

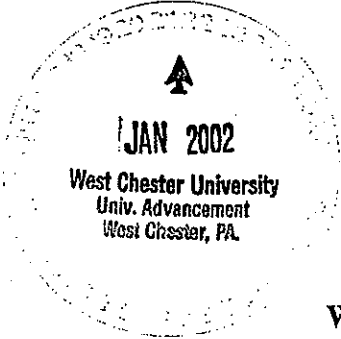


Office of the President  
West Chester University  
West Chester, Pennsylvania 19383-1000

Council of Trustees  
Resolution  
2002-03

610-436-2471  
www.wcupa.edu

PROPOSED



**RESOLUTION**  
**COUNCIL OF TRUSTEES**  
**WEST CHESTER UNIVERSITY OF PENNSYLVANIA**  
**JANUARY 17, 2002**

**Certification of Compliance of the Fund for West Chester University with Board of Governor's Policy on External Financial Support.  
(Policy 1985-04)**

**NOW, IN KEEPING WITH THE BOARD OF GOVERNORS' POLICY 1985-04 AND AFTER A REVIEW OF THE PERTINENT MATERIALS, THE COUNCIL OF TRUSTEES OF WEST CHESTER UNIVERSITY OF PENNSYLVANIA FIND THAT FOR THE FISCAL YEAR OF 2001-2002 THE FUND FOR WEST CHESTER UNIVERSITY IS MEETING ITS DESIRED PURPOSES AND REQUIREMENTS AND IS IN COMPLIANCE WITH THE CONDITIONS ESTABLISHED BY THE BOARD OF GOVERNORS FOR AFFILIATED ORGANIZATIONS.**

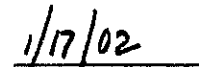
**APPROVED PENDING ACTION BY THE COUNCIL OF TRUSTEES**

  
\_\_\_\_\_  
Linda L. Lamwers, Acting President

  
\_\_\_\_\_  
Date

**APPROVED BY VOTE OF THE COUNCIL OF TRUSTEES**

  
\_\_\_\_\_  
Laurence Harmelin, Chairperson  
Council of Trustees

  
\_\_\_\_\_  
Date




Office of the Vice President for Advancement  
Filano Hall 101  
West Chester University  
West Chester, Pennsylvania 19383-7000

610-436-3303  
fax: 610-436-2606  
www.wcupa.edu

## MEMORANDUM OF CERTIFICATION

**TO:** The Council of Trustees

**FROM:** Mark G. Pavlovich, Vice President for Advancement 

**RE:** Certification of the Fund for West Chester University

**DATE:** January 17, 2002

I am pleased to certify that the Fund for West Chester University is in compliance with the Board of Governor's Policy on External Financial Support (Policy 1985-04). The Fund meets the following criteria:

- 1) An annual statement summarizing University support for and contributions from the Fund has been prepared for the year ending June 30, 2001 (copy attached).
- 2) A Memorandum of Understanding signed by the Fund, University, and legal counsel is in place (copy attached).
- 3) Annual Audit. Because the Fund has not yet completed its first fiscal year of operation, the requirement to provide an annual audit is waived.
- 4) Articles of Incorporation and Bylaws are presented to the Council of Trustees (copy attached).
- 5) A current list of Fund Board members and Officers is available to the Council of Trustees (copy attached).
- 6) Proof of Insurance is presented to the Council of Trustees (copy attached).

mgp



Office of the Vice President  
for Administrative and Fiscal Affairs  
Philips Building - Room 202  
West Chester University  
West Chester, Pennsylvania 19383-3000

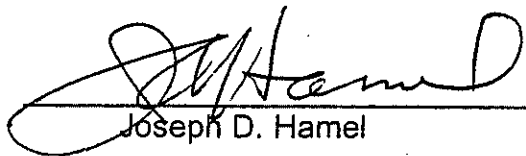
610-436-2731  
fax: 610-738-0314  
www.wcupa.edu

**Annual Summary Report of Direct University Support To  
and Contributions Made by The Fund for West Chester University  
of Pennsylvania**  
For the Period ending June 30, 2001

<b>Direct University support to The Fund for West Chester University of Pennsylvania</b>	<b><u>\$39,000.00</u></b>
Capital Campaign Consulting Services \$37,200	
Legal Fees 7,100	
Miscellaneous Administrative Expenses <u>1,800</u>	
	<u>\$39,000</u>

**Contributions made to or benefiting West Chester University** \$ - 0 -  
This was the first operating year and commencing  
July 1, 2001, contributions began flowing to the  
University from The Fund

Prepared by Vice President for Administrative and Fiscal Affairs  
West Chester University of Pennsylvania

  
\_\_\_\_\_  
Joseph D. Hamel

1-7-02  
Date

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereafter referred to as the "MOU") is made by and between the Fund for West Chester University of Pennsylvania (hereafter referred to as the "Fund") and West Chester University of Pennsylvania (hereafter referred to as WCU) this 30<sup>th</sup> day of October, 2000.

### BACKGROUND

WHEREAS, the Fund has been established to advance the charitable, educational, and scientific purposes of WCU as defined by the President of WCU, and

WHEREAS, the Fund will raise, receive, and manage gifts and endowments for the benefit of WCU as defined in the Fund's Articles of Incorporation and Bylaws, and

NOW THEREFORE, based upon the mutual promises, covenants, and conditions set forth herein, and agreeing to be bound hereby, the Fund and WCU agree as follows:

### AGREEMENT

1. **INCORPORATION.** The background set forth herein above is specifically made part of this MOU.
2. **ACTIVITIES.** In addition to the activities defined in its Bylaws, the Fund may participate in matters of University development, planned giving, gift processing and recording, gift stewardship, donor records, and other fund raising functions as appropriate in consultation with the WCU President and under the direction of the WCU Vice President for Advancement.
3. **TRANSFER OF ENDOWMENT ASSETS.** Upon approval of the WCU Council of Trustees, WCU may transfer management of all endowment and similar assets to the Fund. These endowment assets and related investments are to be managed in consultation with WCU. Each year and as determined by the Council of Trustees of WCU, a percentage of the value of the endowment assets managed by the Fund will be distributed to WCU to advance WCU's educational purposes and goals and the intentions of the donors of said assets. Earnings from endowment assets shall be considered as part of the endowment. Furthermore, the Fund agrees to assess the performance of its endowment managers and report the results to the WCU Council of Trustees.
4. **DISTRIBUTION OF GIFT INCOME.** All gifts contributed to WCU will be given to the Fund for processing, investment, and/or disposition. The Fund shall make regular (at least quarterly) distributions of all gift income and earnings thereon to WCU, less operational costs as approved by the Treasurer and Executive Director of the Fund.

5. **BOARD REPRESENTATION.** In order to foster close collaboration between the Fund and WCU, a member of the WCU Council of Trustees appointed by the Chairman of the Council of Trustees will serve as an *ex officio* trustee of the Fund.
6. **SERVICES AND STAFF.** In the spirit of the State System of Higher Education Board of Governor's resolution of April 16, 1985 regarding fund raising and affiliated organizations, it is WCU's desire to enhance the ability of the Fund to function by providing to the Fund, free of charge or obligation whatsoever, facilities, staff, and services as described below. This support will be reviewed annually.
  - 6A. **STAFF.** WCU will employ an Executive Director of the Fund who will also serve as Associate Vice President of Advancement for WCU. The Executive Director shall report to the WCU Vice President for Advancement and be responsible for day-to-day management of the Fund's operations and attracting private support for the Fund.

The President of the Fund Board, his or her designee, or a committee of the Fund Trustees appointed by the President of the Fund Board shall offer advice to the WCU President and Vice President for Advancement regarding the selection, retention, and evaluation of the Executive Director. In the case of a search for the Executive Director, the President of the Fund Board, or the President's designee, may participate as a member of the Search Committee.

As is the policy for WCU managers, WCU shall complete an annual evaluation of the Executive Director. The Vice President for Advancement shall seek input from the Fund Board of Trustees regarding the Executive Director's performance.
  - 6B. **SERVICES.** WCU shall provide clerical services such as typing, filing and related functions; communication services to include telecommunications, postage, printing, public relations, access to the development computer database, and similar services; and accounting services to include bookkeeping, budgeting, billing, and related fiscal services. In addition, WCU shall provide operational supplies and services to include, but not limited to, internal stores and maintenance agreements to which WCU is a party.
  - 6C. **FACILITIES.** WCU shall provide facilities that include, but are not limited to, space, utilities, maintenance, and housekeeping as may be necessary to conduct Fund functions and activities.
7. **OTHER COSTS.** During the first two years of this MOU (2000-01 and 2001-02), WCU will provide resources to cover special operational costs of the Fund that will not necessarily be part of WCU's regular contribution of services to the Fund. These expenses include but are not limited to legal costs, insurance, Fund meeting costs, real estate transaction fees, financial management costs, and similar expenses. Thereafter, these costs will be assumed by the Fund from income received by the Fund.

8. **REPORTS.** In compliance with the Board of Governor's Policy 1985-04A, the Fund will submit to WCU the following documentation annually and no later than four months following the completion of the fiscal year.
- A. Memorandum of Understanding
  - B. Annual audited financial statements and reports
  - C. Summarization of contributions made by the Fund to WCU
  - D. The list of the Board of Trustees and any changes in fiduciary agreements, articles of incorporation, and bylaws.

In order for WCU to ensure compliance with Board of Governor's Policy 1985-04A, WCU shall have the right to review WCU and Commonwealth of Pennsylvania resources used to support the Fund's operations. It is the responsibility of the Executive Director to transmit this information to WCU on behalf of the Fund Board of Trustees.

9. **INDEMNIFICATION AND INSURANCE.** The Fund shall hold WCU harmless from and indemnify WCU against any and all claims, demands and actions based upon and arising out of any activities performed by the Fund for WCU.

The Fund shall purchase and maintain, at its expenses from income received, comprehensive commercial general liability insurance issued by companies deemed to be financially sound by WCU. The insurance coverage would be \$1,000,000 each occurrence for bodily injury and property damage. Policy/ies shall be on an occurrence basis only. The Fund shall name WCU as an additional insured.

Upon receipt of written notice of any matter for which indemnification might be claimed by WCU, the Fund shall promptly defend, contest, or otherwise protect against any such suit, action, investigation, claim or proceeding at its own cost and expense. WCU agrees to make a demand for indemnification within fourteen days of any claim being made against it.

10. **PROTECTION OF STATUS.** WCU and the Fund shall refrain from taking any action that would violate the terms or conditions of a gift or asset; or the corporate status or purposes of the other; or threaten the Fund's status as a tax exempt [501(c)(3)] organization.
11. **BYLAWS AMENDMENTS.** This MOU may be amended by a majority vote of both the Fund Board of Trustees and the WCU Council of Trustees. In the event that one party to this MOU approves an amendment or amendments of the Bylaws of the Fund without the concurrence of the other party, which concurrence shall not be unreasonably withheld, the Fund shall transfer to WCU all of its assets including gifts and endowments given to the Fund by WCU, gifts contributed directly to the Fund, and endowment principal and income.

12. DISSOLUTION. In the event that one or both parties to this agreement determine that the affiliation between the Fund and WCU should be dissolved, the Fund shall transfer to WCU all of its assets including gifts and endowments given to the Fund by WCU, gifts contributed directly to the Fund, and endowment principal and income.

13. NOTICE. All written notice required to be given under this MOU shall be sent to the President and Executive Director of the Fund and the President of WCU.

14. TERM AND REVIEW OF MOU.

14A. The initial term of this MOU will be from January 1, 2001 to the ending date of June 30, 2001. June 30, 2001 and each June 30 thereafter shall serve as the anniversary date for this MOU.

14B. The MOU will automatically renew and continue in effect for an additional one (1) year period commencing from the ending date to the first anniversary date, and then from anniversary dates to anniversary dates.

14C. If either party desires to renegotiate the MOU, that party must provide the other party with written notice at least sixty (60) days prior to the next anniversary date of the party's intention to renegotiate the MOU.

14D. If the MOU is not thereafter renegotiated by a writing signed by both parties prior to the next anniversary date, then the MOU will terminate at the next anniversary date and the affiliation will be dissolved as defined in Section 10 of this MOU.

The Fund/For West Chester University of Pennsylvania

West Chester University of Pennsylvania

By: [Signature]

By: [Signature]

Date: 7-30-00

Date: 11/14/00

Approved for Form and Legality:

By: [Signature]  
University Legal Counsel

Date: 12-12-00



Council of Trustees  
West Chester University  
West Chester, Pennsylvania 19383-1000

Council of Trustees  
Resolution  
2000-024

www.wcupa.edu

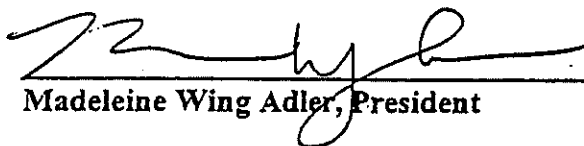
PROPOSED

RESOLUTION  
COUNCIL OF TRUSTEES  
WEST CHESTER UNIVERSITY OF PENNSYLVANIA  
NOVEMBER 29, 2000  
THE FUND FOR WEST CHESTER UNIVERSITY  
OF PENNSYLVANIA

MEMORANDUM OF UNDERSTANDING

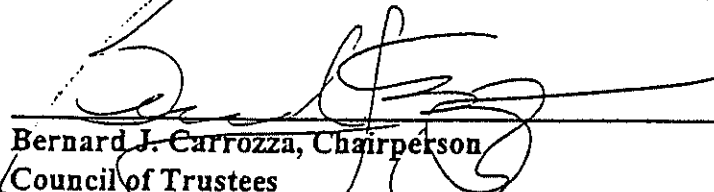
BE IT RESOLVED THAT THE COUNCIL OF TRUSTEES OF WEST CHESTER UNIVERSITY OF PENNSYLVANIA HEREBY APPROVES THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE FUND AND WEST CHESTER UNIVERSITY OF PENNSYLVANIA (ATTACHED).

APPROVED PENDING ACTION BY THE COUNCIL OF TRUSTEES

  
\_\_\_\_\_  
Madeleine Wing Adler, President

11/31/00  
\_\_\_\_\_  
Date

APPROVED BY VOTE OF THE COUNCIL OF TRUSTEES

  
\_\_\_\_\_  
Bernard J. Carrozza, Chairperson  
Council of Trustees

11/29/00  
\_\_\_\_\_  
Date





Office of the Vice President for Advancement  
Smith House 101  
West Chester University  
West Chester, Pennsylvania 19383-7000

610-436-3303  
fax: 610-436-2606  
www.wcupa.edu

RECEIVED  
S.S.H.E.  
DEC 08 2000  
Office of  
University Legal Counsel

December 6, 2000

Wayne S. Melnick, Esq.  
University Legal Counsel  
State System of Higher Education  
Dixon University Center  
2986 North Second Street  
Harrisburg, PA 17110

DEC 21 2000  
West Chester University  
Univ. Advancement  
West Chester, PA

Dear Wayne,

As you may recall, West Chester University of Pennsylvania is creating a relationship with a new not-for-profit organization known as the Fund for West Chester University. The purpose of this affiliation is to generate and manage additional resources to advance the mission of the University.

Please find enclosed the recently adopted Memorandum of Understanding (MOU) between the University and the Fund (original signatures). The WCU Council of Trustees approved this MOU at its November 30, 2000 meeting, while the Fund Board adopted the MOU at its October 30, 2000 meeting. You may remember reviewing this document prior to its submission to the Council and the Fund Board.

It is my understanding that your endorsement of the document's legal content and form is the final step in the approval process. I appreciate your review of the MOU and your acceptance as indicated by your signature on the final page of the form. You may forward the signed MOU to my attention.

Thank you in advance for your timely approval of this MOU. And please contact me at your convenience if you have any questions or need additional information.

Sincerely,

Mark G. Pavlovich  
Vice President for Advancement

mgp  
Enclosure

**ARTICLES OF INCORPORATION**  
**OF**  
**THE FUND FOR WEST CHESTER UNIVERSITY OF PENNSYLVANIA**  
**A PENNSYLVANIA NONPROFIT CORPORATION**

In compliance with the requirements of Pa. Stat. Ann. Tit. 15, § 7316, the undersigned, desiring to be incorporated as a nonprofit corporation, hereby certifies that:

1. Name. The name of the Corporation is Fund for West Chester University of Pennsylvania.
  
2. Address. The location and post office address of the initial registered office of the Corporation in this Commonwealth is West Chester University of Pennsylvania, 628 South High Street, West Chester, Pennsylvania 19383-7100. The county of venue is Chester.
  
3. Purposes.
  - A. The Corporation is formed exclusively for charitable, educational, and scientific purposes within the meaning of § 7311 of the Pennsylvania Nonprofit Corporation Law and § 501(c)(3) of the Internal Revenue Code of 1954, as amended, or any other corresponding section of any future federal tax code (the "Code").
  
  - B. Specific Purposes. In furtherance of its exclusively charitable, educational, and scientific purposes, the Corporation shall promote the interests of West Chester University of Pennsylvania of the State System of Higher Education, a Pennsylvania body corporate described in § 509(a)(1) and (2) of the Code, and such other affiliated entities as fall within the class of organizations described both by § 501(c)(3) and § 509 (a)(1) and (2) of the Code, and the Corporation shall, without otherwise limiting its powers, perform the following:
    - a. solicit funds and other property for the charitable, scientific, and educational purposes of West Chester University of Pennsylvania in accordance with priorities set by West Chester University of Pennsylvania;
  
    - b. receive, manage, and liquidate material assets, including unique gifts such as jewelry, artworks, and real property, to benefit West Chester University of Pennsylvania;

- c. contribute capital, make loans and grants, and provide other financial assistance to West Chester University of Pennsylvania, any of its affiliated entities, and any institutions or organizations that become affiliated with the Corporation; provided all such entities are organizations described in either Section 170(b)(1)(A) or Section 501(c)(3) of the Code;
- d. manage the relationship, including the selection and negotiation of services, with a financial institution or institutions for the purposes of holding endowment funds, life income gifts, and similar funds;
- e. manage any contract for the advancement of West Chester University of Pennsylvania;
- f. provide funds and services to conduct the business of the Corporation;
- g. manage the Corporation's endowment fund, and upon request and with proper approvals, the endowment fund of West Chester University of Pennsylvania; and
- h. engage in and do any and all acts and engage in all lawful business which a nonprofit corporation may do consistent with or in furtherance of the purposes herein set forth above.

- 4. Term. The term for which the Corporation is to exist is perpetual.
- 5. Non-stock. The Corporation is organized on a non-stock basis.
- 6. Members. The Corporation shall have no members.

7. Nonprofit. The Corporation does not contemplate pecuniary gain or profit, incidental, or otherwise. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its trustees, officers, or other persons, except that 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 herein. No substantial part of the activities of the Corporation shall be carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene (including publishing or distribution of statements) in any political campaign on behalf of any candidate for public office.

8. Status. Notwithstanding any other provision of these Articles, 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)

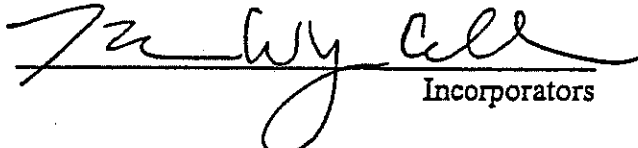
by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

9. Dissolution. Upon the liquidation or dissolution of the Corporation, the Board of Trustees of the Corporation shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purpose of the Corporation in such manner, or to the West Chester University of Pennsylvania of the State System of Higher Education, or its successor, if such organization is a permitted beneficiary under the requirements of Income Tax Regulation § 1.501(c)(3)-1(b)(4), or to such organizations organized and operated exclusively for charitable, educational, or scientific purposes as at the time shall qualify as an exempt organization or organizations under § 501(c)(3) of the Internal Revenue Code of 1954, as amended, as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the County in which the principal office of the Corporation is then located.

- 10. The name and post office address of the Incorporators is:

Name: Madeleine Wing Adler, President  
Address: West Chester University of Pennsylvania  
Philips Memorial Building, First Floor  
700 South High Street  
West Chester, PA 19383

IN WITNESS WHEREOF, the incorporators signed these Articles of Incorporation on August 11, 2000.

  
Incorporators

## BYLAWS

### OF

## THE FUND FOR WEST CHESTER UNIVERSITY OF PENNSYLVANIA A PENNSYLVANIA NONPROFIT CORPORATION

### ARTICLE 1 – DEFINITIONS

#### Section 1.1. Definitions.

The following terms used in these Bylaws shall have the meanings set forth below.

- A. “Act” means the Pennsylvania Nonprofit Corporation Law of 1988, as amended.
- B. “Board” means the Board of Trustees of the Corporation.
- C. “Corporation” means the Fund for West Chester University of Pennsylvania.
- D. “Trustee” means an individual serving on the Board.
- E. “University” means West Chester University of Pennsylvania.

### ARTICLE 2 – PURPOSES

#### Section 2.1. Purposes.

The purposes of the Corporation are set forth in its Articles of Incorporation.

#### Section 2.2. Activities.

The Corporation is organized exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any other corresponding section of any future federal tax code (the “Code”), particularly to promote the interests of West Chester University of Pennsylvania of the State System of Higher Education. The Corporation shall perform the following:

- A. solicit funds and other property to advance the charitable, scientific, and educational interests of the University in accordance with priorities set by the University;

- B. receive, manage, and liquidate material assets, including unique gifts such as jewelry, artworks, and real property, to the benefit of the University;
- C. contribute capital, make loans and grants, and provide other financial assistance to the University, any of its affiliated entities, and any institutions or organizations that become affiliated with the Corporation; provided all such entities are organizations described in either Section 170(b)(1)(A) or Section 501(c)(3) of the Code;
- D. manage the relationship, including the selection and negotiation of services, with a financial institution or institutions for the purposes of holding endowment funds, life income gifts, and similar funds;
- E. manage any contract for the advancement of the University;
- F. provide funds and services to conduct the business of the Corporation;
- G. manage the Corporation's endowment fund, and upon request and with proper approvals, the endowment fund of the University; and
- H. engage in and do any and all acts and engage in all lawful business which a nonprofit corporation may do consistent with or in furtherance of the purposes herein set forth above.

### ARTICLE 3 – OFFICES

#### Section 3.1. Offices.

The registered office of the Corporation shall be located at the West Chester University of Pennsylvania, 628 South High Street, West Chester, Pennsylvania. The Corporation may have any number of other offices at such places as the Board may determine, whether located in or out of Pennsylvania.

### ARTICLE 4 – SEAL

#### Section 4.1. Seal.

The Corporation may use a Corporate Seal. The Corporate Seal shall bear the name of the Corporation, the year of its incorporation, and the words "Corporate Seal, The Fund for West Chester University of Pennsylvania."

## ARTICLE 5 – BOARD OF TRUSTEES

### Section 5.1. Board of Trustees.

The business and affairs of the Corporation shall be managed under the direction of the Board. The powers of the Corporation shall be exercised by, or under the authority of, the Board except as otherwise provided by statute, the Articles of Incorporation, these Bylaws, or a resolution adopted by the Board.

### Section 5.2. Qualifications of Trustees.

Each Trustee shall be a natural person at least 18 years of age who need not be a resident of Pennsylvania. In addition, the requirements of each Trustee (except ex officio Trustees) include, but are not limited to:

- A. active participation at Board meetings;
- B. support for the goals of West Chester University of Pennsylvania as defined by the President of the University and the University's strategic plan;
- C. giving to the Corporation at the leadership level; and
- D. general advocacy of West Chester University of Pennsylvania.

### Section 5.3. Number and Election of Trustees.

The Board shall consist of five (5) ex-officio members ("Ex-officio Trustees") and not less than nine (9) or more than thirty-three (33) other members, who shall be divided into three approximately equal classes, each consisting up to eleven (11) individuals ("Class Trustees").

- A. With respect to the Class Trustees: The term of office of one class shall expire in each year. Each class shall be elected by the Board for terms of three (3) years, except in case of a vacancy in any class, in which case the vacancy shall be filled for the balance of the term of such class. However, to achieve the initial classification of the Board, the initial terms of the three classes of the first Board shall be one year, two years, and three years, respectively. Members of the first Board who shall serve in the one (1) year and two (2) year terms will be eligible for reelection to two (2) additional three (3) year terms.
- B. The Ex-Officio Trustees and their terms shall be as follows:
  - 1. One (1) person who is a member of the West Chester University Council of Trustees selected by the Chairperson of the Council of

Trustees ("Council Trustee"). The Council Trustee shall be appointed for a three (3) year term; provided, however, if such Council Trustee ceases to be a member of the Council of Trustees, such Council Trustee shall cease to be a Trustee of the Corporation, and the Chairperson of the Council of Trustees shall appoint another person who is a member of the Council of Trustees to fill the vacancy for the balance of the term.

2. The President of West Chester University of Pennsylvania ("President of WCU") whose term shall be concurrent with his or her tenure as President of WCU. A person serving as acting or interim President of WCU shall serve as a Trustee during such period he or she is serving as acting or interim President of WCU.
  3. The Vice President for Advancement of West Chester University of Pennsylvania ("VP Advancement of WCU") whose term shall be concurrent with his or her tenure as VP Advancement of WCU. A person serving as acting or interim VP Advancement of WCU shall serve as a Trustee during such period he or she is serving as such acting or interim VP Advancement of WCU.
  4. The Vice President for Administrative and Fiscal Affairs of West Chester University of Pennsylvania ("VP Fiscal of WCU") whose term shall be concurrent with his or her tenure as VP Fiscal of WCU. A person serving as acting or interim VP Fiscal of WCU shall serve as a Trustee during such period he or she is serving as such acting or interim VP Fiscal of WCU.
  5. The Associate Vice President for Advancement of West Chester University of Pennsylvania ("Associate VP of Advancement") whose term shall be concurrent with his or her tenure as Associate VP Advancement of WCU. A person serving as acting or interim Associate VP Advancement of WCU shall serve as a Trustee during such period he or she is serving as such acting or interim Associate VP Advancement of WCU.
- C. Initially, the Board of Trustees shall consist of the persons nominated and elected by the Incorporators of the Corporation. Thereafter, the Trustees shall be elected as set forth herein.

#### **Section 5.4. Term of Office.**

Each elected Trustee shall hold office until (a) the expiration of the term for which he or she was elected and until his or her successor has been elected and qualified, or (b) his or her earlier death, resignation, or removal. With the exception of the Council Trustee, the President of WCU, the VP Advancement of WCU, the VP Fiscal



of WCU, and the Associate VP Advancement of WCU, elected and appointed Trustees may serve two (2) full consecutive three (3) year terms, after which the Trustee must leave the Board for a period of at least one (1) year before being eligible for re-election. A Trustee elected or appointed for an initial or interim term of less than three (3) years may be elected or appointed for two (2) full consecutive three (3) year terms provided the Trustee will have served a total of no more than eight (8) consecutive years.

**Section 5.5. Procedure for Nomination of Candidates for Trustee.**

The chair of the meeting shall announce at the meeting of the Board the number of Trustees to be elected at the meeting. The Nominating Committee shall recommend all candidates for election as Trustees. Each nomination must be seconded. No nominations may be made from the floor. After each nomination has been made and seconded, the Trustees shall cast their votes on each candidate nominated.

**Section 5.6. Vacancies.**

With the exception of Ex-Officio Trustees, vacancies on the Board, including vacancies resulting from (a) an increase in the number of Trustees, or (b) the death, resignation, or removal of a Trustee other than an Ex-Officio Trustee, shall be filled by a majority vote of the remaining Trustees though less than a quorum. Each person so elected shall be a Trustee to serve the balance of the unexpired term. Vacancies resulting from the death, resignation, or removal of an Ex-Officio Trustee shall be filled in the same manner as provided for by the original appointment of such Trustee under Section 6.3 above and each person so appointed shall be a Trustee to serve for the balance of the unexpired term.

**Section 5.7. Termination.**

Members of the Board who, after notice of the consideration of action by the Board and upon the majority vote of the entire Board and as a result of conflict of interest, criminal prosecution, or lack of attendance at four (4) consecutive meetings without prior approval of the Chairperson, shall cease to be members of the Board of Trustees. Vacancies by death, resignation, refusal to serve, or otherwise, shall be filled for the unexpired term by majority vote of the Trustees then serving, although less than a quorum. A vacancy may only be filled by a person who possesses the qualifications referred to in Section 5.2 of this Article 5.

**Section 5.8. Resignations.**

Any Trustee may resign at any time by giving written notice to the Corporation. The resignation shall be effective upon receipt by the Corporation or at such subsequent time as may be specified in the notice of resignation.

**Section 5.9. Compensation of Trustees.**

Trustees shall receive no compensation for their services as Trustees or as committee members. However, the Corporation may compensate a Trustee for providing services to the Corporation in any other capacity, including that of employee or agent of the Corporation. Trustees who serve as employees or agents of the Corporation shall not participate in any vote of the Board with respect to their compensation. Trustees may be reimbursed for reasonable expenses incurred on behalf of the Corporation.

**Section 5.10. Voting Rights – Actions of the Board.**

**Section 5.10(a). Voting Rights.**

Each Trustee, excluding Ex-Officio Trustees, shall be entitled to one vote.

**Section 5.10(b). Actions of the Board.**

At any meeting of the Board of Trustees, only items on the agenda of the meeting notice may be acted upon when a quorum of the Board is not present. When a quorum of the Board is present, new or other business not on the agenda of the notice may be acted upon.

**Section 5.11. Emeritus Trustees.**

The Nominating Committee may from time to time recommend emeriti status to exceptional retiring Trustees. An Emeritus Trustee may attend all regular meetings of the Board, but shall not be entitled to vote on any matter.

**ARTICLE 6 - POWERS AND DUTIES OF THE BOARD OF TRUSTEES**

**Section 6.1. Authority.**

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.

**Section 6.2. Duties.**

The Board shall have general charge of the affairs, property, and assets of the Corporation. It shall be the duty of the Board to establish through policy the aims and purposes of this Corporation, so as to support the goals of West Chester University of Pennsylvania, and, to this end, to manage and control all of its property or assets.

**Section 6.3. Advisory Appointments.**

The Board may 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.

**Section 6.4. Administrative Advisors.**

The Board is authorized to engage such persons, including an Executive Director and assistants, law firms, investment bankers, investment portfolio managers, and accounting firms, as in its opinion are needed for the administration of the Corporation and to pay reasonable and competitive compensation for services and expenses thereof.

**Section 6.5. Fiduciary Responsibility.**

Each member of the Board shall serve in a fiduciary capacity to the Corporation and shall perform his/her duties as a Trustee, including duties as a member of any committee of the Board upon which he/she may serve, in good faith, in a manner he/she reasonably believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

**Section 6.6(a). Reliability of Information.**

A Trustee shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared by Board approved consultants, such as legal counsel, public accountants, investment advisors, computer consultants, and other experts.

**Section 6.6(b). Actions.**

Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Trustee or any failure to take any action shall be presumed to be in the best interests of the Corporation.

**ARTICLE 7 – COMMITTEES**

**Section 7.1. Establishment and Powers.**

The Board may, by resolution adopted by a majority of the Trustees, establish one or more committees to consist of one or more Trustees of the Corporation. The Board may designate one or more Trustees as alternate members of a committee. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all of the powers and authority of the Board, except that no committee,

including the Executive Committee and the Standing Committees, shall have any power or authority as to the following:

- A. the filling of vacancies in the Board;
- B. the adoption, amendment, or repeal of the Bylaws;
- C. the amendment or repeal of any resolution of the Board; or
- D. action on matters committed by the Bylaws or by resolution of the Board to another committee of the Board.

**Section 7.2. Term.**

Each committee of the Board shall serve at the pleasure of the Board.

**Section 7.3. Committee Organization.**

Except as otherwise provided by the Board, each committee shall be chaired by a Trustee and shall establish its own operating procedures. Each committee shall keep regular minutes of its proceedings and report the same to the Board at each regular meeting. Each committee shall determine its times and places of meetings.

**Section 7.4. Ex-Officio Committee Members.**

Except in the case of the Executive Committee and the Nominating Committee, the chairperson of each committee, with the approval of the Nominating Committee, may appoint Ex-Officio Committee Members to serve as members of the committee. Ex-Officio Committee Members may serve two (2) full consecutive three (3) year terms, after which the Ex-Officio Committee Member must leave the committee for a period of at least one (1) year before being eligible for re-appointment. An Ex-Officio Committee Member shall be entitled to vote on matters before the committee on which the member serves, but shall not be entitled to vote on matters before the full Board or any other committee.

**Section 7.5. Executive Committee.**

The Executive Committee shall be composed of the officers of the Corporation, the President of WCU, the Vice President for Advancement of WCU, the Vice President for Administrative and Fiscal Affairs of WCU, and the Executive Director of the Corporation. The Executive Committee shall be authorized to act for the Board between its regular meetings. Except as otherwise provided by these Bylaws or by resolution of the Board, the Executive Committee shall have and may exercise all of the powers and authority of the Board in the management of the Corporation.

**Section 7.6. Standing Committees.**

The President of the Fund, with the approval of the Board, shall appoint the members of the Standing Committees annually. The Board may, by resolution, determine not to constitute a Standing Committee for any year.

There shall be the following Standing Committees of the Board:

**A. Nominating Committee.**

The Nominating Committee shall consist of at least five (5) Trustees, of which three (3) shall be Ex-Officio Trustees, and shall be responsible for assuring appropriate representation on the Corporation's Board of Trustees, including individuals with access to funding sources and individuals willing to devote the necessary time to the responsibilities of Trustee. The Nominating Committee shall establish a process to avoid the re-election or re-appointment of individuals who fail to adequately participate in the Corporation's activities or in Board and Committee meetings. The Nominating Committee, in consultation with the President of WCU and Executive Director, shall propose names for election of Trustees (other than Ex-Officio Trustees). Board members shall receive a list of the recommendations of the Nominating Committee prior to the meeting at which the election shall take place. The Board will vote on such nominations at the next regular meeting following the distribution of the recommendations from the Nominating Committee. The Nominating Committee shall maintain a roster of qualified persons who might be nominated to serve interim terms.

**B. Development Committee.**

The Development Committee shall consist of at least five (5) Trustees and shall be responsible for the development, coordination, and implementation of the fund raising activities of the Corporation.

**C. Finance Committee.**

The Finance Committee shall consist of at least five (5) Trustees, of which one (1) shall be the Vice President for Administrative and Fiscal Affairs of WCU, and shall meet at least twice each year to review the investments of the Corporation. The Finance Committee shall review annually the adequacy of any insurance policies of the Corporation other than property insurance. The Finance Committee shall be authorized in the name of and on behalf of the Corporation to take any and all action which it deems necessary or desirable to acquire or dispose of investments, and to invest or reinvest the funds of the Corporation provided that:

1. any such action shall not be taken without the prior consent of the President, Treasurer of the Corporation, and the Vice President for Administrative and Fiscal Affairs of WCU; or
2. any such action shall be made in accordance with the requirements of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

Any such action shall be reported to the Board at its next meeting following the taking of such action.

#### D. Audit Committee.

The Audit Committee, which may, at the Board's discretion, be a Subcommittee of the Finance Committee, shall consist of at least three (3) Trustees and shall be responsible for the outside and internal audits of the Corporation's financial transactions, shall satisfy itself that necessary controls are in place to ensure compliance with the Corporation's financial policies, and shall periodically evaluate the Corporation's financial control and accounting system and recommend any changes it deems appropriate. The Audit Committee shall report regularly to the Board. The Audit Committee shall recommend to the Board the designation of an independent auditor for the Corporation each year, shall meet privately with the auditor at least once each year, and shall receive the management letter from the auditor. The Audit Committee shall also receive quarterly financial statements from the Treasurer and approve any changes in format recommended by the President. The Audit Committee may request the designated independent auditor, or any officer or employee of the Corporation, to appear before it to report on the financial condition of the Corporation and answer any questions the Audit Committee might have.

### ARTICLE 8 – MEETINGS OF THE TRUSTEES

#### **Section 8.1. Place of Meetings.**

The Board may hold its meetings at such places as the Board may appoint or as may be designated in the notice of meeting.

#### **Section 8.2. Annual Meeting.**

Unless the Board provides by resolution for a different time, the annual meeting of the Board, for election of Trustees and the transaction of any other business which may be brought before the meeting, shall be held at seven o'clock p.m. on the first Tuesday of October in each year. If such day is a legal holiday under the laws of Pennsylvania, the annual meeting shall be held on the next succeeding business day, which is not a legal holiday under the laws of Pennsylvania.

Immediately after each annual election of Trustees, the newly constituted Board shall meet without prior notice at a place where the election of Trustees was held, or at any place and time designated in a notice given as provided in Section 10.1, for the purposes of organization, election of officers, and the transaction of other business.

**Section 8.3. Regular Meetings.**

Regular meetings of the Board shall be held three times annually at such place and time as shall be designated by the resolution of the Board. If the date fixed for any regular meeting is a legal holiday under the laws of Pennsylvania, the meeting shall be held on the next succeeding day or at such other time as may be determined by resolution of the Board. The Board shall transact such business as may properly be brought before its meetings. Notice of regular meetings need not be given.

**Section 8.4. Special Meetings of the Board.**

The President or any three Trustees may call special meetings of the Board, which shall be held at such time and place as shall be designated in the call for the meeting. Five days notice of any special meeting shall be given to each Trustee pursuant to Section 10.1. Such notice shall state the time and place of such special meeting but need not state the purpose of the special meeting. Any business may be transacted at any special meeting whether or not the notice of the meeting contained reference thereto, unless otherwise required by the Act or these Bylaws.

**Section 8.5. Quorum.**

A majority of Trustees shall constitute a quorum for the transaction of business. The acts of a majority of the Trustees present and voting at a meeting at which a quorum is present shall be the acts of the Board.

**Section 8.6. Participation in Meetings.**

One or more Trustees may participate in a meeting of the Board or a committee thereof by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other and participate. Participation in a meeting in this manner shall be considered attendance in person for all purposes of the Act and these Bylaws.

**Section 8.7. Organization.**

Every meeting of the Board shall be presided over by the President of the Fund, or in the absence of the President, the Vice President, or in the absence of the President and Vice President, a chair chosen by the Executive Director of the Corporation. The Secretary, or in the absence of the Secretary, a person appointed by the Chair, shall act as Secretary.

**Section 8.8. Consent of Trustees in Lieu of Meeting.**

Any action, which may be taken at a meeting of the Trustees, may be taken without a meeting, if consent or consents in writing, setting forth the action so taken, shall be signed by all Trustees and filed with the Secretary of the Corporation.

**ARTICLE 9 – OFFICERS**

**Section 9.1. Number.**

The officers of the Corporation shall include a President, Vice President, a Secretary, a Treasurer, and an Executive Director. The officers may include one or more Assistant Secretaries, one or more Assistant Treasurers, and such officers as the Board may determine by resolution.

**Section 9.2. Qualifications of Officers.**

The officers shall be natural persons at least 18 years of age who are Trustees. Employees of West Chester University may not be appointed as officers.

**Section 9.3. Election and Term of Office.**

With the exception of the Executive Director, and except as otherwise provided by resolution of the Board, the officers of the Corporation shall be elected by the Board at the annual meeting of the Board. Each officer shall serve for a term of one year and until his or her successor has been elected and qualified, or until his or her earlier death, resignation, or removal.

**Section 9.4. Removal of Officers.**

With the exception of the Executive Director, any officer may be removed by the Board whenever in its judgement the best interests of the Corporation will be served. Such removal shall be without prejudice to the contract rights, if any, of any person so removed.

**Section 9.5. Resignations.**

Any officer may resign at any time by giving written notice to the Corporation. The resignation shall be effective upon receipt by the Corporation or at such subsequent time as may be specified in the notice of resignation.

**Section 9.6. The President.**

The President shall be the chief executive officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject to the control of the Board. The President shall chair all meetings of the Board



specify the place, day and hour of the meeting and any other information required by the Act. Except as otherwise provided by the Act or these Bylaws, when a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting, or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

**Section 10.3. Waiver by Writing.**

Whenever any written notice is required to be given, a waiver in writing, signed by the person or persons entitled to the notice, whether before or after the time stated, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

**Section 10.4. Waiver by Attendance.**

Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

**ARTICLE 11 – CONFLICTS OF INTEREST**

**Section 11.1. Interested Trustees and Officers.**

No contract or transaction between the Corporation and one or more of its Trustees or officers or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Trustees or officers are directors or officers, or have a financial interest, shall be void or voidable solely for such reason, or solely because the Trustee or officer is present at or participates in the meeting of the Board which authorizes the contract or transaction, or solely because his, her, or their votes are counted for that purpose, if:

- (a) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board and the Board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Trustees even though the disinterested Trustees are less than a quorum; or
- (b) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved, or ratified by the Board.

Interested Trustees may be counted in determining the presence of a quorum at a meeting of the Board which authorizes the contract or transaction.

## ARTICLE 12 – LIMITATION OF LIABILITY AND INSURANCE

### **Section 12.1. Limitation of Liability of Trustees.**

A Trustee shall not be personally liable, as such, for monetary damages for any action taken or any failure to take any action as a Trustee unless:

- (a) the Trustee has breached or failed to perform the duties of his or her office under Subchapter B of Chapter 55 of the Act; and
- (b) the breach or failure to perform constitutes self-dealing, willful misconduct, or recklessness.

This Section shall not apply to (1) the responsibility or liability of a Trustee pursuant to any criminal statute, or (2) the liability of a Trustee for the payment of taxes pursuant to federal, state, or local law. Any repeal or amendment of this Section shall be prospective only and shall not increase, but may decrease, a Trustee's liability with respect to actions or failures to act occurring prior to such change.

### **Section 12.2. Insurance.**

The Corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her 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 him or her against that liability under the Act. The Corporation's payment of premiums with respect to such insurance coverage shall be provided primarily for the benefit of the Corporation. To the extent that such insurance coverage provides a benefit to the insured person, the Corporation's payment of premiums with respect to such insurance shall be provided in exchange for the services rendered by the insured person and in a manner so as not to constitute an excess benefit transaction under section 4958 of the Internal Revenue Code of 1986, as amended.

## ARTICLE 13 – INDEMNIFICATION

### **Section 13.1. Representative Defined.**

For purposes of this Article, "representative" means any Trustee or officer of the Corporation.

### **Section 13.2. Third-Party Actions.**

The Corporation shall indemnify any representative who was or is a party or is threatened to be made a party to any threatened, pending or completed action or

proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action or proceeding if he or she 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 proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal proceeding, had reasonable cause to believe that his or her conduct was unlawful.

### **Section 13.3. Derivative and Corporate Actions.**

The Corporation shall indemnify any representative who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of the action if he or she 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. Indemnification shall not be made under this Section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

### **Section 13.4. Employee Benefit Plans.**

For purposes of this Article, "other enterprises" shall include employee benefit plans; "serving at the request of the Corporation" shall include any service as a representative of the Corporation that imposes duties on, or involves services by, the representative with respect to an employee benefit plan, its participants or beneficiaries; excise taxes assessed on a person with respect to any employee benefit plan shall be deemed "fines"; and action with respect to an employee benefit plan taken or omitted in good faith by a representative in a manner he or she reasonably believed to be

in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the Corporation.

**Section 13.5. Procedure for Effecting Indemnification.**

Unless ordered by a court, any indemnification under Section 13.2 or Section 13.3 shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he or she has met the applicable standard of conduct set forth in those Sections. The determination shall be made:

- (a) by the Board by a majority vote of a quorum consisting of Trustees who were not parties to the action or proceeding; or
- (b) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion.

**Section 13.6. Advancing Expenses.**

The Corporation shall pay expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in Section 13.2 in advance of the final disposition of the action or proceeding upon receipt of any undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article or otherwise.

**Section 13.7. Supplementary Coverage.**

The indemnification and advancement of expenses provided pursuant to this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Act, or any bylaw, 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 that office. Article 11 (relating to conflicts of interest) shall be applicable to any bylaw, contract, or transaction authorized by the Trustees under this Section. However, no indemnification may be made by the Corporation under this Article or otherwise to or on behalf of any person to the extent that:

- (a) the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted self-dealing, willful misconduct, or recklessness; or
- (b) the Board determines that under the circumstances indemnification would constitute an excess benefit transaction under section 4958 of the Internal Revenue Code of 1986, as amended.