




THE FLORIDA STATE UNIVERSITY
OFFICE OF UNIVERSITY ADVANCEMENT

MEMORANDUM

TO: President Eric J. Barron

FROM: Thomas W. Jennings 

DATE: February 15, 2011

SUBJECT: Notification of Intent to Establish Direct Support Organization (DSO)
Action Item

The purpose of this memorandum is to inform The Florida State University Board of Trustees of the intent to establish a direct support organization which will receive, hold, invest, and administer real estate for the benefit of The Florida State University.

The Florida State University Foundation seeks to create a direct support organization pursuant to Florida Statute 1004.28 for the purpose of receiving contributions of real estate, to hold, manage, lease, mortgage, develop, administer or sell in order to contribute or distribute all or a portion of the net proceeds from such activity to The Florida State University, The Florida State University Foundation, or such other entity as the Board may determine appropriate. The new entity will also serve to shield The Florida State University Foundation's assets, to a greater extent, from any claims resulting from incidents occurring on real property currently owned by The Florida State University Foundation. The Florida State University Board of Trustees and The Florida State University assume no financial liability for this DSO.

Supporting Documentation Included: Draft of Articles of Incorporation
Draft of Bylaws

Contact: Jerry Ganz, CFO, The Florida State University Foundation, (850) 644-0766

**ARTICLES OF INCORPORATION OF
THE FLORIDA STATE UNIVERSITY REAL ESTATE FOUNDATION,
INCORPORATED**

ARTICLE I

Name

The name of this corporation is The Florida State University Real Estate Foundation, Incorporated (hereinafter "Foundation") and its principal place of business and mailing address shall be located at 2010 Levy Ave Suite 300, Tallahassee, FL 32306-2739.

ARTICLE II

Enabling Law

This corporation is organized pursuant to the Florida Not for Profit Corporation Act.

ARTICLE III

Purposes

Section 1. This Corporation is organized and shall be operated exclusively for charitable and educational purposes and not for pecuniary profit. The Corporation shall be operated exclusively for the benefit of The Florida State University. The Corporation is a university direct-support organization within the definition of Section 1004.28, Florida Statutes, and as such is organized and operated exclusively to receive, hold, invest, and administer property for the benefit of The Florida State University. All references in these Articles to The Florida State University shall be deemed to include any successor university at the same location, regardless of name.

Section 2. The Florida State University Real Estate Foundation, Incorporated shall exist to provide a direct support organization that:

- A. Receives contributions of real estate, to hold, manage, lease, mortgage, develop, administer or sell in order to contribute or distribute all or a portion of the net proceeds from such activity to The Florida State University, The Florida State University Foundation, or such other entity as the Board may determine appropriate.
- B. Makes expenditures, grants, contributions or distributions to or for the benefit of The Florida State University, directly and/or through The Florida State University Foundation.

- C. To do all other acts and things and carry on and conduct all other activities necessary, suitable, convenient, useful or expedient in connection with or incidental to the accomplishment of any of the purposes set forth herein to the fullest extent permitted by Chapter 617, Florida statutes, and the laws of the State of Florida, subject to the restrictions contained in Section 3 of this Article set forth below.

Section 3. Restrictions:

- A. Notwithstanding any other provisions of these articles, this Corporation will not conduct any activity not permitted to be carried on by the charter granted by The Florida State University, by Section 1004.28, Florida Statutes, and by a corporation organized and existing under Chapter 617, Florida Statutes.
- B. All the assets and earnings of the Corporation shall be used exclusively for the exempt purposes set forth herein

ARTICLE IV

Powers and Limitations on Powers

Section 1. This Corporation shall have all the powers and authority as are now or may hereafter be granted to corporations not for profit under Chapter 617, Florida Statutes or any other laws of the State of Florida. In addition to powers provided by Chapter 617, Florida Statutes, the Corporation shall have the following powers:

- A. To purchase, lease, accept as a gift, bequest or devise, or otherwise acquire any real or personal property to be held, administered or used in any way whatsoever for the benefit of the corporation consistent with its purpose expressed above; and to that end, the corporation shall have full power and authority to hold, own, control, handle, sell, lease, pledge, mortgage, exchange, transfer and administer or operate any such real or personal property, including the operation of any business connected with or incident to the ownership or control of such property upon such terms, prices and conditions as it deems appropriate;
- B. To distribute the net earnings, gains and assets of the corporation to the Florida State University Foundation, Inc., in a manner consistent with these Articles; provided, however, no part of the net earnings, gains or assets of the corporation shall inure to the benefit of or be distributable to its directors, officers, other private individuals, or organizations organized and operated for a profit with the exception that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as hereinabove stated.

- C. To engage in any lawful act or activity for which corporations may be organized under Chapter 617, Florida Statutes, providing such activity is consistent with Section 501(c)(3) of the Internal Revenue Code of 1986.

Section 2. No part of the net earnings shall inure to the benefit of any individual, and no substantial part of its activities shall be for the carrying out of a program of propaganda or otherwise attempting to influence legislation. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws) or by any organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws). The Corporation shall have no capital stock, pay no dividends, distribute no part of the income to its members, directors, or officers, and the private property of the subscribers, members, directors, and officers shall not be liable for the debts of the corporation. The Corporation shall not have the power to convey, lease, pledge, or otherwise encumber assets of the State of Florida.

Section 3. The Florida State University Board of Trustees and The Florida State University assume no financial liability for the Corporation.

ARTICLE V

Capital Stock

The Foundation shall have no capital stock, and no Trustee, officer or employee shall have any right or title to any asset of the Foundation.

ARTICLE VI

Incorporators

The name and residence of each incorporator is as follows:

NAME

ADDRESS

Beth Azor

Thomas W. Jennings

ARTICLE VII

Directors and Officers

Section 1. The affairs of the Foundation shall be managed by the Board of Directors or by its Executive Committee as authorized by the Bylaws.

Section 2. The Board of Directors shall consist of not less than three real persons who shall be appointed as prescribed in the Bylaws. In accordance with Section 1004.28, Florida Statutes, one member must be the Florida State University President or his designee and one member must be the Chair of the Florida State University Board of Trustees or his designee.

Section 3. The Foundation Board shall have the following officers who shall be selected by the Board of Directors:

1. Chairman
2. Vice Chairman
3. Secretary
4. Treasurer

The Board of Directors may create additional offices and prescribe the duties thereof, and elect persons to fill such offices. The duties and responsibilities of said officers shall be published in the Bylaws.

ARTICLE VIII

Location of Registered Office and Registered Agent

The address of the initial registered office of this corporation is the Office of the General Counsel, The Florida State University, Suite 424 - Westcott Building, 222 S. Copeland Avenue, Tallahassee, Florida 32306-1400, and the name of this corporation's initial registered agent at such address is Betty Steffens, General Counsel. Copies of all papers should also be sent to President Eric Barron, The Florida State University, Suite 211 - Westcott, 222 S. Copeland Avenue, Tallahassee, FL 32306-1470

ARTICLE IX

Bylaws

The Bylaws of the Foundation shall be made, altered, or rescinded by the Board of Directors pursuant to being submitted by the President of The Florida State University to the Board of Trustees for approval. The Bylaws shall operate to carry out the purposes of the Foundation and to facilitate the operational procedures thereof. A vote of the majority of the members of the Board of Directors shall be required to effect any alteration, change or amendment.

ARTICLE X

Indebtness

The highest amount of indebtedness or liability to which the Foundation may at any time subject itself shall be at no time in the excess of the total assets held by the Foundation.

ARTICLE XI

Authority to Bind The Foundation

The Chairman, President and other officers of the Foundation shall be empowered to act for the Foundation upon the authorization of the Board of Directors as stated in the Bylaws.

ARTICLE XII

Amendment

The Articles of Incorporation may be amended by a majority vote of the Board of Directors pursuant to being submitted by the President of The Florida State University to the Board of Trustees for approval. Such action shall be effective upon filing same with the Secretary of State of the State of Florida or as is otherwise provided by law.

ARTICLE XIII

Term of Existence

This corporation shall commence corporate existence upon the date of signing these articles of incorporation by the incorporators and shall have perpetual existence unless it shall be dissolved pursuant to the laws of the State of Florida and these Articles of Incorporation.

ARTICLE XIV

Dissolution

Upon dissolution of the Foundation, all of its assets remaining after payment of all costs and expenses of such dissolution shall be disbursed to The Florida State University Foundation, Incorporated, provided that it is exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws), or in the event that such organization is not in existence or The Florida State University Foundation, Incorporated, is not exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any subsequent revenue laws), the remaining assets of the corporation shall be distributed to such scientific, educational and charitable organizations ruled exempt by the Internal Revenue Service under Section 501(c)(3) and Section 170(c)(2)

BYLAWS

The Florida State University Real Estate Foundation, Inc. (A Not-For-Profit Corporation)

ARTICLE I

Board of Directors

Section 1. Membership. The Board of Directors shall consist of (BLANK) voting members. The members of the Board of Directors are:

- a. The Chair of The Florida State University Board of Trustees or designee;
- b. The President of The Florida State University or designee;
- c. (BLANK)

Section 2. Term of Office.

The Chair of The Florida State University Board of Trustees or designee, the President of the University or designee, (BLANK) shall serve as Directors for such time as each respective official continues to serve in that position.

Section 3. Powers and Duties of the Board of Directors.

- a. The Florida State University Real Estate Foundation, Incorporated (hereinafter "Foundation") shall exist to receive, own, manage, lease and sell real property as set forth in its Articles of Incorporation.
- b. The property, affairs, activities, and concerns of the Foundation shall be vested in the Board of Directors. All management functions shall be exercised by the Board of Directors, subject to delegation by the Board to the officers and the Executive Committee. The Board of Directors shall approve budgets, if necessary, on an annual basis. These budgets shall be approved by the University President and recommended by the Chair to the Board of Trustees for review. The President of The Florida State University shall have authority and responsibility to monitor and control the use of the University's resources and name, shall review and approve expenditure plans and shall monitor the organization for compliance with federal and state laws. No contributions of funds or supplements to support intercollegiate athletics shall be received by the Foundation without approval of the President of The Florida State University.
- c. The Foundation shall not give, directly or indirectly, any gift to a political committee or committee of continuous existence as defined in Section 106.011, F.S., for any purpose other than those certified by a majority roll call vote of the Foundation's governing board at a regularly scheduled meeting as being directly related to the educational mission of the University.

- d. The Foundation shall comply with all regulations adopted by The Florida State University Board of Trustees with regard to the operation of direct-support organizations in accordance with Section 1004.28, Florida Statutes.

Section 4. Meetings.

- a. A regular annual meeting of the Board of Directors shall be held at a date, time, and place set by the Board of Directors. Notice of the meeting, signed by the Secretary, shall be mailed, by the postal service or electronically, to the last recorded address of each Director at least ten days before the time appointed for the meeting.
- b. Special meetings of the Board may be called by the Chair of the Foundation or the President of the University. Notice of any special meeting of the Board of Directors shall be given at least ten days prior thereto by personal delivery or sent by U.S. Mail to each Director at the address as shown by the records of the Foundation.
- c. Emergency meetings may be called by the Chair of the Foundation, and the Board may exercise all emergency powers permitted in accordance with Chapter 617, Florida Statutes. Whenever an emergency exists, a majority of the voting Board members present at an emergency meeting shall determine any emergency actions to be taken.
- d. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Business to be transacted at the meeting need not be specified in the notice or waiver, unless specifically required by law or by these Bylaws.

Section 5. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, a majority of those present may adjourn the meeting from time-to-time without further notice.

Section 6. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

Section 7. Vacancies. Whenever any vacancy occurs on the Board of Directors by death, resignation or otherwise, it shall be filled without undue delay. In the case of a vacancy in the positions held by the Chair of The Florida State University Board of Trustees or designee, the President of The Florida State University or designee, (BLANK) their successor shall assume that position as Director upon taking the underlying position.

Section 8. Order of Business. The order of business shall be as follows at all meetings of the Board of Directors and Executive Committee:

- (a) Calling of the roll.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of the minutes.
- (d) Receiving communications.
- (e) Election of the Chair of the Foundation, if necessary.

- (f) Reports of officers.
- (g) Reports of committees.
- (h) Unfinished business.
- (i) New business.

Any question as to the priority of business shall be decided by the Chair without debate. This order of business may be altered or suspended at any meeting by a majority vote of the members present.

ARTICLE II

Members

Section 1. Qualifications. The Board of Directors shall have full discretionary power to set qualifications for members in addition to those set out in the Articles of Incorporation, and establish the voting and other rights and privileges of members.

Section 2. Removal. With the exception of the Chair of The Florida State University Board of Trustees or designee and the President of The Florida State University or designee, a Director may be removed from the Board of Directors upon the recommendation of the Board of Directors with the concurrence of the President of The Florida State University and Chair of The Florida State University Board of Trustees, when it is determined that the best interest of the Foundation will be served thereby. Such member shall be replaced as soon as practicable in the same manner as initially appointed.

ARTICLE III

Officers

Section 1. Number. The officers of the Foundation shall be a Chair, a Vice Chair, a Secretary, and Treasurer.

Section 2. Appointment. The officers shall be elected by the Board of Directors at its first meeting and, thereafter at its annual meeting, shall serve for a term of (BLANK), and may be reappointed. However, the Chair of the Foundation shall be selected by the Board of Directors upon the recommendation and approval of the President of The Florida State University and shall report to the President of the Florida State University or a designee reporting directly to the President.

Section 3. Duties of Officers. The duties and powers of the officers of the Foundation shall be as follows:

- a. **Chair.** The Chair of the Foundation (who shall be a Director) shall be the presiding officer of the Foundation and shall exercise general supervision and oversight of the business of the Foundation. The Chair appoints members of committees, and sees that orders and resolutions of the Board of Directors are executed. The Chair is a member ex officio, with the right to vote, on all committees. The Chair of the Foundation shall discharge such other duties as may be assigned to him by the Board of Directors.

- b. **Vice Chair.** The Vice Chair (who shall be a Director) shall assist the Chair in carrying out the programs of the Foundation. In the event of the death, prolonged absence or disability of the Chair of the Foundation, the Board shall appoint the Vice Chair as Acting Chair, and, as such, the Acting Chair shall have all the authority and duties vested in the Chair.
- c. **Secretary.** The Secretary shall keep full and accurate minutes of all meetings of the Board of Directors and Executive Committee in a book provided for that purpose and shall transmit all notices required by the Bylaws of the Foundation. The Secretary shall have custody of the corporate seal of the Foundation. The Secretary may sign documents with the Chair in the name of the Foundation and, when required, shall affix thereto the seal of the Foundation. The Secretary shall have charge of all official records of the Foundation which shall be at all reasonable times open to the inspection of any Director, and shall in general perform all duties incident to the management of the Office of Secretary for the Board of Directors. In the absence or unavailability of the Secretary to attest to the execution of the documents referenced above, the Treasurer of the Foundation is designated to attest to the authority of the officer/director and, when required, to affix thereto the seal of the Foundation.
- d. **Treasurer.** The Treasurer shall render to the Board of Directors an account and statement of all financial transactions, if any, at the annual meeting of the Board and at other times as the Board may determine. The Treasurer will prepare an annual budget, if necessary, for the Foundation for approval by the Board of Directors. The Treasurer shall cause an annual audit to be made as required by statute and regulation.

Section 4. Bond. The officers of the Foundation shall, if required by the Board of Directors, give to the Foundation such security for the faithful discharge of their duties as the Board may direct.

Section 5. Checks. Checks or drafts on the funds of the Foundation, if any, shall be signed by any two of the officers or Directors authorized to do so by the Board of Directors. However, checks for \$5,000 or less may be signed by the Treasurer or any one of the officers or Directors authorized to do so by the Board of Directors. The payee shall not, in any instance, be a signatory on his/her check.

Section 6. Audit. The Chair of the Foundation shall arrange for the auditing, at least annually, of the books, records, and accounts of the Foundation by an independent certified public accountant. The annual audit and management letter shall be forwarded by the President of The Florida State University to The Florida State University Board of Trustees for review and oversight no later than the end of the fourth month following the close of the Foundation 's fiscal year. The annual audit shall be conducted in accordance with The Florida State University Board of Trustee's Regulation 6C2-2.025.

Section 7. Vacancies. Vacancies in any office shall be filled by the President of The Florida State University based on the recommendation of the Board of Directors, made at its regular annual meeting or at a meeting specifically called for that purpose. However, in the case of a vacancy in the Office of Chair of the Foundation of the Foundation, that officer shall

be selected by the Board of Directors based upon the recommendation and approval of the President of The Florida State University.

Section 8. Compensation of Officers. The officers shall receive no special salary or compensation for being officers of the Foundation other than their usual salaries as employees of The Florida State University, if so employed.

Section 9. Employees. Employees of the Foundation shall not be considered to be employees of The Florida State University Board of Trustees or the State of Florida by virtue of their employment by the Foundation. The Foundation shall provide equal employment opportunity to all persons regardless of race, creed, color, sex, religion, national origin, age, disability, veterans' or marital status, sexual orientation, gender, identity, gender expression, or any other protected group status.

Section 10. Code of Ethics. The Board shall adopt a Code of Ethics. Members of the Board who are employed by The Florida State University or any other state agency are also subject to the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes.

Article IV

Committees

Section 1. Committees. The Chair of the Board shall have the power to establish committees and appoint members, subject to the approval of the Board. Standing committees are charged specifically with the immediate care and supervision of the subject matters assigned to them. The Chair of the Board of Trustees, or in the Chair's absence the Vice Chair of the Board, shall be ex officio members of all standing committees and subcommittees.

Section 2. Notice and Records. The Secretary of the Board shall notice meetings of standing, special, and ad hoc Committees in the same manner as for meetings of the Board of Directors. The Secretary shall not maintain minutes of these meetings, but will ensure that the meeting is audiotaped and kept publicly available.

ARTICLE V

Fiscal Year

The fiscal year of the Foundation shall commence on July 1 of each year and end on June 30 of the following year.

ARTICLE VI

Indemnification, Insurance and Bonds

Section 1. Indemnification. Pursuant to Sections 607.0850 and 617.0831, Florida Statutes, 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 Foundation), by reason of the fact that he is or was a Director or Officer of the Foundation shall be

indemnified against 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, including any appeal thereof, but only if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Foundation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 2. Authorization of Indemnification. Any indemnification hereunder shall be made by the Foundation only upon a determination that indemnification of the Director or Officer is proper in a specific case because he has met the standard of conduct set forth in Section 1 above. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding or, if such quorum is not obtainable, by a majority vote of a committee duly designated by the Board of Directors (in which Directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the action, suit, or proceeding or by a committee comprised of individuals who were not parties to such action, suit, or proceeding where such committee is selected by a majority vote of the full Board of Directors (in which Directors who are parties may participate).

Section 3. Insurance.

- a. The Foundation shall obtain and maintain throughout its existence reasonable commercially available directors and officers liability insurance in the amount of no less than \$1,000,000, which shall provide coverage to all officers, Board members, and employees of the Foundation.
- b. The Foundation shall obtain and maintain throughout its existence reasonable commercially available general liability insurance for the Foundation and its officers, Board members, and employees.

Section 4. Bonding. The Foundation shall obtain and maintain throughout its existence reasonable commercially available bonding for all appropriate officers, Board members, and employees of the Foundation. The Board of Directors shall decide by majority vote which officers, Board members, and employees should be bonded.

ARTICLE VII

Amendments

The Bylaws of this Foundation may be altered, amended, or repealed by a two-thirds vote of the current Directors of the Foundation at any duly organized meeting, subject to final approval by the President of The Florida State University and The Florida State University Board of Trustees. Upon statutory enactments, amendments to existing laws or promulgation of rules affecting University direct support organizations by The Florida State University Board of Trustees or the University, the Board of Directors shall meet and alter, amend, or repeal any of the Bylaws to remain in conformity with such changes. A special meeting may be held for such purposes.

CERTIFICATION OF ADOPTION

I hereby certify that at a regular meeting of the Board of Directors of The Florida State University Real Estate Foundation, Inc., that the foregoing Bylaws were duly adopted pursuant to Section 617.0206, Florida Statutes, as approved by the required majority of the members of the Board of Directors of the Foundation on this ____ day of _____ 2011.

(NAME), Chair

Date

DRAFT