

TO: The Florida State University Board of Trustees  
FROM: Tom Jennings, Vice President, University Advancement  
SUBJECT: Naming Approval Request  
DATE: June 2, 2011

The item below has received positive endorsement from the College of Business and President Barron. I respectfully submit this to the Board for final approval. The request is to name the Marvin A. "Mitch" Mitchell, Sr. Behavioral Laboratory in the College of Business.

Justification: In March 2011, I wrote to President Barron to seek an exception to our naming policy, under Section 1.5 of the policy adopted by the Board of Trustees on 9/24/2010, which allows the President to make exceptions to the policy, with final approval from the BOT. Currently, the University policy requires BOT approval on the naming of all buildings and portions of buildings.

FSU alumnus Andy Mitchell ('74, Education) offered to give \$50,000 to the College of Business to name the Marvin A. "Mitch" Mitchell, Sr. Behavioral Laboratory after his 92-year old father, a WW II veteran. The \$50,000 gift will allow the College of Business to acquire state-of-the-art technology that will permit faculty and students to conduct behavioral research and train on the use of mobile technology in a wide array of business applications. Given Mr. Mitchell Sr.'s age and health, Andy Mitchell wanted to honor his father as soon as possible. The timing of the gift was also important in being able to accomplish the work prior to the start of the 2011-12 academic year. President Barron gave his approval on March 11, 2011.

This request is for the Board of Trustees to confirm President Barron's approval of naming the space described above.

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of THE FLORIDA STATE UNIVERSITY REAL ESTATE FOUNDATION, INCORPORATED, a Florida corporation, filed on May 9, 2011, as shown by the records of this office.

The document number of this corporation is N11000004518.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capital, this the  
Ninth day of May, 2011



CR2EO22 (01-07)

  
Kurt S. Browning  
Secretary of State

FILED

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**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 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. With the approval of The Florida State University Board of Trustees, the Corporation shall be 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 incidental 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 Corporation shall have no capital stock, and no Trustee, officer or employee shall have any right or title to any asset of the Corporation.

## ARTICLE VI

### Incorporators

The name and address of each incorporator is as follows:

<u>NAME</u>	<u>ADDRESS</u>
Beth Azor	The Florida State University Real Estate Foundation 2010 Levy Ave, Suite 300 Tallahassee, FL 32306-2739
Thomas W. Jennings	The Florida State University Real Estate Foundation 2010 Levy Ave, Suite 300 Tallahassee, FL 32306-2739

## ARTICLE VII

### Directors and Officers

Section 1. The affairs of the Corporation shall be managed by the Board of Directors as authorized by the Bylaws.

Section 2. The Board of Directors shall consist of not less than seven 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/her designee and one member must be the Chair of The Florida State University Board of Trustees or his/her designee.

Section 3. The 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 Street, 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 Street, Tallahassee, FL 32306-1470

## ARTICLE IX

### Bylaws

The Bylaws of the Corporation shall be adopted at the first meeting of the Board of Directors and may be altered, amended, or repealed by a majority vote of the Board of Directors prior to being submitted by the President of The Florida State University to the University's Board of Trustees for approval. The Bylaws shall operate to carry out the purposes of the Corporation and to facilitate the operational procedures thereof. A vote of the majority of the

## **ARTICLE X**

### **Indebtness**

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

## **ARTICLE XI**

### **Authority to Bind**

The Chairman, President and other officers of the Corporation shall be empowered to act for the Corporation 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 filing 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 Corporation, 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 the Internal Revenue Code, or in the event that such organization is not in existence or The Florida State University Foundation, Incorporated, is not exempt under the Internal Revenue Code, the remaining assets of the corporation shall be distributed to The Florida State University for such educational, scientific, and/or creative purposes permitted under the Internal Revenue Code, as may be recommended by the University President, and approved by The Florida State University

Board of Trustees. None of the assets will be distributed to any members, directors, or officers of this corporation.

Betty Seffens 4-29-11  
Registered Agent Date

W. W. Ross 4/29/2011  
Incorporator Date

Paul Olyn 4/29/2011  
Incorporator Date

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STONE MARY OF STELLA  
TALLAHASSEE, FLORIDA

Having been appointed Registered Agent for the above corporation, the undersigned hereby accepts such appointment. The undersigned certifies that the undersigned is familiar with, and accepts, the obligations of that position as provided by Florida Statutes.

Betty Seffens

## **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 a minimum of seven (7) 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. A representative of The Florida State University Foundation, preferably with experience in the real estate field ;
- d. A representative of the Seminole Boosters, preferably with experience in the real estate field
- e. A representative of The Florida State University Alumni Association, preferably with experience in the real estate field
- f. Two at-large members who possess significant expertise in the real estate field

**Section 2. Term of Office.**

The Chair of The Florida State University Board of Trustees or designee and the President of The Florida State University or designee shall serve as Directors for such time as each respective official continues to serve in his/her position. The term for the other Directors shall be for a period of three (3) years with an option of a three (3) year renewal.

**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 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 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, the Executive Committee and other

appropriate staff. 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 or the President of The Florida State University or designee, their successor shall assume that position as Director upon taking the underlying position or being designated by the holder of such position.

## **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 two (2) years, and may be reappointed. However, the Chair of the Foundation shall be selected by the Board of Directors with prior 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 (electronically) by any two of the officers or Directors authorized to do so by the Board of Directors. All disbursements from Foundation funds shall be made in accordance with the approval matrix prior to issuance.

**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 majority 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

## Real Property: Procedures for the Administration of Gifts of Real Property

FSU welcomes and actively solicits gifts of real property. In addition, in furtherance of its mission, FSU Foundation may acquire interests in real property by non-gift means for use by FSU.

The Foundation markets gifts of real property unless the university intends to retain the property for active use. Proceeds from real property sales are used for the charitable purposes specified by donors.

The Foundation Board of Trustees determines acceptance, management and liquidation of real property according to the following policy: The Foundation makes inquiries prior to the acceptance of a real property gift concerning its condition, including valuation, marketability, carrying costs and environmental risks. Real property gifts and allied transactions require MAI or SRA appraisals, title work, environmental reports, and other procedures typical of real property transactions.

The appraisals and environmental reports are of particular importance to donors and the Foundation. They provide measures of protection to both parties from claims by third parties, including the Internal Revenue Service or government environmental agencies. For example, the IRS requires “qualified appraisals” before donors are allowed to claim income tax deductions for charitable contributions. Also, federal and state environmental statutes can impose retroactive, joint and several liability upon donors (or their estates) or the Foundation regardless of fault. This liability can be limited by due diligence exercised by both donors and the Foundation.

The following procedures are to be followed in the acquisition, use, management and sale of real property. Any questions about the procedures should be directed to the Foundation’s Chief Financial Officer. The procedures govern the acceptance of real property, special acquisitions, and the management and sale of real property.

Following a review process that includes relevant FSU Foundation staff and, at times, other consultants, the sole authority for the acceptance of any real estate gift rests with the FSU Foundation’s Real Estate Committee. Except as provided for in Paragraph J, College or Unit Agreement infra, the donor and/or university unit serving as cognizant beneficiary or purchaser of each real property must agree, in writing and prior to consideration by the Real Estate Committee, to pay all expenses and carrying costs of the property. These include, but are not limited to legal fees, taxes, mortgage and interest payments, insurance, utilities, and other expenses until the property is liquidated. The donor’s or university unit’s agreements to this arrangement shall be sufficient to authorize the Foundation to disburse funds for the expenses from the beneficiary fund, or, if that fund has insufficient cash assets, from another fund of the unit designated by its dean or chair. FSU Foundation also may agree to carry such costs and will recapture any expenditures from sale proceeds.

## **Minimum Standards for Real Property**

Acceptance of any real property is subject to the following minimum standards:

- A. Completion of the Real Estate General Review – Parts I and II. The review may be found in the Exhibit section, page 55, of this policy document.
- B. Review and recommendation by FSU Foundation’s Chief Financial Officer. The completed reviews must be submitted by an FSU Foundation fundraiser, or a fundraiser’s designee, to the Chief Financial Officer at least three weeks prior to consideration by the Real Estate Committee.
- C. A Phase I Environmental Report, prepared at the prospective donor’s expense, except where the proposed gift is residential property. The Real Estate Committee may accept or reject this report and request a Phase II or III Environmental Report. These also are subject to approval by the committee.
- D. Proof of clear chain of title.
- E. A plat rendering that includes adjacent properties. The Real Estate Committee may also require a survey.
- F. An MAI or SRA appraisal, whichever is appropriate, that has been or will be performed within sixty days prior to the date of the gift, except as noted in Section C herein entitled “Appraisal”.
- G. All revenues, expenses, assessments, and claims associated with the property paid and/or current on the date of gift, including taxes and other expenses for which the Foundation would be ultimately liable, including without limitation, mortgages and liens, and lease or other revenues.
- H. Mortgage assumption assignment ability acceptable to the Real Estate Committee.
- I. Absence of referral fee(s) to secure the gift.
- J. Approval by the Real Estate Committee of any special deed clauses associated with the property.
- K. An agreement, in writing, to pay all expenses related to the property prior to sale or final disposition. In certain instances, the university unit may agree to repay the Foundation its costs from the proceeds of the sale.

## **Real Estate Gift Analysis**

Prior to acceptance or recording of any documents related to real property acquisitions, the Chief Financial Officer and members of the FSU Foundation staff will expeditiously review the documentation, taking into consideration the donor's time constraints. They will consider the following about the real property to be acquired:

- A. Market conditions for resale or disposition.
- B. The condition of any improvements.
- C. The current and potential zoning, land use, and concurrency issues.
- D. Any costs associated with holding the real property for resale.
- E. Donor's comments in General Review Parts I and II.6
- F. Other considerations specific to the acquisitions (see Section L herein).

## **General Warranty Deed**

Title will be transferred to FSU Foundation by general warranty deed unless transfer is by a trustee, personal representative, or other fiduciary providing a deed appropriate to that capacity. The Foundation's legal counsel will review all deeds.

## **Appraisal**

The Internal Revenue Service requires an appraisal if the value of the real property is greater than \$5,000 and the donor wishes to claim a charitable income tax deduction. The appraisal must be performed and value rendered no earlier than 60 days prior to the date of the gift and no later than the due date of the donor's tax return in which the charitable deductions for the gift will be claimed. In the absence of an appraisal, the real property may be recorded on the books for its current ad valorem tax value provided that such property shall be recorded at no more than \$5,000.

Appraisals must conform to acceptable appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation as evidenced by USPAP. Appraisers must be state-licensed or certified. Appraisals must be performed by a member of the Appraisal Institute (MAI) for commercial properties or a Senior Residential Appraiser (SRA) for residential properties. The appraisal methodology must conform to the regulations and definition of market value.

It is the responsibility of the donor to pay for the appraisal. Appraisers should be engaged directly by the Foundation. If not, the Foundation will provide an approved list of appraisers from which the donor must select. The Foundation will select appraisers on a non-preferential basis who (1) possess the requisite education, expertise and competence to render an unbiased opinion, and (2) have no direct or indirect interest, financial or otherwise, in the property or the transaction.

The President of the FSU Foundation or the Chairman of the Real Estate Committee must approve any exception to the policies on appraisal, appraisers, or payment.

### **Title Search and Title Insurance**

A title search is required for all real property transactions. A title search and title insurance will be required for non-gift or gift acquisitions of mortgaged property. In all cases, satisfactory proof of title must be furnished.

### **Survey**

A survey may be required for any real property transaction. A survey will be required for all gift and non-gift acquisitions of mortgaged property, unless the Real Estate Committee and the Foundation's legal counsel determine that existing surveys or drawings are adequate.

### **Real Property Taxes and Other Carrying Costs**

The donor is required to present evidence that all real property taxes and other carrying costs are paid and current. Donors will pay all or prorate the taxes and other carrying costs until the property is sold.

### **Mortgaged Property**

The Foundation rarely accepts mortgaged property and never accepts mortgaged property into a charitable remainder unitrust. However, when real property subject to a mortgage is acquired, the mortgage will be current and assumable and will be accepted only following approval by the Real Estate committee and the Foundation's legal counsel.

Prior to the acceptance of mortgaged property, the following must be obtained:

- A. A minimum of a 50 percent equity value will have been established.
- B. A method for the payment of the remaining debt will be determined.
- C. An MAI or SRA appraisal will have been performed within sixty days prior to the date of the gift.

### **Leases**

When real property is acquired subject to a lease, leases will not be in default and will be assignable by the landlord. All property acquired subject to a lease will require approval by the Real Estate Committee. Upon approval, the leases will be assigned to the Foundation and all deposits, advance rents, and other monies will be transferred to the Foundation or otherwise accounted for as required by law. Authority to execute lease agreements on behalf of the Foundation is limited to the Foundation President, subject to the approval of the Real Estate Committee as noted above.

### **Special Deed Clauses**

The Real Estate Committee must approve any special deed clauses.

### **College or Unit Agreement**

Each academic unit benefiting from a gift or acquisition of real property will agree, in writing, to pay taxes, insurance, mortgage payments, and other related expenses incurred by the Foundation until the property is liquidated. The units may agree to allow the Foundation to recoup these costs from the proceeds of the sale of the property. The written approval will authorize the Chief Financial Officer to pay the expenses and it will identify the appropriate Foundation account from which the monies are to be disbursed. Due to IRS regulations, this portion of the policy will not apply in cases where charitable remainder unitrusts are funded with real estate.

### **Environmental Requirements**

No interest in real property, whether acquired outright, in trust, by bequest, as a secured interest, or otherwise, will be accepted by or on behalf of the FSU Foundation without first complying with the following procedures:

- A. The Foundation staff member responsible for coordinating the transfer of real property will notify the Chief Financial Officer of the proposed transaction as soon as possible.
- B. A Phase I Environmental Report will be performed on every real property asset, except residential property, prior to its acceptance by the Foundation. The Foundation, at its discretion, also may require environmental reports on residential property. It is the responsibility of the donor to pay for any Environmental Reports.
- C. If the environmental report indicates area(s) of significant concern, a more comprehensive investigation including, but not limited to, a Phase II or Phase III Environmental Report will be undertaken prior to acceptance of the property. All environmental reports will be performed by a consultant approved by the Foundation.
- D. If the above procedures reveal any liability, the real property may be accepted only after a request, in writing, by the Chief Financial Officer and a subsequent written approval of the Real Estate Committee.
- E. All contracts for environmental reports will be prepared and reviewed by the Chief Financial Officer.
- F. The Foundation will obtain an indemnification agreement from the transferor of real property regarding hazardous waste liability.
- G. In the case of an acquisition of real property by estate, all costs of environmental assessment and remediation will be borne by the estate before the real property is distributed to the Foundation. If the remediation is too costly, or the potential for liability too great, the Foundation may disclaim its interest in the real property.

All real property held by the Foundation in any capacity shall be managed to minimize or eliminate any liability resulting from hazardous materials and to comply with all federal and state regulations related thereto. The sale or transfer of real property by the

Foundation will be handled so as to eliminate any future liability by the Foundation for hazardous substance remediation. The Foundation will fully disclose to prospective transferees any and all information concerning the condition of any hazardous substances existing on the real property.

### **Unsolicited Deeds**

Unsolicited deeds will not be accepted. Upon the receipt of unsolicited deeds, the Chief Financial Officer will immediately notify the grantor in writing that the real property has not been accepted and will not be accepted until the requirements of the policy governing real property transfers are met.

### **Helpful Information**

The development officer should submit the following information, if available, together with the gift review form to the Real Estate Committee:

- A. Deed, including legal description, showing ownership by the donor.
- B. Prior appraisal.
- C. Prior survey.
- D. Prior titles policies or abstracts.
- E. Prior environmental assessments.
- F. Tax parcel identification number.
- G. Copy of most recent tax bill.

### **Real Estate Used to Fund Planned Giving Vehicles**

As a general rule, encumbered real estate should not be used to fund any type of income-producing planned giving vehicle. However, unencumbered real estate may be used to fund specific types of planned gifts known as charitable remainder unitrusts. Section 664 of the Internal Revenue Code describes the types of charitable remainder trusts to be used in this situation. The rules involved are complex and specific. Should the donor request that the FSU serve as Trustee of such a charitable remainder unitrust, the Foundation's Office of Planned Giving will review the request in consultation with the Chief Financial Officer as well as the Foundation's agent in managing these trusts.

The FSU Foundation strongly discourages the use of real estate as a funding mechanism for all other types of income-producing vehicles, such as charitable gift annuities.

### **Time Share Units**

Time share units will not be accepted as gifts by the FSU Foundation.

### **The Sale and Management of Real Property Gifts**

In accepting property for resale, the Foundation seeks to obtain the best price and terms within a reasonable period of time, unless the Real Estate Committee deems that holding

or leasing of the property is in the Foundation's best interest. During any holding or leasing period:

- The FSU Foundation is authorized to charge routine property carrying costs, such as taxes, insurance, maintenance, travel, surveying/engineering, title examination, closing and other costs, to the cognizant beneficiary of the property in accordance with the Procedures For Accepting Real Estate Gifts. These costs shall be reported regularly to the appropriate fund administrator.
- The properties will be listed for sale within a reasonable period of time. The Chief Financial Officer is authorized to execute listing contracts on behalf of the Real Estate Committee.
- A property's objective may be changed to the production of income or appreciation after consultation with all affected parties and with the consent of the Real Estate Committee.

### **Sales Efforts**

The properties will be listed for sale within a reasonable period of time. The Chief Financial Officer shall provide the Real Estate Committee, at its periodic meetings, with an inventory of all held by the Foundation. The committee may solicit board assistance in liquidation efforts.

- Brokers participating in the local Multiple Listing Service (MLS) or the equivalent listing service for commercial properties shall be given preference.
- The Foundation strives to provide all brokers with equal access to its real estate inventory. This objective does not preclude the use of exclusive listings provided that broker fees are not in excess of customary local fees.
- Properties may be marketed in-house, although this practice is discouraged. The Chief Financial Officer shall attempt to negotiate reduced fees when brokers present buyers arising from in-house marketing efforts.
- An auction sale may be approved by the Real Estate Committee for groups of lots or parcels when they are in the same subdivision or geographic location.

### **Listing Prices**

- Generally, the listing price of property shall be the current appraised value. Exceptions may be made for specific properties that the Real Estate Committee determines cannot be sold at the appraised value. If there is no appraisal, or the appraisal is more than two years old, the listing price shall be based on a competitive market analysis conducted by a licensed broker. If no offers have been received on the property within a reasonable period of time, staff shall seek authority from the Chairperson of the Real Estate Committee to reduce the listing price accordingly.
- No referral fee will be paid to any broker securing a gift of real property. Special consideration may be given to the procuring broker when listing the real property for sale, provided any such agreement to list is non-binding on the Foundation and the fees are not in excess of customary local fees.

- Whenever possible, the Foundation staff will solicit recommendations regarding local brokers and the general marketing effort from local board members, friends of FSU or the donor.
- The payment of fees to brokers when they are principals is discouraged. In such an event, the proportion of the broker's interest in the transaction will reduce the fee.

### **Acceptance and Execution of Contracts**

The Chief Financial Officer and/or the Foundation's legal counsel will review and comment upon each sales contract prior to its presentation to the Real Estate Committee for review. Contracts will be subject to the following:

1. The Foundation President or his/her designee is authorized to execute sales contracts under \$100,000 without Real Estate Committee approval, if the sales price is at least the approved price, and the contract contains standard terms.
2. Contracts exceeding \$100,000 require the approval of the Executive Committee and the Real Estate Committee prior to execution by the Foundation President or his/her designees.
3. All other contracts require Real Estate Committee approval prior to execution by the Foundation President. The Chief Financial Officer is encouraged to seek advice of the Real Estate Committee members when negotiating sales contracts. The secretary of the Foundation, or his/her designee, will keep minutes of all actions of the Real Estate Committee. Financed sales will be subject to the prior approval of the Real Estate Committee.

### **Leasing**

#### Leases With FSU

- The Chief Financial Officer may negotiate leases with FSU at less than market rents, provided the use of the real property is non-profit, complies with FSU's objectives and the Foundation's mission, and does not result in any expense to the Foundation. The leases may not create a negative cash flow for the Foundation unless the beneficiary college agrees in writing to underwrite the losses.
- All leases will be negotiated and executed in accordance with the FSU Board of Trustees' policies and procedures.
- The Foundation's legal counsel will review and approve all leases prior to execution.
- Funding of depreciation shall be considered when computing break-even points for below market or nominal rent leases.

#### Other Leases

- Upon approval by the Foundation's legal counsel, the Chief Financial Officer is authorized to execute a lease provided that the term is less than two years and/or the total rent is \$25,000 or less.

- Approval by the Real Estate Committee will be required when the term of the lease is more than two years and/or the total rent is more than \$25,000.
- The Chief Financial Officer may delegate leasing and management functions to outside professional management firms when deemed appropriate.

### **Non-Discrimination**

FSU Foundation will not discriminate or condone discrimination in its real property activities. It will conduct all affairs in compliance with all applicable state and federal equal opportunity, fair housing, equal credit opportunity or other anti-discrimination laws.

### **Exceptions**

Upon written request by the Chief Financial Officer, exceptions to these policies and procedures will, except for Paragraph E above, *Non-Discrimination*, be considered on an individual basis by the Real Estate Committee.

EXHIBITS

**FLORIDA STATE UNIVERSITY FOUNDATION, INC.  
REAL ESTATE**

**PART I – GENERAL REVIEW**

(To be completed by either the owner/prospective donor or by the development officer using information provided by the owner/prospective donor)

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Legal description and location of property (e.g., lot xx, section xyz, subdivision, county, etc.)

Is the property owned jointly with other individuals? yes \_\_\_ no \_\_\_

Name, address, and social security number of each property owner and type of ownership:

Describe when and how each owner(s)/prospective donor(s) acquired the property. Indicate the property's "adjusted basis" or "tax cost" (i.e., the original purchase price plus cost of improvements less depreciation claimed while owned).

Has a professional appraisal been prepared within the last six months? yes \_\_\_ no \_\_\_

- If so, please indicate appraiser's valuation and attach a copy of the report.
- If not, what is the owner/prospective donor's estimate of the property's value? Describe the basis for this estimate.

Has the property been on the market at any time during the last year? yes \_\_\_ no \_\_\_

- If so, please indicate dates, offering price(s), and name and address of representing agent.

Is the property "marketable"? yes \_\_\_ no \_\_\_ don't know \_\_\_

- If yes, describe recent comparable sales.

Does the property currently produce income? yes \_\_\_ no \_\_\_

- If yes, please indicate the specific source and periodic amount.

List each current lease arrangement relative to the property, including lease term, provisions for insurance, taxes, maintenance responsibilities, and notice requirements for vacation of the premises. Provide a copy of each lease agreement.

Is the property encumbered? yes \_\_\_ no \_\_\_

- If so, please list each mortgagor or claimant, and the amount owed to each.

Are all taxes, covenant fees, and maintenance expenses current? yes \_\_\_ no \_\_\_

Please provide an estimate of the annual expense borne by the property owner(s) for the following:

- Property taxes \_\_\_\_\_
- Insurance \_\_\_\_\_
- Utilities \_\_\_\_\_
- Maintenance \_\_\_\_\_
- Association dues / fees \_\_\_\_\_
- Other \_\_\_\_\_

Please indicate current zoning classification and any pending rezoning issues.

Please describe any problems unique to the property, e.g., zoning questions, neighbor disputes, property upkeep, controversial development planned for the area, etc., that have not otherwise been discussed in this questionnaire.

**PART II – GIFT REVIEW**

(To be completed by development officer)

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1. What use does the donor wish to make of the proceeds of sale?

If the donor intends to fund a named endowment, have or when will fund guidelines be executed?    yes \_\_\_date \_\_\_            no \_\_\_

2. Has the donor been advised of his/her responsibility to provide an appraisal, an environmental study (Phase I, minimum), and title examination at his/her expense?    yes \_\_\_    no \_\_\_

3. Will the gift be used to provide income to the donor and/or other beneficiaries? If so, does the donor understand that a net income charitable remainder unitrust is the only gift arrangement available?    yes \_\_\_            no \_\_\_            n/a \_\_\_\_\_

Will there be more than one life income beneficiary? If so, indicate names, dates of birth and social security numbrs of each beneficiary.

4. Was the donor advised of appraisal requirements relative to IRS Form 8283?    yes \_\_\_    no \_\_\_

Was the donor advised of the IRS reporting requirements for properties sold within two years of the date of gift?    yes \_\_\_    no \_\_\_

5. Please indicate your assessment of any problems unique to the property, e.g., zoning questions, neighbor disputes, property upkeep, controversial development planned for the area.

6. Are you aware of any prospects interested in purchasing the property?

Development officer name: \_\_\_\_\_