

BY-LAWS

OF

MISHAWAKA FOUNDATION

ARTICLE I - GENERAL

Section 1. Name. The name of the corporation (organized as a Minnesota not-for-profit corporation) is MISHAWAKA FOUNDATION.

Section 2. Purpose. The general purposes of this Corporation shall be to give financial assistance to worthy persons in obtaining an education; to finance worthy and needy persons at summer camps; and, to provide recreational facilities and programs for community welfare either as original recreational programs or as supplements to already existing recreational programs.

This Corporation shall have no capital stock or shares, nor shall any individual at any time, either upon a dissolution of this Corporation or in any other event, be considered to be the owner or entitled to any extent to any of the assets, funds or property of this Corporation, all of which said assets, funds or property shall be exclusively and forever devoted to the continuance and carrying out of the general purpose for which this Corporation is formed. No part of the property or net earnings of this Corporation shall inure to the benefit of any trustee or officer hereof nor of any individual whatsoever except it be within the above general educational or recreational purpose, nor shall this Corporation conduct any activities connected with carrying on propaganda or otherwise attempting to influence legislation. This provision, however, shall not prevent the payment of reasonable compensation to Trustees, officers or members, if any, of this Corporation or others as may render services to it. Notwithstanding any other provisions of the Articles of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code; or (b) by a corporation qualified as a public charity pursuant to Sections 509(a)(1) and 170(b)(1)(a)(vi) of the Code; or (c) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code. Anything herein contained to the contrary notwithstanding, no assets of the Corporation shall be donated, distributed, applied to, paid over or otherwise used or employed in any manner which would disqualify the Corporation from being exempt from taxation under Section 501(a) or 501(c)(3) of the Code.

In the event of the dissolution or liquidation of the Corporation and after payment or making provision for the payment of all debts and liabilities of the Corporation, all remaining assets shall be distributed to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as determined by the Board of Trustees.

Section 3. Office. The corporation shall maintain a registered office in the State of Minnesota and a registered agent at such office. The corporation may have other offices within or without the state.

## ARTICLE II - MEMBERS

The corporation shall have no members.

## ARTICLE III - BOARD OF TRUSTEES

Section 1. General Powers. The affairs of the corporation shall be managed by its Board of Trustees.

Section 2. Number, Tenure and Qualifications. The number of Trustees shall be no less than five (5) and no more than nine (9). Trustees shall be elected annually by the Trustees at the annual meeting of the Trustees. If the election of Trustees shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible.

Each Trustee shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign. Trustees need not be residents of Minnesota. The number of Trustees may be increased to any number or decreased to not fewer than three (3) from time to time by amendment of this Section. No decrease shall have the effect of shortening the term of an incumbent Trustee.

Section 3. Annual Meeting. The annual meeting of the Board of Trustees will be held during the month of April<sup>1</sup> each year, at such time and place as may be fixed by the Board of Trustees for the purpose of electing Trustees and for the transaction of such other matters as may come before the meeting.

Section 4. Other Regular Meetings. The Board of Trustees may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of the president or any two Trustees. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meeting of the Board called by them.

Section 6. Notice. Notice stating the place, date, and hour of any special meeting of the Board of Trustees shall be given at least ten (10) days previously thereto by written notice to each Trustee at the address shown for such Trustee on the records of the corporation. Notice of any special meeting of the Board of Trustees in the case of a removal of one or more Trustees, a merger, consolidation, dissolution or sale, lease or exchange of assets, shall be given not less than twenty (20) nor more than sixty (60) days before the date of such meeting. 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 shall be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Notice of any special meeting of the Board of Trustees may be waived in writing signed by the person or persons entitled to such

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<sup>1</sup> Amended 5/99 by resolution of directors changing from May to April

notice either before or after the time of the 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 at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting unless specifically required by law or by these by-laws.

Section 7. Quorum. At all meetings of the Board of Trustees a majority of the total number of Trustees then in office shall constitute a quorum for the transaction of business, provided that if less than a majority of the Trustees then in office is present at said meeting, a majority of the Trustees present may adjourn the meeting to another time without further notice.

Section 8. Manner of Acting. The act of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees, unless the act of a greater number is required by statute, the articles of incorporation or these by-laws. No Trustee may act by proxy on any matter.

Section 9. Action Without Meeting. Any action required to be taken at a meeting of the Trustees of the corporation, or any other action which may be taken at a meeting of Trustees, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Trustees entitled to vote with respect to the subject matter thereof.

Section 10. Attendance by Telephone. Trustees may participate in any meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 11. Vacancies. Any vacancy occurring in the Board of Trustees or any Trusteeship to be filled by reason of an increase in the number of Trustees shall be filled by the Board of Trustees. A Trustee elected to fill a vacancy shall serve for the unexpired term of his or her predecessor.

Section 12. Compensation. The Board of Trustees, by the affirmative vote of a majority of Trustees then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all Trustees for services to the corporation as Trustees, officers or otherwise, notwithstanding any Trustee's conflict of interest. By resolution of the Board of Trustees a fixed sum and expenses of attendance, if any, may be paid for each regular or special meeting of the Board, provided that nothing herein contained shall be construed to preclude any Trustee from serving the corporation in any other capacity and receiving reasonable compensation therefor.

#### ARTICLE IV - COMMITTEES

Section 1. Creation of Committees. The Board of Trustees, by resolution adopted by a majority of the Trustees in the office, may designate one (1) or more committees, each of which shall

consist of two (2) or more Trustees and such other persons as the Board shall appoint, provided that a majority of the members of each committee shall be Trustees.

Section 2. Manner of Acting. Each committee, to the extent provided in the resolution creating such committee and except as limited by law, the articles of incorporation or these by-laws, shall have and exercise the authority of the Board of Trustees in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Trustees, or any individual Trustee, of any responsibility imposed upon it or him or her by law. Unless otherwise provided in the resolution creating a committee, such committee may select its chairman, fix the time and place of its meetings, specify what notice of meetings, if any, shall be given, and fix its rules of procedures which shall not be inconsistent with these by-laws or with rules adopted by the Board of Trustees. The act of a majority of committee members present at a meeting at which a quorum is present shall be the act of the committee.

Section 3. Term of Office. Each member of a committee shall continue as such until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 4. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 5. Quorum. Unless otherwise provided in the resolution of the Board of Trustees designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 6. Action Without Meeting. Any action which may be taken at a meeting of a committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the committee entitled to vote with respect to the subject matter thereof.

Section 7. Attendance by Telephone. Members of a committee may participate in any meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

## ARTICLE V - OFFICERS

Section 1. Enumeration. The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer. The Board of Trustees may also elect one or more additional vice-presidents, one or more assistant secretaries or assistant treasurers and such other officers as it shall deem appropriate. Officers whose authority and duties are not prescribed in these by-laws shall have the authority and perform the duties prescribed, from time to time, by the Board of Trustees.

Any two or more offices may be held by the same person, except the offices of president and secretary.

Section 2. Term of Office. The officers of the corporation shall be elected at the annual meeting of the Board of Trustees and shall hold office until their successors are elected and qualified or until their death, resignation or removal. Vacancies may be filled or new offices created and filled at any meeting of the Board of Trustees. Election of an officer shall not of itself create contract rights. Any officer elected by the Board of Trustees may be removed by the Board whenever in its judgment the best interests of the corporation would be served thereby. Such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 3. President. The president shall be the principal executive officer of the corporation. Subject to the direction and control of the Board of Trustees, the president shall have general supervision, direction and control of the business and affairs of the corporation and shall perform all duties incident to the office of president and such other duties as may be assigned to him or her by the Board of Trustees. The president shall preside at all meetings of the members, if any, and the Board of Trustees. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the corporation or a different mode of execution is expressly prescribed by the Board of Trustees, the president may execute for the corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board of Trustees has authorized to be executed, and he or she may accomplish such execution either under or without the seal of the corporation and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Trustees, according to the requirements of the form of the instrument. The president may vote all securities which the corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the corporation by the Board of Trustees.

Section 4. Vice President. The vice president shall perform such duties and have such other powers as shall be assigned to him or her by the president or the Board of Trustees. Further, in the absence of the president or in the event of his or her inability or refusal to act, the vice president shall perform the duties of the president and when so acting, shall have all the powers of and be subject to all the restrictions upon the president.

Section 5. Secretary. The secretary shall keep a record of all proceedings of the Board of Trustees in a book to be kept for that purpose; see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; be custodian of the corporate records and of the seal of the corporation; and perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board of Trustees.

Section 6. Treasurer. The treasurer shall have charge of and be responsible for the maintenance of adequate books of account for the corporation; have charge and custody of all funds and securities of the corporation, and be responsible for the receipt and disbursement thereof; and perform all duties incident to the office of a treasurer and such other duties as may be assigned to him or her by the president or the Board of Trustees. With the approval of the Board of Trustees, the

treasurer may delegate specified duties to an assistant treasurer or other person for the effective conduct of the affairs of the corporation.

## ARTICLE VI - GENERAL PROVISIONS

Section 1. Contracts. The Board of Trustees may authorize any officer or officers or agent or agents of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Trustees may select. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers or agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Trustees. In the absence of such determination by the Board of Trustees, such instruments shall be signed by the treasurer and counter-signed by the president of the corporation.

Section 3. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Trustees.

Section 4. Seal. On the corporate seal shall be inscribed the name of the corporation and words "Corporate Seal" and "Minnesota."

Section 5. Waiver of Notice. Whenever any notice is required to be given under law, the articles of incorporation or the by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 6. Amendments. The power to alter, amend, or repeal the by-laws or adopt new by-laws shall be vested in the Board of Trustees. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

## ARTICLE VII - INDEMNIFICATION AND INSURANCE

Section 1. Nonderivative Actions. The corporation may indemnify any 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 civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a Trustee, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually

and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Derivative Actions. The corporation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person 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 Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 3. Mandatory Indemnity. To the extent that a Trustee, officer, employee or agent of the corporation has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Sections (1) and (2) of this Article VIII, 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.

Section 4. Authorization. Any indemnification under Sections (1) and (2) of this Article VII (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, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections (1) and (2) of this Article VII. Such determination shall be made (i) by the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding, (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, or (iii) by the members entitled to vote, if any.

Section 5. Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Trustees in the specific case, upon receipt of any

undertaking by or on behalf of the Trustee, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this Article VII.

Section 6. Nonexclusive. The indemnification provided by this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of disinterested Trustees, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Trustee, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, employee or agent of the corporation, or who is or was serving at the request of the corporation as a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Article VII.

Section 8. Reporting. If the corporation has paid indemnity or has advanced expenses under this Article VII to a Trustee, officer, employee or agent, the corporation shall report the indemnification or advance in writing to the members entitled to vote with or before the notice of the next meeting of such members.