

**BY-LAWS
OF
ATLANTA CHARTER MIDDLE SCHOOL, INC.**

ARTICLE I. OFFICES

The principal office of the Atlanta Charter Middle School, Inc. (hereinafter referred to as the "corporation" or "ACMS") shall be located in the State of Georgia.

ARTICLE II. GENERAL PURPOSE

The mission of ACMS is to create a small, focused and diverse middle school that nurtures the whole child through strong parental /community involvement and challenging academics. The school operates under a charter contract which was negotiated between the organizers who created and aid in the operation of the school and the Atlanta Board of Education.

ARTICLE III. GOVERNING BOARD

Section 1. General Powers. The business and affairs of ACMS shall be managed under the direction of the Governing Board. The members shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with ACMS' Articles of Incorporation, these Bylaws, and the laws of this State.

Section 2. Number, Tenure, Vacancies, and Qualifications. The Governing Board shall consist of sixteen (16) members, which number shall be fixed from time to time by the Governing Board. Members shall be natural persons who are 18 years of age or older but need not be residents of the State of Georgia.

Section 3. Structure of the Governing Board. The Governing Board will include 14 (fourteen) voting members and two ex-officio members from the Southeast Atlanta Charter Middle School community. The membership of the Board will include:

- Seven (7) parent or guardian representatives, including 1 parent/guardian with student(s) in the sixth grade, 1 parent/guardian with student(s) in the seventh grade, and 1 parent/guardian with student(s) in the eighth grade. One parent representative must be the PTCA president.
- One (1) Representative from Neighborhood Charter School ("NCS"). The representative must be a parent/guardian with a student in the fifth grade at NCS.
- Three (3) teacher/support professionals (media, counselors) representatives with at least two teachers from grades 6-8 and one teacher from the related arts.
- Three (3) community representatives (1 from the Grant Park Neighborhood Association (GPNA) and 1 from South Atlantans for Neighborhood Development (SAND) and 1 from the East Atlanta Community Association (EACA)). If one

of these organizations ceases to exist, the Governing Board may select another community organization from within the primary attendance zone to appoint a member of the ACMS Governing Board.

- The immediate past-chair of the Governing Board will serve as an ex-officio, non-voting member of the Board.
- The School Principal will serve as an ex-officio, non-voting member of the Board.

Governing Board members, except for the community representatives and the NCS representative, will be elected to two-year terms by the Parent, Teacher, and Community Association (PTCA), with the exception of the times when a one year term is needed to satisfy the one parent representative from each grade requirement. Please see the table below for an overview. One of the parent/guardian representatives must be the current PTCA President.

The NCS representative will be selected by the current ACMS Board in December. This representative will represent NCS until July. At this time, he/she becomes a sixth grade parent representative for the next school year with the term beginning in July and running until the following July.

Governing Board member terms begin the July month that immediately follows the annual meeting at which they were elected.

The Governing Board must have a quorum of eight (8) voting members present in order to conduct business.

The Governing Board shall be subject to the provisions of Open Meetings Law, O.C.G.A. § 50-14-1, and Inspection of Public Records Law. O.C.G.A. § 50-18-70.

Governing Board Structure

Member Group	Number of Reps	Term Length	Elected By
Parents/Guardians	7	2-Years. Periodically a parent will be elected to a one year term to satisfy the one representative for each grade requirement. One of the representatives must be the current PTCA president.	Parent, Teacher, Community Association. Election will take place at the annual meeting of ACMS to be held in April or May.
Immediate Past Chair (ex-officio)	1	1 or 2 years depending on the number of terms the next chair serves.	By virtue of position.
NCS Representative	1	This representative will represent NCS until the first July after his/her election by the Board and then converts to a sixth grade representative	To be determined by organization
Teachers/Support Personnel	3	2-Years	Parent, Teacher, Community Association. Election will take place at the annual meeting of ACMS held in April or May.
Community Representatives	3	1 year. No limit on ability to be reappointed.	To be determined by GPNA, SAND and EACA
Principal (ex-officio)	1	No limit on term.	By virtue of position

Any parent or teacher representative vacancy occurring in the Governing Board may be filled by the affirmative vote of the parent, guardians, and staff of ACMS.

A member elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. Any membership to be filled by reason of an increase in the number of members may be filled by the Governing Board, but only for a term of office continuing until the next annual meeting of members.

Section 4. Annual Meeting. An annual meeting of the members shall be held every April or May (the date, time, and place to be fixed by the Governing Board and notice given to all members, at least 3 weeks in advance), for the purpose of electing board members and for the transaction of such other business as may come before the meeting.

Section 5. Resignation. A member may resign at any time by giving written notice to the chair, Chair-Elect, or Recorder of ACMS. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the officers, and the acceptance of the resignation shall not be necessary to make it effective.

A member who resigns may postpone the effectiveness of his resignation to a future date or to the occurrence of a future event specified in a written tender of resignation. A vacancy shall be deemed to exist at the time of such tender; and the Governing Board may then or thereafter elect or appoint a successor to take office when the resignation, by its terms, becomes effective.

Section 6. Conflict of Interest. Members shall comply with ethics and conflict of interest provisions applicable to members of the Atlanta Board of Education. Governing Board members shall not participate in discussions or votes related to any ACMS business transactions or affairs which would cause an actual, or would give an appearance of, a conflict of interest.

Section 7. Order of Business. The order of business at all meetings shall be set by the Board Chair.

Section 8. Attendance. Board members are not allowed to miss more than two board meetings per year. If they miss more than two meetings, the Board Chair will meet with them to discuss their participation. If they are unable to fulfill their responsibilities, they will be asked to step down.

ARTICLE IV. OFFICERS

Section 1. Number and Qualifications. The officers of ACMS shall consist of a Chair, a Chair-Elect, a Recorder, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected by the Governing Board. The same individual may simultaneously hold more than one office of the corporation except that the Chair may not simultaneously hold another office.

Section 2. Election and Term of Office. The officers of ACMS shall be elected by the Governing Board at its July meeting, except for the office of Chair-Elect, which shall be elected at the January meeting. Each officer shall hold office for a term of one year or until his successor has been duly elected and has qualified or until his earlier death, resignation or removal from office as hereinafter provided. The Chair-Elect shall hold office until the July meeting.

Section 3. Resignation, Removal and Vacancies. In the event that any one of the officers shall resign, such officer shall immediately cease to be an officer. Any such resignation shall be in writing and shall be delivered to the Chair, Chair-Elect, or Recorder. Any officer or agent may be removed by the Governing Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. A two-thirds majority vote of the Board shall be required to remove any officer or agent. Election or appointment of an officer or agent shall not of itself create contract rights. Any vacancy in any office for whatever reason may be filled, for the unexpired portion of the term, by the Governing Board.

Section 4. Chair. The Chair shall be the principal executive officer of ACMS and, subject to the general direction of the Governing Board, shall supervise and control the business and affairs of the corporation. The Chair shall, when present, preside at all meetings of the Governing Board. The Chair or Chair-Elect or both may sign with any other proper officer of the Corporation thereunto authorized by the Governing Board, deeds, mortgages, bonds, contracts, or other instruments which the Governing Board has authorized to be executed, except in cases where the signing and execution thereof is expressly delegated by the Governing Board or by these Bylaws to some other officer or agent of the corporation, or is required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of Chair and such other duties as may be prescribed by the Governing Board from time to time. The Chair shall have authority to institute or defend legal proceedings when the members are deadlocked. An individual may serve as chair for two consecutive one-year terms, provided they are duly re-elected by the Board. An individual may serve as Chair again after either their one year term or two consecutive terms, as long as they are off the Board for a minimum of two years before serving again.

Section 5. Chair-Elect. The Chair-Elect shall: (a) assume duties of Chair in his/her absence; (b) assist Chair in planning meetings; (c) plan the annual meeting and/or board retreat; (d) serve as the Chair of the Governing Board Nominating Committee. The Chair-Elect should be selected from among the Governing Board members who are not in the last year of their term on the Governing Board.

Section 6. The Recorder. The Recorder shall: (a) keep the minutes of the proceedings of the Governing Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) keep a register of the mailing address of each member which shall be furnished to the Recorder by such member; (d) in general perform all duties incident to the office of Recorder and such other duties as from time to time may be assigned to him/her by the Chair or by the Governing Board and;(e) ensure that all board minutes are prepared for board review at each subsequent board meeting and therefore made available to the school community.

Section 7. School Principal. The School Principal shall: (a) manage daily operations of school; (b) direct hiring and supervision of all school teaching and support

staff and otherwise meet all criteria outlined in the School Principal's written job description; (c) ensure that the charter contract goals are being met; (d) report quarterly to the Board on charter compliance and progress toward meeting goals; (e) assist Chair with scheduling and setting agendas for meetings; (f) facilitate and implement Governing Board decisions; (g) act as liaison between school and district office; (h) provide knowledge of federal, state, and district policies/regulations; (i) encourage bottom-up decision-making and participation by all; (j) facilitate and implement school's vision and goals; (k) report to the Governing Board.

Section 8. Duties of all Governing Board Members. All Governing Board members shall:

- Gather and report Liaison Group concerns and ideas to the Board.
- Inform Liaison Group of Board decisions.
- Encourage teamwork within the group.
- Provide leadership in implementing the curriculum/vision/goals.
- Facilitate communication among members.
- Provide oversight of the Principal to include participating in the annual performance and compensation review of the Principal.
- Ensure that the goals of the Charter are met.

Section 9. Role of the Immediate Past Chair. After a new Governing Board Chair is elected each year, the Immediate Past Chair shall continue to perform a vital role for the school. The Immediate Past Chair shall serve as an advisor to the Governing Board. The Immediate Past Chair shall be an ex-officio member of the Governing Board during such time unless they are still a voting member of the Governing Board in which case, in addition to any other role they may accept on the Board, they shall also assist and advise the new Chair until the new Chair-Elect is elected.

ARTICLE V. COMMITTEES

Section 1. Governing Board Committees. The committees of the Governing Board are each chaired by a member of the Governing Board; the Chair is not permitted to chair committees.

The committees and their respective responsibilities are as follows:

Finance. Prepare annual budget for Board approval. Monitor budget compliance, all financial expenditures and revenues and other financial issues throughout the year. Recommend financial policies to the Board. Work with the Fund Development Committee, School Principal and other staff to establish financial goals and policies. Work to secure funding and grants to support ACMS.

Finance chair will, in collaboration with the School Principal, prepare and present a report on current financial performance at each Board meeting.

Personnel. Establish hiring, grievance, transfer, evaluation, and other personnel procedures. Work with the School Principal in implementing these policies and hiring staff.

Parental and Family Involvement. Develop and provide oversight of the parent involvement plan and other parent and family volunteer programs and policies within the school. Analyze volunteer program and make recommendations about how to enhance program. Track and analyze compliance with parent and family contract. Coordinate all sign-in at meetings, work days, and other school functions. Assist families who are struggling to meet their volunteer requirements. Develop and administer two parent and family satisfaction surveys a year and develop and administer two student surveys a year. Review and present findings and recommendations to the Board on survey results. Coordinate school-wide communication – primarily the family courier and the website. Develop the school calendar in conjunction with the PTCA. Work closely with the PTCA in all aspects of the duties associated with the PFI Committee.

Fund Development. Raise funds through an Annual Campaign to supplement the per-pupil funding received from Atlanta Public Schools. Work closely with NCS' Development Team. Ensure that all fundraising at school is vetted through the fund development committee.

At its discretion each year, the Board may vote to create an Executive Committee, which will include at a minimum the Chair, Chair-Elect (when such an officer is in place), Finance Chair, Parent and Family Involvement Chair, Recorder and Principal with the authority to handle urgent or routine issues during the period between regular monthly Board meetings. All meetings and decisions of the Executive Committee must be reported to the Board at the regular meeting and any actions taken may be overruled by simple majority vote of the full Board.

Section 2. Parent Teacher Community Association (PTCA). The PTCA coordinates parent, teacher, and community involvement within the school. The President of the PTCA will serve as a voting member of the Governing Board.

In general, the following duties are assigned to the PTCA:

- Host all school meetings (curriculum night, back to school night, student orientation, etc.) Hosting includes promotion, providing refreshments, assisting with sign-in sheets, etc. PTCA is not responsible for content development unless it is specifically a PTCA event.
- Coordinate advisory class parents
- Coordinate two committee chair meetings each year
- Coordinate all teacher appreciation activities
- Coordinate all PTCA fundraising (box-tops, etc.)
- Coordinate the summer ice-cream social
- Coordinate Grand-parents Day

- In conjunction with PFI develop the school calendar
- Develop and meet the PTCA budget
- Work closely with PFI

The PTCA will define any other specific goals and operating procedures each year and present them to the Governing Board for approval.

Section 3. Schoolwide Subcommittees. The following subcommittees are filled primarily by non-Governing Board members and will report regularly to the Governing Board. School staff, parents/guardians or family, community members, and Governing Board members are encouraged to serve on a committee.

Responsibilities of the standing subcommittees may be reduced or expanded by the Governing Board or upon recommendation of the particular subcommittee concerned and after discussion/approval by the Governing Board. Other committees may be established as the need arises. All subcommittees shall report to the Governing Board.

All subcommittees will set their meeting schedule and dates at the beginning of the school year. Each subcommittee will select a subcommittee leader each year. These leaders serve as the groups' representative to the Governing Board.

The subcommittees are as follows:

Building and Grounds Committee:

Responsibilities include, but are not limited to, maintaining the school building and grounds.

Health and Safety Committee

Responsibilities include but are not limited to:

- Examining health, safety and environmental issues within the ACMS community;
- Planning programming and special events related to health, safety and environmental issues; and
- Making recommendations to the staff and governing board that aim to promote a safer and healthier school community.

Diversity Awareness & Initiatives

Responsibilities include but are not limited to:

- Gathering information and input about school-wide diversity;
- Recommending programs, initiatives or methods to recognize and celebrate and respond to the diversity in the school and community;
- Recommending processes, programs, and plans to improve culturally responsive practices within the school;
- Developing strategies to ensure that all community members receive constant and consistent information on school happenings in a culturally appropriate manner;

- Providing feedback to the entire school population concerning the results of subcommittee meetings;
- Establishing task forces related to this subcommittee as needed.

Discipline

Responsibilities include but are not limited to:

- Developing a staff training plan for a school discipline program;
- Receiving feedback from faculty and staff on effectiveness of program;
- Training and reviewing yearly faculty and staff on adopted discipline program;
- Providing feedback to entire school population concerning results of subcommittee meetings;
- Establishing task forces related to this subcommittee as needed.

Related Arts

Responsibilities include but are not limited to:

- Developing and implementing an arts and music program within the school;
- Leading effort to integrate art and music from cultures represented within the school for recognition, exploration and celebration;
- Providing feedback to entire school population concerning results of subcommittee meetings;
- Establishing task forces related to this subcommittee as needed.

ARTICLE VI. CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Governing Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of ACMS, and such authority may be general or may be confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of ACMS, and no evidence of indebtedness shall be issued in its name, unless authorized by a resolution of the Governing Board. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of ACMS shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall be determined from time to time by resolution of the Governing Board.

Section 4. Deposits. All funds of ACMS not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Governing Board may select.

ARTICLE VII. FISCAL YEAR

The fiscal year of ACMS shall end on the thirteenth day of June of each year, in keeping with the APS fiscal year.

ARTICLE VIII. CORPORATE SEAL

The Governing Board shall provide a corporate seal which shall be circular in form and have inscribed thereon the name of ACMS, the state of incorporation, the words "Not For Profit," and the words "Corporate Seal." The seal of the corporation may be affixed to any document executed by ACMS, but the absence of the seal shall not impair the validity of the document or any action taken in pursuance thereof or in reliance thereon.

ARTICLE IX. WAIVER OF NOTICE

Whenever any notice is required to be given to any member of ACMS under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Georgia Nonprofit Corporation Code, a waiver thereof may be made, whether before or after the times stated therein, in writing signed by the person or persons entitled to such notice and delivered to the corporation for inclusion in the minutes or corporate records. Such written waiver shall be deemed equivalent to the giving of such notice.

ARTICLE X. AMENDMENTS

Section 1. Power to Amend Bylaws. The Governing Board shall have the power to alter, amend or repeal these Bylaws or adopt new bylaws, but any bylaws adopted by the Governing Board must be consistent with the Articles of Incorporation of ACMS and the laws of the State of Georgia.

Section 2. Conditions. Action by the Governing Board with respect to bylaws shall be taken by an affirmative vote of a majority of all members then holding office.

ARTICLE XI. EMERGENCY BYLAWS

The Emergency Bylaws provided in this Article X shall be operative during any emergency in the conduct of the operations and affairs of ACMS resulting from any catastrophic event because of which a quorum of the corporation's members cannot be readily assembled, notwithstanding any different provision in the preceding Articles of these Bylaws or in the Articles of Incorporation of ACMS or in the Georgia Nonprofit Corporation Code. To the extent not inconsistent with the provisions of this Article, the Bylaws provided in the preceding Articles shall remain in effect during such emergency and upon its termination the Emergency Bylaws shall cease to be operative.

During any such emergency:

(a) A meeting of the Governing Board may be called by any officer or member of ACMS. Notice of the place, date and hour of the meeting shall be given by the person calling the meeting to such of the members as it may be feasible to reach by any available means of communication. Such notice shall be given at such time in advance of the meeting as circumstances permit in the judgment of the person calling the meeting.

(b) At any such meeting of the Governing Board a quorum shall consist of one member and any other members available.

(c) Either before or during any such emergency, the Governing Board may provide and from time to time modify lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

These Emergency Bylaws shall be subject to repeal or change by further action of the Governing Board, but no officer, member, or employee acting in accordance with these Emergency Bylaws shall be liable for any corporate action taken in good faith. Any amendment of these Emergency Bylaws may make any further or different provision that may be practical and necessary for the circumstances of the emergency.

ARTICLE XII. INDEMNIFICATION

Section 1. Actions Against Officers and Members. Pursuant to the provisions set forth in Sections 3 and 4 of this Article, ACMS shall indemnify and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a member, officer, employee or agent of the corporation, or is or was serving at the request of ACMS, as a member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against reasonable expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in a manner he reasonably believed in good faith to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, that the corporation shall not indemnify a member, officer, employee or agent for any liability incurred in a proceeding in which the person is adjudged liable to the corporation or is subjected to injunctive relief in favor of the corporation: (a) for any appropriation, in violation of his duties, of any business opportunity of the corporation; (b) for acts or omissions which involve intentional misconduct or a knowing violation of law; (c) for the types of liability set forth in Section 14-2-831 of the Official Code of Georgia Annotated; or (d) for any transaction from which he received an improper personal benefit. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of contendere or its equivalent, shall not in itself create a presumption that the person did not act in a manner he reasonably believed to be in or not opposed to the best interests of the nonprofit corporation, nor, with respect to any criminal action or proceeding, that the

person did not have reasonable cause to believe that his conduct was lawful.

Section 2. Actions By Or In The Right Of The Corporation. Pursuant to the provisions set forth in Sections 3 and 4 of this Article, ACMS shall indemnify and hold harmless any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit, by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a member, officer, employee or agent of the corporation, or is or was serving at the request of ACMS, as a member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; provided, however, that the corporation shall not indemnify a member, officer, employee or agent for any liability incurred in a proceeding in which the person is adjudged liable to the corporation or is subjected to injunctive relief in favor of the corporation: (a) for any appropriation, in violation of his duties, of any business opportunity of the corporation; (b) for acts or omissions which involve intentional misconduct or a knowing violation of law; (c) for the types of liability set forth in Section 14-2-831 of the Official Code of Georgia Annotated; or (d) for any transaction from which he received an improper personal benefit.

Section 3. Expenses. To the extent that a member, officer, employee or agent of ACMS has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. Determination And Authorization. Except as provided in Section 3 of this Article, and except as may be ordered by a court, any indemnification under Sections 1 and 2 of this Article shall be made by ACMS only as authorized in the specific case upon a determination that indemnification of the member, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2. Such determination shall be made (1) by the Governing Board by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, by majority vote of a committee duly designated by the Governing Board, consisting solely of two or more members not at the time parties to the action, suit or proceeding, or (3) by special legal counsel employed by the corporation for that purpose. Authorization of indemnification or an obligation to indemnify, and evaluation as to reasonableness of expenses, shall be made in the same manner as the determination that indemnification is permissible.

Section 5. Prepayment. Expenses incurred in defending or prosecuting a civil or criminal action, suit or proceeding may be paid by ACMS in advance of the final disposition of such action, suit or proceeding as authorized by the Governing Board if: (a) the member, officer, employee or agent furnishes the corporation a written affirmation of

his good faith belief that his conduct merits indemnification under Section 1 or Section 2 of this Article; and (b) the member, officer, employee or agent furnishes the corporation a written undertaking, executed personally on his behalf, to repay advances if it is ultimately determined that he is not entitled to indemnification pursuant to the laws of this State.

Section 6. Rights. The indemnification provided by this Article shall not be deemed exclusive of any other rights, with respect to indemnification or otherwise, to which those seeking indemnification may be entitled under any bylaw or resolution adopted or approved by a majority of the full Governing Board, both as to an action by a member, officer, employee or agent in his official capacity, and as to an action in another capacity while holding such office or position, and shall continue as to a person who has ceased to be a member, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. ACMS may purchase and maintain insurance on behalf of any person who is or was a member, officer, employee or agent of the corporation, or is or was serving at the request of ACMS as a member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or incurred by him in that capacity, or arising from his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article.

Section 8. Mergers/Consolidations. For purposes of Sections 1 and 2 of this Article, reference to "the corporation" or "ACMS" shall include, in addition to the surviving or new corporation, any merging or consolidating corporation (including any merging or consolidating corporation of a merging or consolidating corporation) which is merged or consolidated with ACMS so that any person who is or was a member, officer, employee or agent of such merging or consolidating corporation, or is or was serving at the request of such merging or consolidating corporation as a member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provision of Sections 1 and 2 of this Article with respect to the corporation as he would if he had served the corporation in the same capacity. However, no indemnification under Sections 1 and 2 of this Article shall be mandatory without the approval of such indemnification by the Governing Board of ACMS in the manner provided in Section 4 of this Article.

ARTICLE XIII. PAYMENTS TO MEMBERS AND OFFICERS

No part of the net income or profit of ACMS, if any, shall be distributed to the members or officers.