

**La Crosse Community Foundation**

**DECLARATION  
OF TRUST**

*Amended and Restated Effective as of June 5, 2001*

North Central Trust Company and each bank or trust company subsequently signing this instrument, hereby agrees to accept gifts, devises, legacies or bequests in trust for charitable purposes to be held and administered as a single trust to be known as the "La Crosse Community Foundation" upon the following terms:

**ARTICLE I  
Purposes**

The purpose of the La Crosse Community Foundation shall be to receive gifts, administer funds and make distributions for charitable purposes (as defined in Paragraph 9.36) for the benefit and improvement of residents of the La Crosse, Wisconsin, metropolitan area in such a way that the quality of life in the La Crosse metropolitan area shall be enhanced. The Foundation is organized and shall be operated exclusively for such charitable purposes and limited to the exclusive purposes permitted for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"). No part of the net earnings of the Foundation shall inure to the benefit of any private shareholder or individual and no substantial part of the activities of the Foundation shall consist of carrying on

propaganda, or otherwise attempting, to influence legislation, and the Foundation shall not participate or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

**ARTICLE II  
The La Crosse Community  
Foundation Board**

2.1. The La Crosse Community Foundation Board (the "Board") shall consist of eleven citizens residing in the La Crosse, Wisconsin, metropolitan area selected for their knowledge of the educational, cultural, civic, moral, public and other charitable needs of the La Crosse community and their commitment to the betterment and improvement of the La Crosse community. No member shall be an officer or employee of any trustee nor shall any member hold or seek any public office, unless such office is entirely nonpolitical and nonpartisan in nature. Members shall serve without compensation except that they shall be entitled to reimbursement for reasonable expenses as provided in Paragraph 2.9, below.

2.2. Except as hereinafter otherwise provided, all members of the La Crosse Community

Foundation Board shall hold office for a term of five years from the first day of January following their appointments and no member shall be eligible to serve more than two consecutive five year terms.

**2.2.1.** The members of the La Crosse Community Foundation Board shall be appointed as follows:

*Class 1.* Two members shall be appointed by the Board of Directors of North Central Trust Company.

*Class 2.* One member shall be appointed by the Mayor of the City of La Crosse.

*Class 3.* One member shall be appointed by the President of the La Crosse County Bar Association.

*Class 4.* One member shall be appointed by the Senior Judge of the Circuit Court for La Crosse County.

*Class 5.* Six members shall be appointed by two-thirds vote of the La Crosse Community Foundation Board, not including the retiring Class 5 member(s).

**2.2.2.** The terms of the members of the several classes of the La Crosse Community Foundation Board shall be staggered as follows: Terms of one member of Class 1 and one of those in Class 5 shall expire on December 31st in years ending in 4 or 9; one of those of Class 1, those of Class 2 and one of those of Class 5 shall expire on December 31st in years ending in 0 or 5; those of Class 3 and two of those in Class 5 shall expire on December 31st in years ending in 3 and 8; those of Class 4 and two of those in Class 5 shall expire on December 31st in years ending in 2 and 7.

**2.3.** Members of the Board who by change of residence or for any other reason cease to be qualified shall automatically cease to be members. Any member who fails to attend a majority of the meetings of the Board in any calendar year without excuse shall, at the discretion of the Board, be removed from membership. In addition, any member of the Board may be removed from office without specification of cause by the vote of three quarters (3/4) of the other members of the Board with the concurrence of the trustee, or, if there is

more than one trustee, a majority of the trustees. Vacancies caused by expiration of term, death, resignation, incapacity, disqualification, refusal to serve, removal or any other reason shall be filled for the unexpired term, or for a full new term, as the case may be, by the parties charged under Paragraph 2.2.1, above, with the appointment of the member whose position has become vacant.

**2.4.** If any party authorized to appoint a member of the Board pursuant to Paragraph 2.2.1, above, shall fail, for sixty days after written request, to make the appointment, the appointment shall be made by the trustee, or, if there is more than one trustee, by a majority of the trustees. If any corporation, society, group, or other entity, the directors or members of which are designated pursuant to Paragraph 2.2.1, above, or this Paragraph 2.4, to appoint a member of the Board shall cease to exist, then the Board shall designate a successor bank or trust company, community organization, public official or other person or entity knowledgeable of the needs of the La Crosse community to make such appointment.

**2.5.** At each annual meeting, the Board shall elect a Chairman and may elect a Vice Chairman and such other officers as the Board shall determine from among its members. The Board shall have the power to fix the time for each annual meeting and to adopt rules or procedures for the conduct of the Board's affairs. No such rule or procedure shall materially change or impact the trustee's duties, obligations or powers hereunder or be otherwise inconsistent with this instrument. The Board shall elect a Secretary, who need not be a member of the Board, to keep its records and to perform other duties as directed, and may elect one or more Assistant Secretaries who also need not be members of the Board.

**2.6.** A majority of the members of the La Crosse Community Foundation Board shall constitute a quorum. A majority vote at a meeting at which a quorum is present shall constitute the act of the Board except as otherwise provided in this instrument. Action of the Board may be taken without a meeting if authorized by a written instrument signed by all members of the Board or if each member of the Board authorizes such

action by telephone or other means of communication and written minutes describing the actions so authorized are distributed to each member of the Board and retained by the Foundation.

2.7. Members of the Board may participate in meetings of the Board by, or such meetings may be conducted through the use of, a telephone or any other means of communication by which any of the following occurs: (a) All participants may simultaneously hear each other during the meeting; or (b) All communication during the meeting is immediately transmitted to each participant and each participant is able to immediately send messages to all other participants. A member of the Board participating in a meeting by any means authorized by this Paragraph 2.7 shall be deemed to be present in person at the meeting.

2.8. The Board shall have the power to employ such persons on behalf of the Foundation, including an Executive Director, attorneys, agents, accountants and assistants, as in its opinion are needed for the proper administration of the Foundation and to pay reasonable compensation for the services of such persons. The Board shall also have the power, subject to the express written consent of North Central Trust Company, if then a trustee hereunder, or if not, by a majority of the trustees then acting, to add additional banks or trust companies as trustees under this instrument. The Board shall also have the power to remove any bank or trust company serving as trustee hereunder as provided in Paragraph 5.6. In case of such removal, the funds held by the removed bank or trust company shall be transferred to such successor bank or trust company as shall be designated by the Board, and the removed trustee shall thereupon be discharged from all obligations for further administration thereof. If any bank or trust company having power to designate a member of the Board as provided in Paragraphs 2.2.1 or 2.4, above, shall be removed by the Board, such appointment shall thereafter be made by such successor bank or trust company, community organization, public official or other person or entity knowledgeable of the needs of the

La Crosse community as the Board shall designate. If any bank or trust company having power to designate a member of the Board as provided in Paragraphs 2.2.1 or 2.4, above, shall be succeeded by another corporation through merger or consolidation or by a corporation taking over its business as a successor, such appointment shall thereafter be made by the succeeding corporation.

2.9. The reasonable expenses of the Foundation and the Board, including, but not limited to, promotional activities, compensation of any employees and reimbursement of members of the Board for any out-of-pocket expenses incurred in connection with Foundation business, shall be paid out of funds available for distribution by the Foundation. Expenses may be charged to the funds held in the Foundation in equitable proportions in accordance with such fee schedules or allocations as the Board may from time to time establish taking into consideration the costs of administration of particular funds or classes of funds.

2.10. The Board and each trustee shall take such action as it deems appropriate to make the Foundation known to the residents of the La Crosse community and to conduct a bona fide and continuous program of solicitation for new and additional gifts from a wide range of potential donors in the La Crosse community and to attract public support for the Foundation on a continuous basis. Any written order or direction to a trustee or any other person for the payment of money or for any other purpose made pursuant to a resolution duly adopted at a meeting of the La Crosse Community Foundation Board shall be deemed sufficiently made and executed if signed by the Chairman or Vice Chairman and attested by the Secretary or an Assistant Secretary.

2.12. None of the trustees or members of the Board, individually, shall be liable for any misapplication of funds in violation of this instrument provided direction for such distribution shall have been made in good faith and not in willful violation of this instrument nor for any acts, neglects or defaults of any employee, agent or representative selected with reasonable

care, nor for anything any such trustee or member may do or refrain from doing in good faith, including any error in judgment, if done or committed on advice of counsel, or any mistake of fact or law, if done or made in good faith.

### ARTICLE III Donor's Gifts and Directions

3.1. Donors may make gifts to or for the use of the Foundation by naming or otherwise identifying the Foundation. Although no donor need designate a trustee, a donor may designate one or more of the trustees to hold and administer a gift and if more than one trustee, the portions of the gift to be held and administered by each. If a donor fails to designate a trustee, if the designated trustee fails to accept a gift, or if the designated trustee has been or is removed by the Board pursuant to the authority granted in Paragraph 5.6, hereof, the Board may designate one or more trustees or successor trustees, to hold and administer the gift and if more than one trustee, the portions to be held and administered by each. The Board may, in its discretion, refuse to accept any gift.

3.2. Each donor making a gift to the Foundation shall be deemed conclusively to have accepted and agreed to all of the terms of this instrument, including any provisions for variance from the donor's directions and for amendment and termination hereof.

3.3. The trust assets shall be administered as one or more funds, consisting of a general fund and such component funds as any donor may wish to create. Any donor may make a gift to the general fund, or may, with respect to such gift, create a component fund by giving directions as to:

3.3.1. A name as a memorial or otherwise for the fund created by the gift;

3.3.2. The particular charitable organization(s) described in Sections 509(a)(1), (2) or (3) of the Code to be supported or the particular charitable purpose(s) to be supported; and/or

3.3.3. Whether some or all of the principal is not to be distributed for a specified period.

3.4. All directions given in connection with the creation of a component fund shall be followed by the Board for so long as it shall be, in the absolute discretion of the Board under conditions from time to time existing, the judgment of the Board that it is wise and beneficial to do so. However, any other provisions notwithstanding in this instrument or in any instrument creating a component fund or otherwise making a transfer creating or adding to a fund or trust under this instrument (a "Transfer Instrument"), the Board shall have the power to modify or supplement any Transfer Instrument or provision thereof or any restriction or condition on, or direction as to, the timing, manner or character of the distribution of funds or on or as to the distribution of funds for any specified charitable purposes or to specified organizations if, in the sole judgment of the Board (without the approval of any participating trustee, custodian or agent), such provision, direction, restriction or condition becomes, in effect, unnecessary, inconvenient, impractical, undesirable, incapable of fulfillment or inconsistent with any distribution policy adopted pursuant to Paragraph 4.2 of this instrument or with the charitable needs of the La Crosse community.

3.5. No gift may be accepted by the Board or any trustee on behalf of the Foundation if:

3.5.1. The donor, or any person or committee designated by the donor, or pursuant to the terms of an agreement with the donor, reserves the right to direct (other than by direction only in an instrument of transfer creating a component fund pursuant to Section 3.3, above) the particular organizations to which or the purposes for which the Foundation must distribute the transferred assets, or the income derived therefrom, or both, or the timing of such distributions;

3.5.2. The terms of the gift or instrument of transfer, or any express or implied understanding between the donor and the Foundation, require the Foundation to

take or withhold action with respect to the donated assets which is not designed to further one or more of the exempt purposes of the Foundation, and such action or withholding of action would, if performed by the donor with respect to the assets, have subjected the donor to tax under Chapter 42 of the Code (other than with respect to Section 4942 (e) ), or any corresponding chapter of any successor revenue act;

**3.53.** The Foundation is required to or does assume leases, contractual obligations or liabilities of the donor, or to take or does take assets subject to such liabilities (including obligations under commitments or pledges to donees of the donor), for purposes inconsistent with the purposes or best interests of the Foundation other than the payment of taxes incurred by a donor under Chapter 42 of the Code prior to the donor's transfer of assets to the Foundation, to the extent of the value of the assets transferred;

**3.54.** The Foundation is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain, or not to dispose of, any securities or other investment assets transferred to it by the donor, either permanently or for an extended period of time;

**3.55.** The Foundation is required to enter into an agreement with the donor in connection with the transfer of securities or other property which grants to the donor, or persons connected with the donor, a first right of refusal to purchase the transferred securities or other property, when and if disposed of by the Foundation;

**3.56.** The Foundation is required to enter into any agreement with the donor which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the Foundation, including, but not limited to, continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to investments or other property transferred to the Foundation (other than a relationship with a trustee, custodian or agent of the Foundation acting as such); or

**3.5.7.** Any other condition is imposed on action by the Foundation that prevents it from exercising ultimate control over the assets received from the donor for purposes consistent with the purposes of the Foundation.

**3.6.** In the absence of any direction of a donor in accordance with Paragraph 3.3.2 above which has not been varied, the Board shall have absolute discretion to direct the distribution of any gift in such manner as may, in its opinion, best comply with the purposes of the Foundation. In the absence of any direction of the donor to establish a component fund by giving one or more of the directions permitted by Paragraphs 3.3.1, 3.3.2 or 3.3.3, above, any gift to the Foundation shall be deemed to be intended as a donation to the general fund.

#### **ARTICLE IV Distributions and Disbursements**

**4.1.** At such times as the Board shall determine, but not less frequently than annually, the trustee(s) shall certify to the Board the balance of each fund held and administered pursuant to this instrument, including the general fund, and the Board shall determine all the distributions to be made. Distributions must be approved by affirmative vote of at least a majority of the Board. Subject to directions of the donor given pursuant to Paragraphs 3.3.1, 3.3.2 or 3.3.3, above, which have not been varied, the Board shall have absolute discretion to direct distributions to such persons or organizations and for such purposes consistent with the purposes of the Foundation as in the Board's opinion are best suited to meet the needs of the La Crosse community. The Board may, in its discretion, direct that distributions be made to persons or agencies in the United States located outside of the La Crosse community if, in the Board's opinion, such distributions will benefit persons within the La Crosse community or facilitate the accomplishment of the charitable objectives of any person within the La Crosse community.

4.2. The Board may, subject to directions of donors which have not been varied, from time to time in its discretion adopt policies for determining the amounts and timing of distributions to be made from the funds held pursuant to this instrument. Such policies may provide for the distribution of the income and/or principal of any fund as considered prudent by the Board and may, without limitation, provide for distribution of a fixed percentage of the fair market value (or average fair market value) of invested assets, for distributions from the net appreciation, realized and unrealized, of invested assets, for the accumulation of net income in excess of a certain percentage of the fair market value of invested assets or for the distribution of fund balances of less than a fixed amount. Distribution policies must be approved by the affirmative vote of at least a majority of the members of the Board. Unless the Board determines otherwise, any direction or authorization in any instrument establishing a component fund or otherwise making a transfer creating or adding to a fund or trust under this instrument to use only "income," "interest," "dividends" or "rents, issues or profits" or "to preserve the principal intact" or which contains other words of similar import shall be deemed varied without the necessity of formal action by the Board to the extent such direction is inconsistent with any distribution policy adopted pursuant to this Paragraph 4.2.

4.3. Distributions and other payments authorized by the Board may be made by the trustee(s) at the direction of the Board or by checks or other instruments drawn upon accounts maintained by the Foundation with the trustee(s) or their affiliated institutions, signed by the Chairman or the Secretary or such other person(s) as the Board may designate.

## ARTICLE V Trustees' Powers and Duties Replacement of Trustee

5.1. Gifts to or for the use of the Foundation shall, upon acceptance and receipt, vest in the trustee(s) designated by the donor or by the Board, subject to the terms of this instrument. Whenever

any trustee is succeeded by another corporation through merger or consolidation or by a corporation taking over its business as a successor, the Foundation funds then held by it shall thereupon vest likewise in the succeeding corporation. Any trustee may, at any time, upon notice to the Board resign as trustee of any or all funds it holds by transferring the funds to such consenting successor trustee as shall be designated by the Board, and the resigning trustee shall thereupon be discharged from all obligation for further administration thereof.

5.2. No trustee shall have any responsibility, or be under duty to inquire into, the validity of any gift received. A trustee may refuse to accept a gift, but in such case it shall promptly notify the Chairman or the Executive Director of the Foundation (if one has been appointed), stating the reasons for such refusal, so that another trustee may be designated. If a trustee receives or is notified of a gift which has not previously been approved by the Board, such trustee shall promptly notify the Chairman or Executive Director (if one has been appointed) of the relevant details of such gift, including its estimated value and a copy of any directions given or proposed by the donor.

5.3. In addition to any other powers that may be conferred upon them by law, and not by way of limitation of such powers, each trustee or successor trustee hereunder shall have the following powers:

5.3.1. To retain any property in the form and condition in which it is received, to invest and reinvest from time to time in any securities, obligations or other property of any kind it may deem advisable, including any common trust fund maintained by it, without regard to statutes and rules of law regulating investments by fiduciaries and to commingle assets of two or more funds and administer them as undivided interests; provided, however, that all assets (other than assets held directly for the active conduct of the Foundation's purposes within the meaning of Section 4942 (j) (3) (B) (i) of the Code) must be invested to produce a reasonable return of net income or appreciation;

5.3.2. To sell, lease for any period, convey, transfer, exchange, deliver and dispose of all or any part of the assets of any fund, and make contracts concerning any such asset, all at such prices, for such terms as to credit and otherwise and whether at public or private sale, as it deems best;

5.3.3. To vote or refrain from voting any corporate or other securities; to give proxies; to exercise or sell subscription rights and pay security assessments; to consent to extension or renewal or refunding of obligations and liens or security therefore; to hold property in its name or the name of a nominee without disclosing the interest of the Foundation except in its accounting; to participate in reorganizations, mergers, consolidations, foreclosures and liquidations, and join with other security holders in delegating authority to, depositing securities with, and acting through, committees, depositories, voting trustees and the like, and to receive and hold securities or property thereby received; and to settle, compromise, contest, prosecute or abandon claims in favor of or against any trust assets, all as it deems best;

5.3.4. To allocate receipts and disbursements to principal and income in accordance with the Wisconsin Principal and Income Act, Section 701.20 Wis. Stats. as the same may be amended from time to time and otherwise in accordance with appropriate accounting principles.

5.3.5. To execute and deliver receipts, bills of sale, conveyances, assignments, transfers, powers of attorney, contracts, releases, deeds of trust, mortgages and other instruments incident to any transaction; and

5.3.6. To employ attorneys, agents, auditors, investment counselors, depositories, and other special assistance as needed, and to retain and pay reasonable compensation for services and expenses thereof, and to retain and receive for its services as trustee such compensation as is fair, reasonable and customary at the time, and to charge all such amounts in equitable proportion to the funds held by it.

5.4. No person dealing with any trustee shall be under any duty or obligation to inquire concerning the validity of anything the trustee

purports to do nor as to the application of anything paid or transferred to or upon the order of a trustee.

5.5. At such times as the Board shall determine, but not more frequently than quarterly, each trustee shall provide to the Board a statement showing the receipts and disbursements of income and principal for the quarter or other period included in such statement for each fund held by it and the amounts, if any, available for distribution at the end of such period in accordance with such distribution policies, if any, as may have been adopted by the Board pursuant to Paragraph 4.2. At the end of each fiscal year, each trustee shall certify to the Board a description of the assets of each fund at the end of such year with book values and estimated market values.

5.6. Any other provisions notwithstanding in this instrument or in any instrument making a transfer creating or adding to a fund or trust under this instrument, the Board shall have the following powers:

5.6.1. To replace any participating trustee, custodian or agent for breach of fiduciary duty under the laws of the State of Wisconsin; and

5.6.2. To replace any participating trustee, custodian or agent for failure to produce a reasonable (as determined by the Board) return of net income (or appreciation when not inconsistent with the Foundation's need for current income), with due regard to safety of principal over a reasonable period of time (as determined by the Board).

5.7. Any other provisions notwithstanding in this instrument or in any instrument of transfer, the determination whether there is a reasonable return of net income with respect to the exercise of the power described in Paragraph 5.6.2 of this Article shall be made separately with respect to each restricted trust or fund and shall be made in the aggregate with respect to nonrestricted trusts or funds of the Foundation. As used herein, the term "restricted trust or fund" means a trust or

fund, any income of which has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number.

5.8. If it appears that there may be grounds for exercising any power described in Paragraphs 5.6.1 or 5.6.2 of this Article with respect to any fund or trust, the Board shall notify the participating trustee, custodian or agent involved and provide a reasonable opportunity for explanation and/or correction. Before exercising the power granted to the Board under Paragraphs 5.6.1 or 5.6.2 of this Article, the Board may seek advice of legal counsel as to whether a breach or failure has been committed under the laws of the State of Wisconsin. The Board shall exercise the powers described in this Article only upon the vote of at least a majority of the members of the Board.

5.9. Upon the exercise of the foregoing power to replace any participating trustee, custodian or agent, the Board shall have the power to select a successor trustee, custodian or agent to which the fund or funds held by the former trustee, custodian or agent shall be transferred.

#### **ARTICLE VI Audits and Reports**

6.1. The Board shall maintain a record of all donors to the Foundation, and shall take appropriate measures to see that proper recognition is given to all donors with the exception of those requesting anonymity.

6.2. The accounts of each trustee for each fund shall, without revealing the identity of donors requesting anonymity, be audited in accordance with accepted auditing practices by an independent auditor appointed or approved by the Board, at such times as the Board may determine, but at least annually, and subject to such limitations on the scope of the examination as the

Board may prescribe.

6.3. An independent auditor appointed or approved by the Board shall at such time as the Board may determine, but at least annually, prepare for the Foundation as a whole a consolidated financial statement, including a statement of combined assets and liabilities; a statement of income, expenses and distributions; a list of projects and/or organizations to or for which funds were used or distributed for the Foundation's purposes; and such other additional reports or information as may be requested from time to time by the Board. The auditor shall also prepare such financial data as may be necessary for tax returns or other reports required by the State of Wisconsin or the United States to be filed by the Foundation.

6.4. The Board shall at least annually make such distribution of a written report of its financial condition, activities and disbursements to banks, trust companies, attorneys, professional groups, and such other representative persons and organizations in the La Crosse community as in the opinion of the Board will reasonably inform the interested public of the operations of the Foundation.

#### **ARTICLE VII Amendments and Termination**

7.1. The Board, by the affirmative vote of a majority of its members and with the express written consent of North Central Trust Company, if then a trustee hereunder, or if not, a majority of the trustees then acting, may amend this instrument at any time and from time to time and, in the event of any such amendment, each fund established within the Foundation shall be held and administered subject to the terms of this instrument as so amended. Notwithstanding the foregoing, no amendment may be made to this instrument which would be inconsistent with the purposes herein expressed or which would affect adversely the federal and Wisconsin income tax exemptions of the Foundation or the deductibility of gifts to the Foundation for federal and Wisconsin income, inheritance and estate tax purposes.



7.2. Whenever the Board, by the affirmative vote of a majority of its members, and North Central Trust Company, if then a trustee hereunder, or if not, a majority of the trustees then acting, shall determine that changes in social, economic or political conditions, including changes in tax laws, have made it undesirable to continue the Foundation, or shall determine that the assets of the Foundation are insufficient to make it worthwhile to continue the Foundation, the Board may terminate the Foundation in which case the property then held shall (after payment or provision for all liabilities) be distributed (1) exclusively for public purposes to one or more governmental entities described in Section 170 (c) (1) of the Code; or, (2) to an organization or organizations described in Section 170(c) (2) of the Code which organization or organizations: (a) have purposes consistent with the purposes of the Foundation, and, (b) are not private foundations as defined in Section 509 (a) of the Code.

### **ARTICLE VIII Indemnification**

8.1. For the purposes of this Article VIII, the following terms shall have the meanings ascribed to them in this section:

- (a) "Director" shall mean a person who is or was a member of the Foundation's Board and, unless the context requires otherwise, the estate or personal representative of such person;
- (b) "Trustee" shall have the meaning set forth in Section 9.3.5, below.
- (c) "Expenses" shall include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.
- (d) "Liability" shall include the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employee benefit plan, and reasonable expenses.
- (e) "Party" shall mean a director or trustee who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(f) "Proceeding" shall mean any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the Foundation or by any other person.

8.2. (a) The Foundation shall indemnify a director or trustee, to the extent such director or trustee has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or trustee was a party because he/she/it is a director or trustee of the Foundation.

(b) In cases not included under subparagraph (a), above, the Foundation shall indemnify a director or trustee against liability incurred by the director or trustee in a proceeding to which the director or trustee was a party because he/she/it is a director or trustee of the Foundation, unless liability was incurred because the director or trustee breached or failed to perform a duty he/she/it owes to the Foundation and the breach or failure to perform constitutes any of the following:

- (i) A willful failure to deal fairly with the Foundation in connection with a matter in which the director or trustee has a material conflict of interest.
- (ii) A violation of criminal law, unless the director or trustee had reasonable cause to believe his/her/its conduct was lawful or no reasonable cause to believe his/her/its conduct was unlawful
- (iii) A transaction from which the director or trustee derived an improper personal profit.
- (iv) Willful misconduct. Determination of whether indemnification is required under this subparagraph shall be made under the provisions of Paragraph 8.3 hereof. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea shall not, by itself, create a presumption that indemnification of the director or trustee is not required under this subparagraph.

(c) A director or trustee who seeks indemnification under this Paragraph 8.2 shall make a written request to the Foundation.

(d) Indemnification under this Paragraph 8.2 is not required if the director or trustee has previously received indemnification or allowance of expenses from any person, including the Foundation, in connection with the same proceeding.

**8.3.** Unless provided otherwise by written agreement between the director or trustee and the Foundation, the director or trustee seeking indemnification under subparagraph (b) of Paragraph 8.2 hereof, shall select one of the following means for determining his/her/its right to indemnification:

(a) By majority vote of a quorum of the members of the Board consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the Board and consisting solely of two or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(b) By independent legal counsel selected by a quorum of the Board or its committee in the manner prescribed in subparagraph 8.3(a) or, if unable to obtain such a quorum or committee, by a majority vote of the full Board, including directors who are parties to the same or related proceedings.

(c) By a panel of three arbitrators consisting of one arbitrator selected by those directors entitled under subparagraph (b) to select independent legal counsel, one arbitrator selected by the director or trustee seeking indemnification, and one arbitrator selected by the two arbitrators previously selected.

(d) By a court as provided in Paragraph 8.6 hereof.

**8.4.** Upon written request by a director or trustee who is a party to a proceeding, the Foundation may pay or reimburse his/her/its reasonable expenses as incurred if the director or

trustee provides the Foundation with all of the following:

(a) A written affirmation of his/her/its good faith belief that he/she/it has not breached or failed to perform his/her/its duties to the Foundation.

(b) A written undertaking, executed personally or on his/her/its behalf, to repay the allowance and, if required by the Foundation, to pay reasonable interest on the allowance to the extent that it is ultimately determined under Paragraph 8.3 hereof that indemnification under Paragraph 8.2 hereof is not required and that indemnification is not ordered by a court under Paragraph 8.6 hereof. The undertaking under this subparagraph shall be an unlimited general obligation of the director or trustee and may be accepted without reference to his/her/its ability to repay the allowance. The undertaking may be secured or unsecured.

**8.5.** (a) Except as provided in subparagraph 8.5(b), the provisions of Paragraph 8.2 and Paragraph 8.4, hereof, do not preclude any additional right to indemnification or allowance of expenses that a director or trustee may have under any of the following:

- (i) a written agreement between the director or trustee and the Foundation; or
- (ii) a resolution of the Foundation's Board.

(b) Regardless of the existence of an additional right to indemnification or allowance of expenses, the Foundation shall not indemnify a director or trustee or permit a director or trustee to retain any allowance of expenses unless it is determined by or on behalf of the Foundation that the director or trustee did not breach or fail to perform a duty he/she/it owes to the Foundation which constitutes conduct under Paragraph 8.2(b)(i)-(iv).

(c) A director or trustee who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this Paragraph 8.5.

(d) None of the provisions contained in this Article VIII shall affect the Foundation's power to

pay or reimburse expenses incurred by a director or trustee in any of the following circumstances:

- (i) as a witness in a proceeding to which he/she/it is not a party;
- (ii) as a plaintiff or petitioner in a proceeding because he/she/it is or was an employee, agent, director or trustee of the Foundation.

8.6. Except as provided otherwise by written agreement between the director or trustee and the Foundation, a director or trustee who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court or competent jurisdiction. Application shall be made for an initial determination by the court under the provisions of subparagraph 8.3(d) or for review by the court of an adverse determination under subparagraphs 8.3(a), (b), (c), or (e).

**ARTICLE IX**  
**General Provisions, Definitions,**  
**and Miscellaneous**

9.1. Notwithstanding any other provision of this instrument, the Foundation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501 (c) (3) of the Code and also exempt under the tax laws of the State of Wisconsin, or by an organization contributions to which are deductible under Section 170 (c) (2) of the Code and which are also deductible under the tax laws of the State of Wisconsin.

9.2. Notwithstanding any other provision of this instrument, to the extent reasonably possible, the Foundation shall be organized and operated, its funds shall be held, distributed and invested, and its activities shall be carried on, in such a manner that the Foundation shall be an organization other than a "private foundation" as defined in Section 509 (a) of the Code.

9.3. As used in this instrument, the following words, unless the context clearly indicates otherwise, shall have the following respective meanings:

9.3.1. "Foundation" means the La Crosse Community Foundation created by this instrument.

9.3.2. "Board" means the La Crosse Community Foundation Board created by Article II hereof.

9.3.3. The word "gift" includes a bequest, legacy, devise or other transfer.

9.3.4. The word "person" includes an individual, a governmental agency, a firm, corporation, partnership, LLC, committee, Board of Directors, organization or other group or entity.

9.3.5. The word "trustee" means North Central Trust Company and any bank or trust company subsequently signing this instrument, or any bank or trust company acting as a successor to any such bank or trust company.

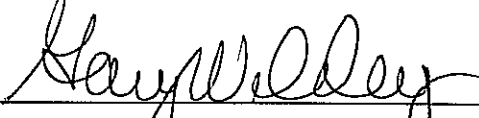
9.3.6. The term "charitable purposes" includes religious, charitable, scientific, literary, educational, cultural, benevolent and civic or public purposes.


9.3.7. "Code" means the Internal Revenue Code of 1986 and all references herein to particular sections or paragraphs of the Code shall also be considered to refer to the corresponding provisions of any successor revenue act.

9.4. In construing this instrument, the use of words of the masculine gender is intended to include, wherever appropriate, the feminine gender and vice versa, and the use of words of the singular is intended to include, wherever appropriate, the plural and vice versa.

*IN WITNESS WHEREOF, the undersigned have executed this instrument as of the 5th day of June, 2001.*

NORTH CENTRAL TRUST COMPANY

By:   
President

Attest:   
Trust Officer/Secretary



319 Main Street, Suite 300  
La Crosse, WI 54601

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