

**EMMANUEL EPISCOPAL CHURCH, CUMBERLAND RI**  
**BY-LAWS**

*AMMENDED ON JANUARY 29, 2017*

**ARTICLE 1 - TITLE**

Emmanuel Episcopal Church shall be known as (the "Parish"). The Parish is incorporated pursuant to An Act for the Incorporation of Parishes as adopted April 10, 1883 and as subsequently amended. This Parish is incorporated as a non-profit religious corporation in the State of Rhode Island.

**ARTICLE II - MEMBER OF THE DIOCESE OF RHODE ISLAND**

**2.1** The Parish is a constituent member of The Diocese of Rhode Island (the "Diocese"), and is organized for the worship of God in accordance with the doctrine, discipline, worship and liturgy of The Episcopal Church (the "Church"). This Parish acknowledges that it is and will forever be subject to the laws and the ecclesiastical authority of the Church and the Diocese.

**2.2** This Parish may not dissolve or merge with another Parish without providing a written explanation for the proposed merger or dissolution to the Bishop and the Standing Committee and receiving written consent of the Bishop and the Standing Committee prior to the dissolution or merger.

**2.3** Prior written approval of the Bishop and Standing Committee is required for any amendment to a charter. The Parish must provide the Bishop and Standing Committee full written statement for the reason of the amendment.

**ARTICLE III – THE PARISH**

**3.1 Members.** All persons who:

- a. have received the Sacrament of Holy Baptism with water in the name of the Father and of the Son and of the Holy Spirit and whose Baptism has been duly recorded in the Parish register; or
- b. have been Confirmed or Received in The Episcopal Church or a Church in Full Communion with The Episcopal Church, whose Confirmation or Reception is duly recorded in the Parish Register; and
- c. regularly contribute to the support of the Parish shall be considered Members of the Parish.

**3.2 Pledging Members.** All members who make and are fulfilling a financial pledge as an outward and visible sign of commitment to the Parish shall be considered Pledging Members. The records of the Treasurer (or other person designated to keep financial records) shall constitute evidence of the status of Pledging Member.

**3.3 Voting Members.** Each voting members is entitled to one vote in any election or other proposals to be acted upon at a meeting. A member shall be eligible to serve in a leadership role and shall have Voting Rights if he or she conforms to the following requirements:

- a. is a member in accordance with Art. 3.1;
- b. is at least sixteen years of age;
- c. is a regular participant in the life and worship of this Parish;
- d. has received Holy Communion at least three times in the twelve months preceding the meeting at which he or she wishes to vote; and
- e. has been a Pledging Member for at least six months preceding the meeting at which he or she wishes to vote. Pledging Member is defined in accordance with Art. 3.2.

**3.4 Adoption of new voting restrictions.** Additional voting restrictions included or amended in the bylaws shall not be effective until after six months of adoption.

**3.5 Posting of voting members.** Upon the written request of any fifteen (15) members who are qualified to vote made at least ten (10) days prior to an annual meeting the Rector, Minister in charge, or a Warden shall, within five (5) days after receipt of such request, post in a conspicuous place on the Parish premises a certified list of the qualified electors.

**3.6 Retention of Voting List.** Voting list shall be retained with the election records by the Clerk.

#### **ARTICLE IV – MEETINGS OF THE PARISH**

**4.1 Place of Meetings.** The Annual Meeting and all special meetings of the members shall be held at such place, within the State of Rhode Island, as shall be stated in the notice of meeting.

**4.2 Annual Meeting.** There shall be an annual meeting of this Parish each year during the month of January at a time and place set by the Rector and Vestry no later than thirty days prior to the date of such meeting.

- a. This shall be the annual meeting called for by the Charter of this Parish.
- b. Inability to hold said meeting shall not invalidate the Charter. In the event of the failure to hold an annual meeting at any time or for any cause, any and all business which might have been transacted at that annual meeting may be transacted at the next succeeding meeting, whether special or annual.
- c. Annual meetings and other official meetings of the Parish shall in all cases conform to the laws and statutes of the State of Rhode Island and Providence Plantations.

**4.3 Special Meetings.** Special Parish meetings may be called at any time by the Rector (or by the Wardens when the Parish is without a Rector), provided notification is done in accordance with article 4.4. A Special Parish meeting may also be called by a vote of  $\frac{3}{4}$  of the members of the Vestry. Business transacted at any special meeting of members will be limited to the purposes stated in the notice of the meeting.

**4.4 Notice of Meetings.** Written notice of each annual or special meeting stating the purpose, place, day and hour of the meeting will be given by or at the direction of the Rector, (or the Wardens when the Parish is without a Rector) to each member entitled to vote at such meeting.

- a. Such notice shall be given not less than twenty nor more than sixty days before the meeting.
- b. Electronic communication shall be deemed sufficient for notification provided that the written request of those who have requested paper notification shall be honored.
- c. Remote attendance at all meetings through Skype or other virtual means is permitted, and those attending remotely will be allowed to vote. Voting by proxy or absentee ballot is prohibited under these bylaws.

**4.5 Quorum.** 15% of the Voting Members of the Parish as defined in Article 3.3 shall constitute a quorum for such meetings and such a quorum may transact such business as shall come before it.

**4.6 Business of Annual Meeting.** The business of the Annual Meeting shall be:

- a. to receive reports from the Rector, Clerk, Treasurer, and any organization or committee that the Rector or Senior Warden shall deem appropriate.
- b. to elect the following: Wardens, Treasurer, Clerk, and members of the Vestry, all in accordance with Article 3.3 of these By-Laws.
- c. to elect delegates and alternates to the Convention of the Diocese in accordance with the Canons of the Diocese.

- i. Delegates and alternates shall continue in office until their successors are elected. Any vacancy occurring in a delegation between annual meetings may be filled by election by the Vestry.
- ii. Each delegate and alternate shall be a Voting Member of the Parish in accordance with Article 3.3 of these By-laws.
- iii. Delegates and Alternates are elected annually to serve a one year term.
- iv. Delegates and Alternates shall be limited to three consecutive terms in any one position, then one year must pass before he or she is again eligible to serve.
- v. Delegates and Alternates shall attend Deanery meetings as well as Diocesan Convention.

**4.7 Election results.** Results of elections for Wardens, members of the Vestry, Delegates of the Convention, their Alternates, the Treasurer, and Secretary be forwarded to the Bishop within fifteen (15) days of the election.

**4.8 Annual Reports.** The Parish must prepare annual reports for the preceding year.

- a. the report must be in the form prescribed by the General Convention and contain the information as required by the canons of the Episcopal Church.
- b. Two copies of the report must be sent to the Bishop's office no later than February 1.

**4.9 Election Results.** Results of elections and meetings shall be posted in a conspicuous place on Parish premises within (7) seven days after the meeting.

## **ARTICLE V – VESTRY**

**5.1 Vestry Responsibilities.** The Vestry shall serve as the board of directors of the Parish, and shall be subject to the laws of Rhode Island, the Articles of Incorporation, and the bylaws of the Parish. The temporal activities and affairs of the Parish shall be conducted and all corporate powers shall be exercised by or under the direction of the Vestry. Such powers shall include, but not be limited to:

- a. The election of a Rector, as provided for in Article 5.13.
- b. The management of:
  - i. all the finances, including all investments, endowments and the approval of an annual budget; and
  - ii. all real and personal property, including the purchasing of insurance thereon.
- c. The sale, mortgaging, and improvements of property, as well as any needed demolition of same. The Vestry is empowered to execute, acknowledge, and

deliver any deeds, mortgages, and exchanges of any real property; except that the authority to sell or mortgage property shall require the prior approval of:

- i. a majority of the voting members of the Parish present at a special meeting called for this purpose or at a regular annual meeting; and
  - ii. The Bishop and Standing Committee for the Diocese of Rhode Island to the extent required by Canon Law.
- d. The financial and legal aspects of engaging the services of such employees as may be deemed necessary upon the nomination of the Rector or the Senior Warden, provided the majority of Vestry members approves.

**5.2 Delegation.** The Vestry may delegate its management of temporal corporate activity so long as the Parish's activities, affairs and powers remain under the ultimate direction of the Vestry.

**5.3. Quorum.** At all meetings of the Vestry two-thirds of the members of the Vestry will constitute a quorum for the transaction of business, and the act of a majority of the members present at a meeting at which a quorum is present will be the act of the Vestry, unless the act of a greater number is required by the Rhode Island non-profit corporation act or by the articles of incorporation.

**5.4 Consent Vote.** Any action required or permitted to be taken at a meeting of the Vestry may be taken without a meeting if consent in writing, setting forth the action so taken, is signed by a quorum of the Vestry. Digital means of indicating consent are acceptable.

**5.5 Rector and Warden absence.** No action shall be taken at a Vestry meeting unless the Rector or a Warden is present.

**5.6 Vestry Membership.** The Vestry shall consist of the Rector as presiding officer, the Senior Warden, the Junior Warden, the Treasurer, the Clerk, and as many as nine Vestry members elected by the members of the Parish at a regular or special Parish meeting.

- a. Vestry members shall be members of this Parish having Voting Rights under Article 3.3 of these By-laws. Vestry members shall be elected for three-year terms. Vestry members shall be limited to two consecutive terms in any one position, then one year must pass before he or she is again eligible to serve on Vestry.
- b. The Senior Warden, Junior Warden, Treasurer, and Clerk shall:
  - i. be members of this Parish having Voting Rights under Article 3.3 of these By-laws;

- ii. have been Confirmed in the Episcopal Church or Confirmed in a denomination in Full Communion with the Episcopal Church in order to be eligible to stand for election.
  - iii. In addition, the Treasurer must be bonded with a surety of an amount approved by the Vestry.
- c. The Senior Warden and Clerk are elected in even-numbered years to two-year terms. The Junior Warden and Treasurer shall be elected in odd-numbered years to two-year terms. All officers shall be limited to three consecutive terms in that role, then one year must pass before he or she is again eligible to serve on Vestry in any capacity.
- d. Terms of office for all positions will commence upon election.
- e. A vacancy in any office, for any reason may be filled by the affirmative vote of a majority of the remaining members of the Vestry. A member elected to fill a vacancy will complete the unexpired term of his or her predecessor. Officers may be appointed by the Vestry, and appointees need not be members of the Vestry. Vacancies may also be filled by election at the annual meeting in addition to the 'regular' election cycle outlined in Article 4.5b.
- f. The retiring Vestry members shall form a nominating committee to present names to the annual meeting or to a special Parish meeting called for the purpose of replacing members of the Vestry. The Rector shall chair this committee and both Wardens shall be members of the Nominating Committee. Nominations for Vestry members shall be solicited not less than sixty days in advance of the annual meeting. The Nominating Committee shall interview all nominees, verify eligibility and present a slate to the Parish for election at the annual meeting. Additional nominations can be taken from voting members of the Parish if submitted in writing to the Clerk no later than 15 days prior to the annual meeting.

## **5.7 Resignation and Removal.**

- a. In the event the Rector and Vestry determine a current member should not continue to serve the remainder of his/her term, due to but not limited to such instances as repeated lack of attendance or sharing confidential information inappropriately, the remaining Vestry members in agreement with the Rector may request his/her removal. Said removal will be communicated to the specific member via the Rector. The Clerk may be requested to send a formal letter to said Vestry member.

- b. Should a Vestry member request a resignation prior to completing his/her term, they may do so at any time, by communicating with the Rector in person or through writing.
- c. Notification to the Parish regarding any change in Vestry members is required.

**5.8 Committees and Commissions.** The Vestry shall organize itself into any commissions and special committees as it sees fit. The Rector shall be a member of all commissions and committees *ex officio* by virtue of his or her position.

### **5.9 Vestry Meetings.**

- a. The Vestry shall generally meet every month, at a time to be decided upon. Additional meetings of the Vestry may be called by the Rector on seven days' notice to each Vestry member, either personally, by mail, or electronically.
- b. Meetings of the Vestry may be held by means of a telephone or video conference circuit and connection to such circuit will constitute presence at such meeting.
- c. Meetings of the Vestry may be held within or outside of the State of Rhode Island as long as proper notification is made to the members and officers.

**5.10 Consent Vote.** Any action required or permitted to be taken at a meeting of the Vestry may be taken without a meeting if the action is submitted to all members of the Vestry and consent in writing is received from a quorum of the members of the Vestry. Such submissions and consent may be received electronically.

**5.11 Ineligibility.** Family members shall not serve concurrently as officers or members of Vestry. Additionally, no spouse, former spouse, or family member of current staff members shall serve as officers or members of the Vestry.

**5.12 Vacancy.** When the position of Rector becomes vacant in the Parish, the Wardens shall consult with the Bishop of the Diocese with respect to the appointment of an interim Rector for the maintenance of divine services and the pastoral care of the congregation. The Wardens shall also consult with the Bishop with respect to the procedure to be followed in the selection and call of a new Rector.

**5.13 Search Committee.** After consultation with the Bishop, the Vestry shall coordinate the formation of a Search Committee.

- a. The Search Committee shall include but not be limited to:
  - i. three members of the Vestry who are elected by Vestry, and
  - ii. at least three Members of the Parish who are not members of the Vestry but are elected by the Vestry.

- b. The Search Committee shall be representative of the Parish and shall not exceed nine members. Additionally, the Search Committee shall include, when possible, an active member of the youth group who may be selected by the Vestry to serve as a full committee member with voice and vote.
- c. The Vestry shall elect the chair of the Search Committee.

**5.14 Election of Rector.** The Rector shall be elected by  $\frac{3}{4}$  of the entire Vestry assembled in a formal meeting, and the Rector-elect shall be notified of the vote. No commitment shall be made by the vestry to anyone under consideration as a prospective Rector, nor shall any formal call be issued, until the name of the cleric under consideration as Rector has been made known to the Bishop for his judgment. If the Bishop has not responded within thirty days, or such additional time as has been agreed upon, from the date of notice to the Bishop, the vestry may proceed with the commitment and call. In case the Bishop objects to the choice of the vestry, a second meeting of the vestry shall be held and the person first proposed can be elected only upon an affirmative vote of three-fourths of the lay members of the vestry. If the requisite three-fourths is not obtained, the same procedure shall be repeated for the election of another candidate.

#### **ARTICLE IV - CLERGY**

**6.1 Rector.** The Rector shall be the president and principal executive officer of the Parish and, in conjunction with the Vestry, shall have general charge of the business affairs and property of the Parish. The Rector, subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of the Church and of the Diocese, and under the pastoral direction of the Bishop, shall have control of the worship and spiritual jurisdiction of the Parish, and shall discharge the duties set forth in the Canons of the Episcopal Church and of the Diocese of Rhode Island. For the purposes of his or her office, and for the discharge of all functions and duties thereof, the Rector shall, at all times, have access, use and control of the Parish Church and buildings. The Rector shall preside and have the right to vote at any Parish or Vestry meeting. The Rector shall:

- a. ensure that accurate Parishioner information is maintained and available non-confidential information is available to commissions and committees;
- b. maintain custody and control of Parish registry. This registry shall be preserved as part of the records of the Parish or mission. This register shall be available at all times to the Bishop for his examination at each visitation and at all reasonable times be available for examination by the members of the Vestry,



the Bishop or any person designated by the Bishop. The Parish Registry shall contain:

- i. a record of all Baptisms, Confirmations, Receptions, Marriages, and Burials solemnized in the Parish.
  - ii. the names and dates of birth of the persons baptized together with the names of parents and sponsors or witnesses; and
  - iii. the names of persons married or buried, and the date of every such rite performed; and
  - iv. the names of all communicants with the date of their reception, death, or removal.
- c. ensure that reports are made to the Vestry of transfers into, and out of, the Parish;
  - d. as necessity requires and funds allow, ensure that sufficient staffing is maintained, including additional clergy called to minister to the Parish and the community; and
  - e. all terms of his or her Letter of Agreement are regularly met.

**6.2. Assistant Minister.** If the parish can support an Assisting Minister, the Rector shall consult with the Bishop and together they shall agree upon a list containing names of qualified persons. The rector shall then nominate to the Vestry, from the list, the name of the person chosen by the rector to serve as an assistant. The Vestry must approve the appointment by majority affirmative vote.

- a. The employment of the Assistant Minister is subject to the Canons of the Diocese and that the terms of his/her employment must be incorporated into a written agreement.
- b. The appointment must be signed by the Rector and sent to the Bishop within ten (10) days of the election
- c. The Bishop's satisfaction of the appointment shall be sent to and recorded by the secretary of the Diocese.
- d. Any Assistant Minister shall serve at the pleasure of the Rector, subject to the rights, if any, of such Assistant under any agreement of employment.

**6.3 Selection of Non Stipendiary assistants.** The Rector may appoint, with the prior written approval of the Bishop, one or more non-stipendiary assistants from among the Clergy canonically resident in the Diocese or who are in good standing and currently licensed to officiate in the Diocese.

## ARTICLE VII - OFFICERS

**7.1. Number.** The officers of the Parish shall consist of a Rector, a Senior Warden, a Junior Warden, a Clerk, and a Treasurer, who shall all be members of the Vestry. The Vestry may from time to time elect or appoint such other officers, including one or more assistant officers, as it may deem necessary.

**7.2 Senior Warden.** The Senior Warden shall be a voting member of the Parish as indicated in Article 3.3 and a Confirmed or Received member of the Church as indicated in Article 5.6b. In the absence of the Rector, the Senior Warden shall assume the administrative authority of the Parish and perform the duties of the office as set forth in the Canons of the Church and such other duties as may be assigned by the Vestry. The Senior Warden is the senior lay leader of the Parish and shall:

- a. provide support and assistance to the Rector in all matters;
- b. manage the affairs of the Parish in the absence of the Rector;
- c. coordinate regular Wardens' meetings with the Rector and annual Mutual Ministry Reviews;
- d. coordinate the annual audit of the Rector's discretionary account;
- e. sit as an *ex officio* member of Parish committees and commissions;
- f. prepare an annual report to the Parish
- g. be a resource to the members, committees, and Vestry of the Parish.
- h. perform the administrative duties of the office as set forth in the Canons of the Church and such other duties as may be assigned by the Vestry.

**7.3 Junior Warden.** The Junior Warden shall be shall be a voting member of the Parish as indicated in Article 3.3 and a Confirmed or Received member of the Church as indicated in Article 5.6b. The Junior Warden shall assist the Senior Warden and the Rector in the affairs of the Parish. In the absence of both the Rector and the Senior Warden, the Junior Warden shall assume the administrative authority of the Parish and perform the duties of the office as set forth in the Canons of the Church and such other duties as may be assigned by the Vestry. The Junior Warden shall have responsibility for the physical plant of the Parish, and shall:

- a. ensure that all buildings receive timely maintenance and regular upkeep;
- b. ensure that grounds are appropriately maintained;
- c. ensure that all approved renovation or capital construction is properly planned and coordinated;
- d. ensure that a Buildings and Grounds Committee is fully empaneled with members of the Parish who are willing and able to assist in the performance of these duties;

- e. prepare an annual report to the Parish;
- f. attend Wardens' meetings.

**7.4 Clerk.** The Clerk shall be shall be a voting member of the Parish as indicated in Article 3.3 and a Confirmed or Received member of the Church as indicated in Article 5.6b and shall act as secretary of all meetings of the Parish and of the Vestry. The Clerk shall perform the duties usually pertaining to the office and such other duties as may be required from time to time by the Vestry. The Clerk shall:

- a. record accurate minutes of Vestry meetings, regular and special, presenting them to the Vestry for correction and approval, and post approved minutes for the Parish;
- b. prepare and certify all Parish reports to the diocese; and
- c. coordinate and record Parish meetings, especially the Annual Meeting, in conjunction with the Rector, including preparing adequate voting lists.

**7.5. Treasurer.** The Treasurer shall be shall be a voting member of the Parish as indicated in Article 3.3 and a Confirmed or Received member of the Church as indicated in Article 5.6b, shall monitor the finances of the Parish and shall:

- a. ensure that all expenditures are authorized by the Vestry through budgeting or by vote;
- b. ensure that all income and expenses are documented;
- c. present financial reports to the Vestry each month;
- d. attend Wardens' meetings;
- e. ensure that all investments and endowments are monitored and managed for maximum benefit to the Parish;
- f. ensure that all financial reports required by the Diocese or other bodies are timely and accurate;
- g. gather reports and necessary data for the creation of the Annual Budget;
- h. prepare and present a report for the Annual Meeting;
- i. ensure that a qualified audit committee is formed and provided with the necessary documentation to ensure diocesan standards are met.

**7.6. Assistant Treasurer.** An Assistant Treasurer may be appointed by the Vestry at the recommendation of the Rector and Treasurer for a one-year term. The Assistant Treasurer shall:

- a. complete monthly bank reconciliations;
- b. assist in preparing the annual audit;
- c. sit as a full member of the Finance Committee.

**7.7. Vacancies.** A vacancy in any office by reason of death, resignation, removal or otherwise may be filled by the Vestry for the unexpired portion of the term.

## **ARTICLE VIII – COMMISSIONS AND COMMITTEES**

There shall be such commissions and committees of the members of the Parish as the Vestry shall organize and supervise. The commissions and committees shall perform such duties as may be required of them by the Vestry.

## **ARTICLE IX - FINANCE**

**9.1. Finance Committee.** The Treasurer, in consultation with the Rector, shall assemble a Finance Committee comprised of members of the Parish with interest and experience suitable to the management of the Parish's finances. The Rector, Senior Warden and current Stewardship chair shall be members *ex officio*.

**9.2. Indebtedness.** The Parish shall not become liable in respect of any indebtedness without first obtaining the written consent of the Bishop and Standing Committee of the Diocese, except for unsecured current liabilities incurred in the ordinary course which in the aggregate do not exceed ten percent of the average annual receipts of the Parish during the three preceding calendar years.

**9.3. Trust.** All real and personal property held by or for the benefit of the Parish is held in trust for the Church and the Diocese.

**9.4. Endowment Funds.** Any endowment funds of the Parish shall be deposited with a national or state bank, the Diocesan Investment Trust, or other agency approved by the Commission on Finance of the Diocese, and shall be held under agreements providing for at least two signatures for the withdrawal of funds. The Parish shall maintain records of all trust and permanent funds showing the source, date and terms governing the use of principal and income.

**9.5 Audit.** An annual audit is required to ensure financial security and to be in compliance with diocesan expectations. As such, each year, no later than February, the Treasurer will nominate three qualified, non-Vestry Members of the Parish to the Vestry to serve as the Audit Committee for the current year. The Audit Committee shall follow the Diocesan guidelines for doing a Parish audit. Once every three years, the Parish audit will be done by an authorized group from outside the Parish.

**9.6 Bids.** No non-budgeted expenditures in excess of \$1000 will be made without approval from the Vestry. For all expenditures of \$2501 or above, three bids are required.

- a. If any member of the Vestry, Officer or employee of the Parish shall be interested either directly or indirectly, or shall be a director, officer or employee of or have an ownership interest (other than as the owner of less than one percent of the shares of a publicly-held corporation) in any firm or corporation interested directly or indirectly in any contract with the Parish, such interest will be disclosed to the Parish and set forth in the minutes of the Parish.
- b. In that event, the member of the Vestry, Officer or employee having such interest therein will not participate on behalf of the Parish in the authorization of any such contract.

**9.7 Discretionary Fund.** The Rector's Discretionary Account shall be maintained and disbursed by the Rector for direct relief of the poor and other charitable purposes. Open plate offerings from the first Sunday of each month as well as open plate offerings from all Christmas Eve services shall be deposited into the Discretionary Fund. The Discretionary Fund shall be audited every July for the previous calendar year by the current Senior Warden and one former Senior Warden.

**9.8. Unrestricted Gifts.** Any unrestricted gift given to the Parish of \$1001.00 and above shall be divided by the Vestry in the following manner:

- a. 10% to Outreach – including but not limited to Mobile Loaves, St. George's, Northern Rhode Island Food Pantry, and/or Rector's Discretionary Fund.
- b. 20% to an Investment Fund
- c. 30% to be used at the discretion of the Rector and Vestry
- d. 40% to Capital Improvement fund(s)

**9.9. Accounts.** The Parish shall maintain books of account in order to provide the basis for satisfactory accounting. Accounting software and digital files satisfy this requirement as long as regular back-ups are done.

**9.10. Insurance.** The Parish shall maintain adequate insurance coverage as recommended by the Diocese and Church Insurance.

**9.11. Fiscal year.** The fiscal year of the Parish shall be the calendar year.

## **ARTICLE X – DISSOLUTION OR MERGER**

**10.1. Dissolution or Merger.** The Parish shall provide a written reason and plan for the proposed dissolution or merger to the Bishop and the Standing Committee. The Parish shall obtain the prior written consent of the Bishop and the Standing Committee for the dissolution or merger of the Parish.

## **ARTICLE XI - INDEMNIFICATION**

**11.1. Agreement of Parish.** In order to induce the directors and officers of the Parish to serve as such, the Parish adopts this by-law and agrees to provide the directors and officers of the Parish with the benefits contemplated hereby.

**11.2. Persons Entitled to Benefits.** This paragraph will apply, and the benefits hereof will be available, to each director and officer of the Parish who serves the Parish as such without the need for other proof that the director or officer has accepted the provisions of this Article.

**11.3. Definitions.** As used herein, the following terms will have the following respective meanings:

- a. "Covered Act" means any act or omission by the Indemnified Person in the Indemnified Person's official capacity with the Parish and while serving as such or while serving at the request of the Parish as a member of the governing body, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.
- b. "Director" means a member of the vestry of the Parish.
- c. "Excluded Claim" has the meaning set forth in Section 6, hereof.
- d. "Expenses" means any reasonable expenses incurred by the Indemnified Person in connection with the defense of any claim made against the Indemnified Person for Covered Acts including, without being limited to, legal, accounting or investigative fees and expenses (including the expense of bonds necessary to pursue an appeal of an adverse judgment).
- e. "Indemnified Person" means any member of the vestry or officer of the Parish who serves the Parish as directors or officer.
- f. "Loss" means any amount which the Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for Covered Acts including, without being limited to, judgments for, and awards of,

damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

- g. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**11.4. Indemnification.** Subject to the exclusions hereinafter set forth, the Parish will indemnify the Indemnified Person against and hold the Indemnified Person harmless from any Loss or Expenses.

**11.5. Advance Payment of Expenses.** The Parish will pay the Expense of the Indemnified Person as such time and from time to time as the Indemnified Person may request in advance of the final disposition of any Proceeding except to the extent that the defense of a claim against the Indemnified Person is undertaken pursuant to any directors' and officers' liability insurance (or equivalent insurance known by another term) maintained by the Parish. The advance payment of Expenses will be subject to the Indemnified Person's agreement with the Parish (evidenced by the Indemnified Person's acceptance of an advance payment or, if requested, a prior agreement in writing) to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was not entitled to indemnity by reason of the provisions of Section 9.

**11.6. Exclusions.** The Parish will not be liable to pay any Loss or Expenses (an "Excluded Claim"):

- a. With respect to a Proceeding in which a final non-appealable judgment or adjudication by a court of competent jurisdiction determines that the Indemnified Person is liable to the Parish (as distinguished from being liable to a third party) for:
  - i. any breach of the Indemnified Person's duty of loyalty to the Parish or its members;
  - ii. acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; or
  - iii. any transaction from which the Indemnified Person derived an improper personal benefit; or
- b. If a final, nonappealable judgment or other adjudication by a court of competent jurisdiction determines that such payment is unlawful.

**11.7. Notice to Parish.** Insurance. Promptly after receipt by the Indemnified Person of notice of the commencement of or the threat of commencement of any Proceeding, the Indemnified Person will, if indemnification with respect thereto may

be sought from the Parish under these Canons, notify the Parish of the commencement thereof. Failure to promptly notify the Parish will not adversely affect the Indemnified Person's right to indemnification hereunder unless and only to the extent that the Parish is materially prejudiced in its ability to defend against the Proceeding by reason of such failure. If, at the time of the receipt of such notice, the Parish has any directors' and officers' liability insurance in effect, the Parish will give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Parish will thereafter take all the necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, all Loss and Expenses payable as a result of such Proceeding in accordance with the terms of such policies.

#### **11.8. Indemnification Procedures.**

- a. Payments on account of the Parish's indemnity against Loss will be made by the Treasurer of the Parish except if, in the specific case, a determination is made that the indemnification of the Indemnified Person is not proper in the circumstances because such Loss results from a claim which is an Excluded Claim. If the Parish so determines that the Loss results from an Excluded Claim (although no such determination is required by the Parish hereunder prior to payment of a Loss by the Treasurer), the determination shall be made:
  - i. By the vestry by a majority vote of a quorum consisting of members not at the time parties to the Proceeding; or
  - ii. If a quorum cannot be obtained for purposes of clause (i) of this subparagraph (a), then by a majority vote of a committee of the vestry duly designated to act in the matter by a majority vote of the full vestry (in which designation members who are parties to the Proceeding may participate) consisting solely of three or more directors not at the time parties to the Proceeding; or
  - iii. By independent legal counsel designated:
    - a) by the vestry in the manner described in clause (i) of this subparagraph (a), or by a committee of the vestry established in the manner described in clause (ii) of this subparagraph (a), or
    - b) if the requisite quorum of the full Council cannot be obtained therefore and a committee cannot be so established, by a majority vote of the full vestry (in which designation members who are parties to the Proceeding may participate). If made, any such



determination permitted to be made by this subparagraph (a) will be made within 60 days of the Indemnified Person's written request for payment of a Loss.

b. Payment of an Indemnified Person's Expenses in advance of the final disposition of any Proceeding will be made by the Treasurer of the vestry except if, in the specified case, a determination is made pursuant to Section 8(a) above that indemnification of the Indemnified Person is not proper in the circumstances because the Proceeding involved an Excluded Claim.

c. The Parish will have the power to purchase and maintain insurance on behalf of any Indemnified Person against liability asserted against him or her with respect to any Covered Act, whether or not the Diocese would have the power to indemnify such Indemnified Person against such liability under the provisions of this paragraph. The Parish will be subrogated to the rights of such Indemnified Person to the extent that the Parish has made any payments to such Indemnified Person in respect to any Loss or Expense as provided herein.

**11.9. Settlement.** The Parish will have no obligation to indemnify the Indemnified person under this paragraph for any amounts paid in settlement of any Proceeding affected without the Parish's prior written consent. The Parish will not unreasonably withhold or delay its consent to any proposed settlement. If the Parish so consents to the settlement of any Proceeding, or unreasonably withholds or delays such consent, it will be conclusively and irrebuttably presumed for all purposes that the Loss or Expense does not constitute an Excluded Claim. If the Parish reasonably withholds its consent solely on the ground that the Proceeding constitutes an Excluded Claim, the Indemnified Person may accept the settlement without the consent of the Parish, without prejudice to the Indemnified Person's rights to indemnification in the event the Diocese does not ultimately prevail on the issue of whether the Proceeding constitutes an Excluded Claim.

**11.10. Rights Not Exclusive.** The rights provided hereunder will not be deemed exclusive of any other rights to which the Indemnified Person may be entitled under any agreement, vote of disinterested trustees or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such office, and will continue after the Indemnified Person ceases to serve the Diocese as an Indemnified Person.

### **11.11. Enforcement.**

- a. The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 8 hereof.
- b. In the event that any action is instituted by the Indemnified Person under the Canons, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such section was not made in good faith or was frivolous.

**11.12. Severability.** If any provision of this Article is determined by a court to require the Parish to perform or to fail to perform an act which is in violation of applicable law, this Article shall be limited or modified in its application to the minimum extent necessary to avoid a violation of law, and, as so limited or modified, this Article shall be enforceable in accordance with its terms.

**11.13. Successor and Assigns.** The provisions of this Article will be:

- a. binding upon all successors and assigns of the Parish (including any transferee of all or substantially all of its assets) and
- b. binding on and inure to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person.

**11.14. Amendment.** No amendment or termination of this Article will be effective as to an Indemnified Person without the prior written consent of that Indemnified Person and, in any event, will not be effective as to any Covered Act of the Indemnified Person occurring prior to the amendment or termination.

## **Article XII - Amendments**

**12.1 Voting.** These By-Laws may be revised, altered, or amended by a 2/3rds vote of the Members of the Parish present and voting at the annual meeting or at a special Parish meeting called by the Vestry for this purpose.

**12.2 Immediate Effect.** These By-Laws shall come into effect immediately upon their approval by two-thirds of the members of the Parish present and voting at the Annual Meeting or Special Meeting at which they are presented. The Rector and the

Senior Warden shall sign these By-Laws to record that they have been so approved. If the Senior Warden is not present, the Junior Warden may sign. If neither the Senior Warden nor the Junior Warden is present, any two members of the Vestry may sign.

**12.3 Previous By-laws.** All previous By-Laws are hereby repealed.