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# Articles of Incorporation of the Twin Cities Area Delta Chi Fraternity Scholarship Foundation

The undersigned incorporators, being of legal age, for the purpose of now adopting and invoking the rights and responsibilities pursuant and subject to the provisions of the Minnesota Nonprofit Corporation Act, Chapter 317A et seq. of the Minnesota Statutes, and as amended, do hereby create a nonprofit corporation and adopt the following Articles of Incorporation:

### Article I – Name of Organization

The name of the nonprofit corporation shall be the Twin Cities Area Delta Chi Fraternity Scholarship Foundation (hereinafter “The Scholarship Foundation”).

### Article II – Registered Office Address

The Scholarship Foundation’s principal place of business and registered office shall be located at:

Twin Cities Area Delta Chi Fraternity Scholarship Foundation  
c/o Sean Barrett  
3543 Rhode Island Ave. S.  
St. Louis Park, MN 55426

### Article III – Purpose

The Scholarship Foundation is organized exclusively for charitable, religious, educational, and scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

The purposes and objectives of The Scholarship Foundation shall be:

- To solicit; take and hold, by bequest, devise, gift, grant, purchase, lease or otherwise, any property, real, personal or mixed or any undivided interest therein, without limitation to amount or value; to convey, sell, or otherwise dispose of such property; and to invest, reinvest, and deal with the same in such a manner as in the judgment of the Board of Trustees, will best promote the purposes of The Scholarship Foundation.

- To apply its corpus and income exclusively to the following charitable purposes:
  - To promote the belief that great advantages are to be derived from a brotherhood of college and university men, appreciating that close association may promote friendship, develop character, advance justice, and assist in the acquisition of a sound education;
  - To promote the advancement of education, study and research, and provide increased access to higher education for collegiate and alumni members of The Delta Chi Fraternity at the University of Minnesota;
  - To establish and authorize the payment of funds for grants, fellowships, gifts, and/or scholarships;
  - To evaluate scholarship applications and grant proposals, and make decisions as to the recipients of The Scholarship Foundation's funds;
  - To engage in such other and further means as may be necessary and proper to accomplish the foregoing purposes.

#### **Article IV – Exemption Requirements**

**Section 1. Restrictions.** At all times, the following shall operate as conditions restricting the operations of The Scholarship Foundation:

- A. The Scholarship Foundation shall not discriminate based on considerations of disability, nationality, race, creed, age, religion, or sexual orientation.
- B. No part of The Scholarship Foundation's annual gross receipts shall inure to the benefit of, or be distributable to, any private shareholder, Trustee, Trustee, Officer, and/or Member, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purpose set forth in the purpose section herein. This includes reasonable compensation for employees and independent contractors.
- C. The Scholarship Foundation shall not make grants to foreign organizations, or send money or property to foreign organizations.
- D. The Scholarship Foundation shall distribute its income for each tax year at a time and manner as not to become subject to the five percent (5%) excise tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or the corresponding section of a future federal tax code. To achieve this end, The Scholarship Foundation shall make qualifying distributions to be paid to accomplish one or more purposes, including religious, charitable, scientific, literary, or educational purposes.

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- E. Pursuant to Section 4941(d) of the Internal Revenue Code, or the corresponding section of a future federal tax code, The Scholarship Foundation shall not participate directly or indirectly in “self-dealing.”
- F. The Scholarship Foundation shall not retain any “excess business holdings” as defined in Section 4943(c) of the Internal Revenue Code, or the corresponding section of a future federal tax code.
- G. The Scholarship Foundation shall not make investments that would jeopardize the carrying out of the exempt purposes of the organization, within the meaning of Section 4944 of the Internal Revenue Code, or the corresponding section of a future federal tax code, so as to give rise to liability for the taxes imposed by Section 4944(a).
- H. The Scholarship Foundation may not make a “taxable expenditure” as defined in Section 4945(d) of the Internal Revenue Code, or the corresponding section of a future federal tax code, that would give rise to liability for the tax imposed by Section 4945(a).

Section 2. Intellectual Property. The Scholarship Foundation has no current rights in intellectual property. Any future ownership of intellectual property such as copyrights, trademarks, patents, and other processes shall be according to the terms of funding and intellectual property law. All rights to usage will be granted to The Scholarship Foundation.

#### **Article V – Membership/Board of Trustees**

Section 1. Membership. The Scholarship Foundation shall have Members. The eligibility, rights, and obligations of the Members shall be determined by The Scholarship Foundation’s Bylaws.

Section 2. Board of Trustees. The management of the affairs of The Scholarship Foundation shall be vested in a Board of Trustees, as defined in The Scholarship Foundation’s Bylaws. No Trustee shall have any right, title, or interest in or to any property of the organization.

Section 3. Initial Trustees. The number of Trustees constituting the initial Board of Trustees is nine (9); their names and addresses are as follows:

- Matthew Johnson, [REDACTED]
- Sean Barrett, [REDACTED]
- William Pruitt, [REDACTED]
- Jonathan Heinz, [REDACTED]



- Chris Beltmann, [REDACTED]
- Matthew Eich, [REDACTED]
- David Tuomala, [REDACTED]
- Lee Jacobson, [REDACTED]
- Charles Kanan, [REDACTED]

Members of the initial Board of Trustees shall serve until the first annual meeting, at which they will be re-elected, their successors will be duly qualified and elected, or they will be removed as provided in the Bylaws.

#### **Article VI – Limited Liability & Indemnification**

Section 2. Indemnification and Limited Liability. The Scholarship Foundation shall indemnify and hold harmless any Trustee, Officer, or high-level employee (such as an Executive Trustee) from any judgments, penalties, fines, suits, damages, claims, or liability arising out of conduct (actions or inactions taken) in his or her capacity as a Trustee, Officer, or high-level employee except in cases involving willful misconduct. Indemnification provided under this section shall comply with and follow the requirements as provided by Section 317A.521 of the Minnesota Statutes.

A. Indemnification will be allowable if the Trustee, Officer, or high-level employee:

1. has not been indemnified by another organization or employee benefit plan for the same liability with respect to the same acts or omissions;
2. acted in good faith in accordance with the required Standard of Conduct:
  - a. Standard of Conduct: Trustees, Officers, and high-level employees are considered fiduciaries of The Scholarship Foundation. These fiduciaries shall discharge their duties in good faith, in a manner the fiduciary reasonably believes to be in the best interests of The Scholarship Foundation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a fiduciary of the corporation and is protected by the business judgment rule.
  - b. Reliance: Trustees, Officers, and high-level employees are entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

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- i. One or more Officers or employees of The Scholarship Foundation who is reasonably believed to be reliable and competent in the matters presented;
  - ii. Counsel, public accountants, or other persons as to matters that are reasonably believed to be within the person's professional or expert competence; or
  - iii. A committee of the Board upon which the Trustee, Officer, or high-level employee does not serve, duly established under Section 317A.241 of the Minnesota Statutes, as to matters within its designated authority, and the committee is reasonably believed to be reliable and competent

A Trustee, Officer, or high-level employee will not be entitled to claim reliance if he or she has actual knowledge concerning the matter in question and that knowledge makes reliance unwarranted;

3. Received no improper personal benefit;
  4. In the case of a criminal proceeding, did not have reasonable cause to believe the conduct was unlawful;
  5. In the case of acts or omissions occurring in the Trustee, Officer, or high-level employee's official capacity, he or she reasonably believed that the conduct was in the best interests of The Scholarship Foundation, or was not opposed to the best interests of The Scholarship Foundation.
- B. No Trustee, Officer, Member, or employee of The Scholarship Foundation shall be personally liable for the acts, debts, liabilities, or obligations of the nonprofit corporation. Likewise, no acts, debts, liabilities, or obligations of a Trustee, Officer, Member, or employee shall be subject to payment by The Scholarship Foundation as a debt or obligation.
- C. Insurance: The Scholarship Foundation shall have the power to acquire nonprofit management liability insurance, Officers & Trustees liability insurance, or other similar liability insurance coverage in order to protect the organization from expenses arising from legal liability.

Section 3.

- A. Any repeal or modification of this Article by the Trustees of The Scholarship Foundation shall not adversely affect any right or protection of a Trustee, Officer, Member, or

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employee of The Scholarship Foundation existing at the time of such repeal or modification.

- B. If the Minnesota Nonprofit Corporation Act, Chapter 317A et. seq. of the Minnesota Statutes, is amended after this Article becomes effective, in order to authorize action further eliminating or limiting the personal liability of a Trustee, Officer, Member, or employee, then the liability of that person shall be eliminated or limited to the fullest extent permitted by Minnesota law, as so amended.

### Article VII – Conflicts of Interest

Conflicts of Interest Policy. The purpose of this conflicts of interest policy is to protect The Scholarship Foundation when The Scholarship Foundation is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Trustee of The Scholarship Foundation or might result in a possible excess benefit transaction.

A. Definitions:

1. Interested person. An interested person, for purposes of this conflicts of interest policy, is any Trustee, Officer, or Member of a committee with Board-delegated powers, who has a direct or indirect financial interest.
2. Financial interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
  - a. An ownership or investment interest in any entity with which The Scholarship Foundation has a transaction or arrangement;
  - b. A compensation arrangement with The Scholarship Foundation or with any entity or individual with which The Scholarship Foundation has a transaction or arrangement; or
  - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which The Scholarship Foundation is negotiating a transaction or arrangement.
3. Compensation. Compensation means anything of value received for services rendered. Compensation includes direct and indirect remuneration as well as gifts or favors that are not de minimus.
4. Conflict of interest. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.



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5. Member of the family. A Member of the family of a Trustee is a spouse, parent, child, spouse of a child, brother, sister, spouse of a brother or sister, grandparent, or grandchild.

B. Policy: Pursuant to Section 317A.255 of the Minnesota Statutes, the Board of Trustees shall not enter into any contract or transaction with (a) one or more of its Trustees or a Member of the family of its Trustee, (b) a Trustee of a related organization, or (c) an organization in or of which one of The Scholarship Foundation's Trustees, or a Member of the family of one of its Trustees, is also a Trustee, Officer, or legal representative, or in some other way has a material financial interest, unless:

1. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person MUST disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Trustees and Members of committees with Board-delegated powers considering the proposed transaction or arrangement.
2. Determining Whether a Conflict of Interest Exists. After disclosure of all material facts regarding the transaction or arrangement and all details about the interested Trustee's financial interest, the remaining Board or committee Members shall decide if a conflict of interest exists.
3. Procedures for Addressing the Conflict of Interest.
  - a. The interested Trustee has the burden of proving that the interested transaction or arrangement is fair and reasonable as compared to other available transactions or arrangements.
  - b. The interested Trustee may be present for discussion to answer questions, but may NOT advocate for the action to be taken, cannot be included to establish a quorum for the meeting, and must leave the room while a vote is taken. The minutes of all actions taken on such matters shall clearly reflect that these requirements have been met.
  - c. If a more advantageous transaction or arrangement is not reasonably possible under circumstances that do not produce a conflict of interest, the Board or committee shall determine by a two-thirds (2/3) vote of the disinterested Trustees whether the interested transaction or arrangement is in The Scholarship Foundation's best interests, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make a decision as to whether to enter into the interested transaction or arrangement.

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4. Violations of the Conflict of Interest Policy.

- a. If the Board or committee has reasonable cause to believe a Trustee has failed to disclose actual or possible conflicts of interest, it shall inform the Trustee of the basis for such belief and afford the Trustee an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the Trustee's response and after making further investigation as warranted by the circumstances, the Board or committee determines the Trustee has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

C. Compensation: This subsection shall govern when The Scholarship Foundation determines compensation.

1. A Trustee does not have a material financial interest in a resolution fixing the compensation of Trustees or fixing the compensation of another Trustee as a Trustee, Officer, Employee, or agent of The Scholarship Foundation, even though the first Trustee is also receiving compensation from The Scholarship Foundation.
2. A Trustee who receives compensation, directly or indirectly, from The Scholarship Foundation for *services* is precluded from voting on matters pertaining to that Trustee's compensation.
3. A voting Member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from The Scholarship Foundation for *services* is precluded from voting on matters pertaining to that Member's compensation.
4. Trustees and voting Members of any committee whose jurisdiction includes compensation matters and who also personally receives compensation, directly or indirectly from The Scholarship Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**Article VIII – Duration & Dissolution**

Section 1. Duration. The duration of The Scholarship Foundation's corporate existence shall be perpetual until dissolution.

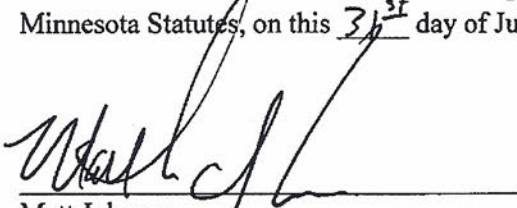



Section 2. Dissolution. Methods and procedures of Dissolution shall be governed by the Minnesota Nonprofit Corporation Act, Sections 317A.701 to 317A.791, Minnesota Statutes.

Section 3. Distribution of Assets. Any and all assets upon dissolution of The Scholarship Foundation shall be distributed first to The Delta Chi Educational Foundation. If The Delta Chi Educational Foundation is no longer in existence, then to another 501(c)(3) tax exempt organization related to The Delta Chi Fraternity as determined by the Board of Trustees.

**Article IX – Incorporators**

IN WITNESS WHEREOF, we, the undersigned, subscribe our names to this document for the purpose of incorporating The Scholarship Foundation and filing its Articles of Incorporation under the laws of the State of Minnesota, specifically Chapters 309 and 317A et. seq. of the Minnesota Statutes, on this 31<sup>st</sup> day of July 2011.

  
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Matt Johnson  
2926 McKinley Dr.  
Woodbury, MN 55125

  
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Sean Barrett  
3543 Rhode Island Ave. S.  
St Louis Park, MN 55426

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED

AUG 01 2011

  
Mark Ritchie  
Secretary of State