

**BY-LAWS**  
**OF**  
**MIDWEST HOLY CROSS ASSOCIATES, INC.**

**ARTICLE I**  
**Name and Location**

The name of this Corporation is **MIDWEST HOLY CROSS ASSOCIATES, INC.** The principal office shall be located at Valatie, New York.

**ARTICLE II**  
**Purpose**

The general purpose of the Corporation, a Type B corporation as defined in Section 201(b) of the New York Not-for-Profit Corporation Law, is to be operated exclusively for charitable and religious purposes. Consistent with the foregoing, the purpose of the corporation shall be to:

- (a) foster spiritual growth by participating in the building of community in the traditions and charisms of Holy Cross;
- (b) offer and seek support in ministering to the people of God;
- (c) promote the physical and spiritual needs of those in need through individual and community activities; and
- (d) do any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof, but not for the pecuniary, profit or financial gain of its members, directors, officers or any private person.

**ARTICLE III**  
**Corporate Members**

1. **General.** There shall be only one class of Corporate Members. The Corporate Members shall consist of: (A) the Provincial Superior of the Brothers of Holy Cross Midwest Province from time to time in office, (B) the Assistant Provincial, (C) the Province Steward, (D) the Chairperson of the Holy Cross Associate Board, and (E) the Executive Director of Holy Cross Associates, or if such a function does not exist, a member of the Holy Cross Associate Board appointed by the Provincial Superior after consultation with the Board Chairperson. The said Provincial Superior shall serve as President and preside at meetings of the Corporate Members and shall have the power to designate another Corporate Member to preside in his absence.

2. **Number.** The Members of the Corporation shall number five.

3. **Term.** The term of office of a Member shall be while serving in the identified role or until a successor has been designated.

4. **Reserved Powers.** Without limitation of such powers as may be conferred upon Corporate Members by law, the Corporate Members shall have ultimate authority to authorize:

- (a) To approve and interpret the Corporation's purposes and the statement of philosophy and mission established by the Corporation and to require that the Corporation operate in conformance with the Corporation's philosophy, mission and purposes;
- (b) To approve and amend the Certificate of Incorporation and by-laws of the Corporation;
- (c) To approve any plan of merger, consolidation, or reorganization of the Corporation;
- (d) To approve any plan of dissolution of the Corporation and the distribution of the assets of the Corporation upon dissolution;
- (e) To approve the establishment, merger, consolidation, reorganization, or dissolution of any organizational relationship of the corporation, including subsidiary corporations, partnerships, joint ventures, and like relationships;
- (f) To appoint and remove, with or without cause, the directors of the corporation;

- (g) To approve any debt of the Corporation in excess of an amount to be fixed from time to time by the members, except for any debt necessary to finance the cost of compliance with operational or physical plant standards required by applicable law;
- (h) To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the philosophy, mission and purposes of the Corporation;
- (i) To approve the strategic plan of the Corporation, provided that such right of ratification shall not permit the members to exercise any of the governance authority, which under applicable law would require approval from any agency or department of New York State;
- (j) To ratify the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the members;
- (k) To ratify settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
- (l) To approve the appointment of an Executive Director, and after consultation with the Board of Directors to terminate the employment of the Executive Director, with or without cause; and
- (m) To approve the appointment of the Board Chairperson and remove the Chairperson, with or without cause.

#### **ARTICLE IV**

##### **Members**

1. **Annual Meeting.** The annual meeting of the Members shall be held at a time as may be more definitely stated in the notice of the Meeting. At the annual meeting of Members there shall be held the annual election of Directors and such other business as may properly come before such meeting.

2. **Election of Directors.** The Members of the Corporation shall elect the Directors for a term of three years from nominations made as provided in Article VIII, Section 3. The terms shall be for three years or to fill unfinished terms.

3. **Vacancies.** A vacancy in the Board of Directors shall be filled by a majority vote of the Members of the Corporation present at their annual meeting or at a special meeting called for that purpose. Any person so elected as a Director to fill a vacancy shall hold office until the expiration of the term for which that person was elected.

4. **Removal.** An Officer or Director may be removed from office by majority vote of the Members present at a meeting called for the purpose with due notice.

5. **Special Meetings.** Special meetings may be held whenever the President or a majority of the membership of the Members of the Corporation shall deem necessary. At special meetings of the Members, only the business designated in the notice of the meeting shall be transacted.

6. **Notice.** Notice of the time, place and object of the annual meeting of the Members of the Corporation and such special meetings of Members of the Corporation as may be called, shall be given by mailing or electronically forwarding a notice thereof to the Members of the Corporation not less than five days prior to such meetings.

7. **Quorum.** At all meetings of Members of the Corporation there shall be present in person or by proxy at least three Members in order to constitute a quorum for the transaction of business except insofar as otherwise prescribed by law or by these by-laws.

8. **Written Consent.** Unless otherwise restricted by the Certificate of Incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Members, Board of Directors, or of any committee thereof, may be taken without a meeting, if all Members, all Directors or all members of the committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Members, Directors, or the committee.

9. **Telephone Conference.** Unless otherwise restricted by the Certificate of Incorporation or these by-laws, participation in a meeting of the Members, Directors, or any committee may be by means of telephone conference or similar communications equipment whereby all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting.

10. **Order of Business.** At the annual meeting of Members the order of business shall be:

- (a) Opening prayer
- (b) Minutes of previous meeting
- (c) Receipt of reports
- (d) Election of Directors
- (e) Old business
- (f) New business
- (g) Adjournment.

## **ARTICLE V**

### **Directors**

1.     **General.**     The general management of the Corporation shall be vested in a Board of Directors. The Board shall have and execute all powers and perform all duties relating to the direction and management of the Corporation, its property, and the conduct of its affairs not otherwise specifically provided for in these by-laws.

2.     **Number.**     The number of Directors shall be not less than five or more than eleven. The Provincial Superior of the Midwest Province, or his representative shall be considered an ex-officio Director. If the position of Executive Director is filled, this person shall be a non-voting ex-officio Director.

3.     **Election of Directors.** The Members of the Corporation shall elect the Directors, based upon recommendation of the Board, for a term of three years in accordance with Article IV.

4.     **Resignations.** Any Director may resign his/her office at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation unless a time may be fixed in the resignation, and then from that time. The acceptance of a resignation shall not be required to make it effective.

5.     **Removal of Directors.** A Director may be removed after consultation with the Board, with or without cause, at any time by the affirmative vote of the Corporate Members.

6.     **Vacancies.** Any vacancy on the Board, due to death, resignation or removal, may be filled by the Corporate Members after consultation with the Board. Any Director elected to fill a vacancy shall hold office until the next annual meeting of the Corporate Members and until his/her successor is elected and qualified.

7.     **Annual Meeting.** The annual meeting of the Corporate Members shall be held as designated in the notice of meeting, and the annual meeting of the Board of Directors shall be held as soon as feasible following the annual meeting of Corporate Members, at such respective locations within the State of New York or elsewhere in the United States or its possessions and on such respective dates and at such respective hours as may be designated by the president of the Corporate Members and the Chairperson of the Board of Directors, respectively, and specified in the respective notices or waivers of notice of the meetings. In the event that for any reason the annual meeting of Corporate Members or Directors is omitted, a meeting may be held in place thereof at a later date and any elections held or business transacted at such meeting shall be as valid as if held or transacted at the annual meeting held upon the date and time herein provided. The Board of Directors shall meet at least three additional times in each year.

8. **Annual Report.** At the annual meeting of the Corporate Members, a report shall be presented in accordance with the provisions of Section 519 of the New York Not-for-Profit Corporation Law, verified by the Board Chairperson and treasurer of the Corporation or by a majority of the Directors. The financial portion of this report shall be prepared by the Business Office of the Brothers of Holy Cross or by a firm of certified public accountants selected by the Corporate Members. If this report is prepared by a certified public accountant, it shall include an opinion audit and management letter from said accountants. The report shall be filed with the records of the Corporation and either a copy or an abstract thereof entered in the minutes of the meeting.

9. **Regular Meetings.** In addition to the annual meeting, the Board of Directors shall hold not less than three regular meetings each year at such times as the Board may determine or as may be fixed by the Chair.

10. **Special Meetings.** Special meetings of the Board shall be called at any time upon the request of the Chair or upon the request of two-thirds of the Directors of the Corporation on at least 5 days' notice to each Director. Any such notice shall be given either personally, by mail or electronically and shall include the place, day, agenda and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called.

11. **Notice of Meetings.** Notice of the time and place of each meeting of the Board, whether annual, regular, or special, shall be given personally or by telephone, or sent by mail or electronic transmission, to each Director, addressed in accordance with the records of the Corporation, at least five days before the time at which the meeting is to be held. Unless required by law or by these by-laws, such notice need not state the purpose of the meeting.

12. **Quorum.** Except as otherwise provided by law, at any meeting, a simple majority of the entire membership of the Board of Directors, shall constitute a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these by-laws, each Director shall have one vote, and a majority of such quorum shall decide any questions that may come before the meeting. No action may be taken at any meeting of the Board of Directors with regard to any business which does not appear on the agenda without a vote of two-thirds (2/3) of the Directors present.

13. **Order of Business.** The order of business at the annual meeting of the Board of Directors shall be as follows:

- (a) Opening prayer
- (b) Reading of minutes
- (c) Election of officers
- (d) Election or appointment of committees
- (e) Reports of officers and committees
- (f) Old business
- (g) New business
- (h) Adjournment.

14. **Absence from Meetings.** Directors who miss three consecutive regular meetings without excuse or cause shall be deemed to have resigned. It shall be the responsibility of the Secretary to ascertain the reasons for the absence and to report same to the Board for its action.

## **ARTICLE VI Officers**

**General.** The Corporation shall have the following officers who shall be elected, with the exception of the Board Chairperson, by majority vote of the Directors present at the annual meeting of Directors, to hold office for one year or until their respective successors have been elected and qualified: Vice-Chair, Secretary and Treasurer.

## **ARTICLE VII Powers and Duties of Officers**

1. **Board Chairperson.**

The Chair shall preside at all meetings of the Board of Directors, shall be a member, ex officio, of all committees, except the Nominating Committee, and shall preside at meetings of the Executive Committee. The Chair shall appoint all committees except when appointment is reserved to the Board of Directors or the Members by the by-laws.

2. **Board Vice-Chairperson.**

The Vice-Chair shall have such powers and duties as may be assigned him or her by the Chair or the Board of Directors. In the absence or disability of the Chair, the Vice-Chair shall exercise the powers and duties of the Chair.

3. **Board Secretary.**

The Secretary shall, subject to these by-laws and the Board:

- a. Be responsible for the minutes of all meetings of the Board of Directors and the Executive Committee, and cause the same to be recorded in the official records of the Corporation.
- b. Be responsible to see that all notices are duly given in accordance with the provisions of these by-laws, or as required by statute.

- c. Notify Officers and Directors of their election.
- d. Be custodian of the records, corporate documents and seal of the Corporation with authority to imprint the seal as authorized by the Board of Directors.
- e. In general, perform such other duties and have and exercise such other powers as from time to time may be assigned by these by-laws or by the Board.

4. **Board Treasurer.**

The Treasurer shall have general responsibility for the Corporation's funds and accounts, subject to the order of the Board of Directors. The Treasurer shall cause proper books of accounts to be kept, which at all reasonable times shall be open to the examination of any Director, and reports therefrom shall be rendered at such times as the Chair or Board of Directors shall order. The Treasurer shall make certain that the books are audited no less frequently than annually by the Midwest Province Business Office or by a certified public accountant.

5. **Additional Powers and Duties.**

The Officers of the Corporation shall have such additional powers and duties as may be conferred upon them by the Board of Directors, except those powers reserved to the Members.

**ARTICLE VIII  
Committees**

1. **Executive Committee.**

The Executive Committee shall consist of those officers of the Corporation who are Directors, plus the Executive Director, if this position is filled. In addition, the Chair may appoint one or more Directors to the Committee when necessary or advisable. The Executive Committee may be convened for the purpose of performing urgent business that cannot wait for the action of the Board, or that cannot be handled by a functional committee of the Board. Any action of the Executive Committee shall be reported for ratification at the next meeting of the Board or earlier where appropriate. A majority of the members of the Executive Committee shall constitute a quorum.



2. **Finance Committee.**

The Finance Committee shall include among its members the Board Chairperson and the Treasurer and President of the Corporation. The Finance Committee shall be appointed by the Chair. The Finance Committee shall be responsible for: overseeing the management of all funds of the Corporation; annually reviewing and recommending operating and capital budgets to the Board of Directors; advising the Chair and Treasurer of the Corporation regarding current and long-term fiscal affairs; advising the Board of Directors on investment policies and procedures; establishing procedures to produce annual disclosure statements from the Directors and Officers of the Corporation; and, performing such other duties as may be assigned to it by the Board of Directors.

3. **Nominating Committee.**

There shall be a Nominating Committee of three Directors who shall be appointed by the Chair. The purpose of the Nominating Committee shall be to nominate candidates for the Board of Directors. At least twenty days before the annual meeting of the Members, the Nominating Committee shall furnish the names of candidates for the Board of Directors in writing to the President of the Corporate Members. (A brief profile describing the proposed nominees' education, affiliation and experience with human service and civic organizations should also be included.) With the notice of the annual meeting of the Members, a copy of the nominations shall be furnished to the Members. Any Member of the Corporation may make nominations in addition to those submitted by the Nominating Committee.

4. **Special Committees.**

The Board of Directors in its discretion from time to time may authorize the election or appointment from its membership of special committees, which shall have such purposes, functions, duties and authority as the Directors determine. The Chair shall appoint the committee chairs. A special committee shall continue in existence only until the next annual meeting of the Board of Directors and may be discharged earlier; the members of any such special committee may be reappointed.

5. **Eligibility for Committees.**

Unless otherwise provided for in these by-laws, any Director shall be eligible to serve as a member of any committee. The chair of the committee may invite participation of persons who are not Directors with the prior approval of the Board of Directors.

**ARTICLE X**  
**Fiscal Year**

The fiscal year of the Corporation shall end on June 30, unless otherwise indicated by the Members.

**ARTICLE XI**  
**Indemnification and Insurance**

1. **Indemnification.** The Corporation shall indemnify, to the fullest extent permissible at the time under the laws of the State of New York, any current or former Member, Director or Officer of the Corporation against expenses and liabilities in connection with any proceeding involving the Member, Director or Officer by reason of service as such a Member, Director or Officer. Such indemnification shall be in addition to any other rights to which those indemnified may be entitled under the laws of the State of New York.

2. **Insurance.** To the full extent permitted by law, the Corporation shall have the power to purchase and maintain insurance on behalf of any current or former Member, Director or Officer of the Corporation against any liability asserted against such person and incurred by such person in such capacity, or arising out of said status, whether or not the Corporation would have the power to indemnify such person against such liability.

**ARTICLE XII**  
**Conflict of Interest**

1. **Purpose.** The purpose of this Article is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director of the Corporation.

2. **Definitions.**

(a) **Interested Person.** Any Director, Officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

(b) **Financial Interest.** A person has a financial interest if he or she personally has, directly or indirectly, through business, investment, or family:

(i) An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, or

(ii) A compensation arrangement with the Corporation or with an entity or individual with which the Corporation has a transaction or arrangement, or

(iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

### 3. **Procedures.**

(a) Duty to Disclose. In connection with any actual or possible conflicts of interest, an interested person must disclose the existence and nature of his or her financial interest to the Directors and members of committees with Board delegated powers considering the proposed transaction or arrangement.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest, the interested person shall leave the Board or committee meeting while the Board or committee discusses and votes upon the financial interest. The remaining Board or committee members shall decide if a conflict of interest exists.

(c) Procedure for Addressing the Conflict of Interest.

(i) The Chair of the Board or Chair of the committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(ii) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

(iii) If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination. If, however, the majority vote of disinterested directors is not sufficient to constitute action by the committee or Board, the matter shall, in the case of a committee, be submitted to a vote of the Board and, in the case of the Board, be submitted to vote of the Members.

(d) Violations of the Conflict of Interest Policy.

(i) If the Board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(ii) If, after hearing the response of the member and making such further investigations as may be warranted in the circumstances, the Board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

4. **Records of Proceedings.** The minutes of the Board and all committees with Board-delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed; and

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

5. **Compensation Review.** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

6. **Annual Statements.** Each Director, Officer, and member of a committee with Board delegated powers shall annually sign a statement that affirms that such person:

- (a) Has received a copy of the conflicts of interest provisions of the Corporation's by-laws;
- (b) Has read and understands those provisions;
- (c) Has agreed to comply with those provisions; and
- (d) Understands that the Corporation is a charitable organization and that in order to maintain its federal tax-exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

7. **Periodic Reviews.** To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- (a) Whether compensation arrangements and benefits are reasonable and are results of arm's length bargaining.
- (b) Whether acquisitions of provider services result in inurement or impermissible private benefit.
- (c) Whether partnership and joint venture arrangements with management service organizations conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further the Corporation's charitable purposes and do not result in inurement or impermissible private benefit.

8. **Use of Outside Experts.** In conducting the periodic reviews provided for in Section 7 of this Article XII, the Corporation may, but need not, use outside advisors. If outside experts are used, they shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.

9. **Loans.** No loans, other than through the purchase of bonds, debentures or similar obligations of the type customarily sold in public offerings, or through the ordinary deposit of funds in a bank, shall be made by the Corporation to its Directors or Officers, or to any other corporation, firm, association or other entity in which one or more of its Directors or Officers are Directors or Officers or hold a substantial financial interest, except a loan to another Type B not-for-profit corporation.

### **ARTICLE XIII** **Notice and Waiver of Notice**

1. **Notice.** Whenever under the provisions of these by-laws notice is required to be given to any Member or Director, such notice may be given personally, or in writing by depositing the same in a post office or letter box in an envelope addressed to such Member or Director, or by electronic transmission and addressed in accordance with the records of the Corporation.

2. **Waiver.** Any Member or Director may at any time waive any notice required to be given under the provisions of these by-laws or of any law.

**ARTICLE XIV**  
**Amendment**

These by-laws may be amended, repealed, or altered, in whole or in part, only by affirmative vote of two-thirds (2/3) of all of the Corporate Members at any meeting thereof, provided, however, that any amendment, repeal or alteration of Articles II and III of these by-laws shall require the affirmative vote of two-thirds (2/3) of all of the Corporate Members of the Corporation at two successive meetings of the corporate members. Notice of each proposed amendment shall be given to all of the corporate members at least ten (10) days prior to any meeting at which any such vote shall be taken.

Any provision of the preceding paragraph to the contrary notwithstanding, the authorization of any merger of the Corporation with any other corporation having the same purposes and any actions necessary in connection with any such merger shall require only the affirmative vote of two-thirds (2/3) of the Corporate Members at any meeting thereof.

**ARTICLE XV**  
**Dissolution of the Corporation**

In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to the Congregation of Holy Cross, Midwest Province of Brothers, an Indiana nonprofit corporation, which shall continue the general religious and charitable purposes of the corporation, or its successor which would qualify as an organization described in Internal Revenue Code Section 501(c)(3) at that time. In no event shall any of such assets or property be distributed to any director, officer or any private individual for other than a charitable purpose.

Adopted:

July 5, 2012, and revised by Members on January 3, 2013