Committee on Trustees.** The Committee on Trustees shall determine expectations and responsibilities for Trustees, coordinate the recruitment of Trustees, nominate officers of the Board of Trustees, and evaluate the effectiveness of overall Board of Trustees operations and individual Trustees in performing their duties. The Committee on Trustees shall provide programs of education for Trustees to assist them in carrying out their individual and corporate responsibilities.
- 7.05 **Committee on Academic Affairs.** The Committee on Academic Affairs shall oversee matters relating to academic and/or instructional policies of the University; oversee the development and implementation of a plan for regional, state, and programmatic accreditation and meeting state and federal reporting responsibilities; and oversee plans for assessment of student academic achievement and completion thereof, with periodic reports made for committee review.
- 7.06 **Committee on Student Life and Athletics.** The Committee on Student Life and Athletics shall address institutional policies regarding student rights and responsibilities, student activities and recreation, student organizations, and student housing. The Committee on Student Life and Athletics shall study, review, and recommend plans and programs to promote high Christian ethics and ideals in programs and activities.
- 7.07 **Committee on Finance and Operations.** The Committee on Finance and Operations shall review and have a thorough knowledge of the funds, finances, and resources of the University. The Committee shall oversee the physical property of the University. It shall be concerned with the construction, modernization, and upkeep of the physical plant.
- 7.08 **Committee on Enrollment.** The Committee on Enrollment shall address institutional policies relating to recruitment, student financial planning, retention, and the qualifications of students for admission to the University.
- 7.09 **Committee on Institutional Advancement.** The Committee on Institutional Advancement shall address matters of policy related to fund raising, public relations, and

alumni cultivation to secure the necessary operating and endowment funds, as well as the resources required for capital expansion and improvement of the University. The Committee on Institutional Advancement shall stay aware of the interest, concerns and support of The United Methodist Church.

- 7.10 **Committee on Strategic Thinking and Implementation.** The Committee on Strategic Thinking and Implementation shall study, review, and recommend plans that enhance the work of the university to assure progress, growth, improvement and sustainability of the institution. It shall work with campus constituents to develop, implement and evaluate an on-going strategic plan.

ARTICLE VIII ADMINISTRATION

- 8.01 **President.** The Board of Trustees shall appoint the President and shall determine the term of office, authority, duties, and compensation of the President. The President shall be an employee and the Chief Executive Officer of the University; shall be responsible to the Board of Trustees for the proper operation of the University; shall see that the policies established by the Board of Trustees are carried out; shall perform the duties assigned by the Board of Trustees; shall transmit or cause to be transmitted to the Board of Trustees written and oral reports which adequately and properly reflect the academic, financial, and other aspects of the University; shall make recommendations to the Board of Trustees; shall have the power to perform all acts and to execute all documents necessary or desirable to make effective the actions of the Board of Trustees; shall ensure that the University is subscribing to the required factors of regional, state, and programmatic accreditation and state and federal responsibilities; and shall make a comprehensive report on the state of the University at each regular meeting of the Board of Trustees.
- 8.02 **Administrative Officers.** The President shall appoint the principal administrative officers of the University. They shall be defined as "President's Council level" administrators of the University.
- 8.03 **Other Administrative Staff.** The President may appoint additional administrative staff for the University with specific duties and powers as may be required by the educational and business needs of the University consistent with the current budget of the University.
- 8.04 **Channel to the Board of Trustees.** Any official communication from or to the faculty, students, employees, or officers of the University shall ordinarily be communicated through the President of the University, preferably in writing.
- 8.05 **Officer Relationship to Board of Trustees.** No administrative officer of the University, including the President of the University, shall serve as an officer of the Board of Trustees nor serve as parliamentarian.

ARTICLE IX PROCEDURE

- 9.01 **Fiscal Year.** The fiscal year of the University shall begin on the first day of July of each calendar year and end on the thirtieth day of June of the following calendar year.

- 9.02 **Board of Trustees Operating Manual.** The Board of Trustees is authorized to prepare and maintain a Board of Trustees Operating Manual to contain policies, rules, regulations, and procedures of the Board of Trustees, committees of the Board of Trustees, and matters not covered in detail in these Bylaws.
- 9.03 **Administrative Manual.** The President is authorized to prepare and maintain a personnel handbook containing policies, rules, regulations, and procedures concerning all faculty, staff, students and employees of the University, subject to approval of the Board of Trustees.
- 9.04 **Faculty Constitution.** The faculty of the University is authorized to prepare and to maintain a constitution governing the teaching operation of the faculty and academic affairs of the University, subject to the policies set forth by the Board of Trustees and without abrogating the authority or responsibility of the Board of Trustees.
- 9.05 **Conflict of Interest.** Each Trustee is required to file a Conflict of Interest form annually. In cases where a Trustee, or the Board of Trustees with respect to a Trustee, determines that the decision on a particular matter could reasonably be expected to be affected by the personal, financial, or legal interests of such Trustee, then that Trustee shall not exercise a vote or participate in discussions on such matters whether in committee or the whole Board of Trustees, except that such Trustee may participate in such discussions to such extent as the Board of Trustees may determine and further provided that discussions without participation by such Trustee shall be included in the decision-making process.
- 9.06 **Rules of Order.** Any procedure not herein prescribed shall be governed by *Robert's Rules of Order Newly Revised*.
- 9.07 **Distribution.** A copy of the approved and adopted Bylaws of the Board of Trustees or the University shall be provided to each voting Trustee, to each Trustee Emeriti, and to each new Trustee at the time of election to the Board of Trustees. A copy shall be placed in the main library of the University.

ARTICLE X INDEMNIFICATION OF TRUSTEES AND OFFICERS

- 10.01 **Limitation of Liability.** No person shall be liable to the University or the Members of the University for any loss, damage, liability or expense suffered by the University on account of any action taken or omitted to be taken by such person as a Trustee or officer of the University or of any Other Enterprise which such person serves or has served as a director, trustee or officer at the request of the University, if such person (a) acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the University, or (b) took or omitted to take such action in reliance upon advice of counsel for the University, or for such Other Enterprise, or upon statements made or information furnished by Trustees, officers, employees or agents of the University, or directors, trustees, officers, employees, or agents of such Other Enterprise, which such person had no reasonable grounds to disbelieve.
- 10.02 **Indemnification, Generally.** In addition to and without limiting the rights to indemnification and advancement of expenses specifically provided for in the other

sections of this Article X, the University shall indemnify and advance expenses to each person who is or was a Trustee or officer of the University, or is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise, to the full extent permitted by the laws of the State of Kansas as in effect on the date of the adoption of these Bylaws and as may hereafter be amended.

10.03 Indemnification in Actions by Third Parties. The Corporation shall indemnify each person who has been or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, other than an action by or in the right of the University, by reason of the fact that such person is or was a Trustee or officer of the University, or is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise, against all liabilities and expenses, including, without limitation, judgments, fines, amounts paid in settlement (provided that such settlement and all amounts paid in connection therewith are approved in advance by the University using the procedures set forth in Section 10.06 of these Bylaws, which approval shall not be unreasonably withheld or delayed), attorneys' fees, ERISA excise taxes or penalties, and other expenses actually and reasonably incurred by such person in connection with such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the University, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; provided, however, that the University shall not be required to indemnify or advance expenses to any such person or persons seeking indemnification or advancement of expenses in connection with an action, suit or proceeding initiated by such person or persons (including, without limitation, any cross-claim or counterclaim initiated by such person or persons) unless the initiation of such action, suit or proceeding was authorized by the Board of Trustees of the University. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or under 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 which such person reasonably believed to be in or not opposed to the best interests of the University, and, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that such person's conduct was unlawful.

10.04 Indemnification in Derivative Actions. The Corporation shall indemnify each person who has been or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding by or in the right of the University to procure a judgment in its favor by reason of the fact that such person is or was a Trustee or officer of the University or is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise against all expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding) if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the University, except that no indemnification under this Section 10.04 shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to

be liable to the University unless and only to the extent that the court in which the action, suit or proceeding is brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

- 10.05 **Indemnification for Expenses.** Notwithstanding the other provisions of this Article X, to the extent that a person who is or was serving as a Trustee or officer of the University, or is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 10.03 and 10.04 of these Bylaws (including the dismissal of any such action, suit or proceeding without prejudice), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.
- 10.06 **Determination of Right to Indemnification.** Prior to indemnifying a person pursuant to the provisions of Sections 10.02, 10.03 and 10.04 of these Bylaws, unless ordered by a court and except as otherwise provided by Section 10.05 of these Bylaws, the University shall determine that such person has met the specified standard of conduct entitling such person to indemnification as set forth under Sections 10.02, 10.03 and 10.04 of these Bylaws. Any determination that a person shall or shall not be indemnified under the provisions of Sections 10.02, 10.03 and 10.04 of these Bylaws shall be made (a) by the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to the action, suit or proceeding, (b) if such quorum is not obtainable, or even if obtainable, a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, or (c) by the Members of the University who were not parties to the action, suit or proceeding, and such determination shall be final and binding upon the University; provided, however, that in the event such determination is adverse to the person or persons to be indemnified hereunder, such person or persons shall have the right to maintain an action in any court of competent jurisdiction against the University to determine whether or not such person has met the requisite standard of conduct and is entitled to such indemnification hereunder. If such court action is successful and the person or persons is determined to be entitled to such indemnification, such person or persons shall be reimbursed by the University for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with any such action (including, without limitation, the investigation, defense, settlement or appeal of such action).
- 10.07 **Advancement of Expenses.** Expenses (including attorneys' fees) actually and reasonably incurred by a person who may be entitled to indemnification hereunder in defending an action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate, shall be paid by the University in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to indemnification by the University. Notwithstanding the foregoing, no advance shall be made by the University if a determination is reasonably and promptly made by (a) the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to the action, suit or proceeding for which the advancement is requested, or (b) if a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Trustees so

directs, by independent legal counsel in a written opinion, or (c) by the Members of the University who were not parties to the action, suit or proceeding, based upon the facts known to the Board of Trustees, independent legal counsel or Members of the University at the time such determination is made, such person acted in bad faith and in a manner that such person did not believe to be in or not opposed to the best interests of the University, or, with respect to any criminal proceeding, that such person believed or had reasonable cause to believe such person's conduct was unlawful. In no event shall any advancement of expenses be made in instances where the Board of Trustees, independent legal counsel or the Members of the University reasonably determines that such person intentionally breached such person's duty to the University or the Members of the University.

10.08 **Non-Exclusivity.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, the Articles of Incorporation, these Bylaws, agreement, vote of the Members of the University or disinterested Trustees, policy of insurance or otherwise, both as to action in their official capacity and as to action in another capacity while holding their respective offices, and shall not limit in any way any right which the University may have to make additional indemnifications with respect to the same or different persons or classes of person. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall continue as to a person who has ceased to be a Trustee or officer and shall inure to the benefit of the heirs, executors, administrators and estate of such a person.

10.09 **Insurance.** Upon resolution passed by the Board of Trustees, the University may purchase and maintain insurance on behalf of any person who is or was a Trustee or officer of the University, or is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the University would have the power to indemnify such person against such liability under the provisions of this Article X.

10.10 **Vesting of Rights.** The rights granted by this Article X shall be vested in each person entitled to indemnification hereunder as a bargained-for, contractual condition of such person's serving or having served as a Trustee or officer of the University or serving at the request of the University as a director, trustee or officer of any Other Enterprise and while this Article X may be amended or repealed, no such amendment or repeal shall release, terminate or adversely affect the rights of such person under this Article X with respect to any act taken or the failure to take any act by such person prior to such amendment or repeal or with respect to any action, suit or proceeding with respect to such act or failure to act filed after such amendment or repeal.

10.11 **Definitions.** For purposes of this Article X, references to:

10.11.1 "the University" shall, if and only if the Board of Trustees shall determine, include, in addition to the University, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to

indemnify its directors, trustees or officers or persons serving at the request of such constituent corporation as a director, trustee or officer of any Other Enterprise, so that any person who is or was a director, trustee or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, trustee or officer of any Other Enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued;

- 10.11.2 "Other Enterprises" or "Other Enterprise" shall include, without limitation, any other corporation, limited liability company, partnership, joint venture, trust or employee benefit plan;
- 10.11.3 "officer of the University" shall include the officers of the Board of Trustees, as well as the President of the University and also the principal administrative officers of the University (also defined as "cabinet level" administrators of the University);
- 10.11.4 "director, trustee or officer of any Other Enterprise" shall include, without limitation, any person performing similar functions with respect to such Other Enterprise, whether incorporated or unincorporated;
- 10.11.5 "fines" shall include any excise taxes assessed against a person with respect to an employee benefit plan;
- 10.11.6 "defense" shall include investigations of any threatened, pending or completed action, suit or proceeding as well as appeals thereof and shall also include any defensive assertion of a cross-claim or counterclaim; and
- 10.11.7 "serving at the request of the University" shall include any service as a director, trustee or officer of a corporation which imposes duties on, or involves services by, such director, trustee or officer with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the University" as referred to in this Article X.

10.12 **Severability.** If any provision of this Article X or the application of any such provision to any person or circumstance is held invalid, illegal or unenforceable for any reason whatsoever, the remaining provisions of this Article X and the application of such provisions to other persons or circumstances shall not be affected thereby and, to the fullest extent possible, the court finding such provision invalid, illegal or unenforceable shall modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to persons subject to indemnification hereby within the bounds of validity, legality and enforceability. Without limiting the generality of the foregoing, if any Trustee or officer of the University, or any

person who is or was serving at the request of the University as a director, trustee or officer of any Other Enterprise, is entitled under any provision of this Article X to indemnification by the University for some or a portion of the judgments, amounts paid in settlement, attorneys' fees, ERISA excise taxes or penalties, fines or other expenses actually and reasonably incurred by any such person in connection with any threatened, pending or completed action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding), whether civil, criminal, administrative, investigative or appellate, but not, however, for all of the total amount thereof, the University shall nevertheless indemnify such person for the portion thereof to which such person is entitled.

ARTICLE XI AMENDMENTS

These Bylaws may from time to time be altered, amended or repealed, or new bylaws may be adopted, in any of the following ways: (i) by a majority of the Members; or (ii) by a majority of the full Board of Trustees, and any change so made by the Members may thereafter be further changed by a majority of the full Board of Trustees; provided, however, that the power of the Board of Trustees to alter, amend or repeal these Bylaws, or to adopt new bylaws, may be denied as to any bylaws or portion thereof by the Members if at the time of enactment the Members shall so expressly provide.

RECORD OF ADOPTION AND AMENDMENTS (past 39 years)

These amended Bylaws were adopted by the Board of Trustees at the regular meeting on:

Date: October 22, 2020
Chairperson: Jeffrey H. Bieber
Secretary: Steve Michel

Amendments to Bylaws of the University were previously adopted by the Board of Trustees at the following regular meetings of the Board:

Date: June 16, 2018
Chairperson: Emily-May Richards
Secretary: Jane A. Philbrick

Date: June 23, 2006
Chairperson: Stephen C. Ryan
Secretary: Debora L.

Date: June 20, 2015
Chairperson: Randall W. St. Clair
Secretary: Donna L. McKinley

Date: October 25, 1996
Chairperson: Dean Owens
Secretary: Ann Knowles

Date: June 7, 2014
Chairperson: Randy St. Clair
Secretary: Donna McKinley

Date: June 26, 1992
Chairperson: Roy Applequist
Secretary: Pauline Eaton

Date: October 19, 2013
Chairperson: Randy St. Clair
Secretary: Donna McKinley

Date: July 8, 1989
Chairperson: Daniel C. King
Secretary: Ken Stephenson

Date: June 15, 2013
Chairperson: James R. Nelson
Secretary: Marla Beikman

Date: February 19, 1987
Chairperson: Tom Wilson
Secretary: Edward Boyce

Date: June 16, 2012
Chairperson: James R. Nelson
Secretary: Marla Beikman

Date: June 22, 1984
Chairperson: R.H. Zimmerman
Secretary: Edward Boyce

Date: June 25, 2011
Chairperson: D. Kent Lambert
Secretary: Marla Beikman

Date: October 16, 1981
Chairperson: R.H. Zimmerman
Secretary: Daniel C. King

Date: February 26, 2011
Chairperson: D. Kent Lambert
Secretary: Marla Beikman