

**AMENDED AND RESTATED
BYLAWS**

of

**FLORIDA SOUTHWESTERN STATE COLLEGE
FOUNDATION, INC.**

As amended and restated on January 17, 2019

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WHEREAS, for purposes in the best interests of Florida SouthWestern State College Foundation, Inc., a Florida not for profit corporation (the “Foundation”), the Board of Directors, who are also the sole voting members of the Foundation, now desire to amend and restate the bylaws of Foundation as set forth herein.

ARTICLE 1. MISSION

The mission and purposes of the Foundation shall be as stated in its Articles of Incorporation.

ARTICLE 2. DEFINED TERMS

Capitalized terms used in these Bylaws shall have the meanings ascribed to them in that particular article or section or in Article 14 below.

ARTICLE 3. OFFICES

The Foundation shall maintain a registered office in the State of Florida and a registered agent at such office and may have other offices within or without the state.

ARTICLE 4. BOARD OF DIRECTORS

Section 4.1. Powers. The Board of Directors (the “Board of Directors” or the “Board”) shall have general power to control and manage the affairs and property of the Foundation in accordance with the purposes and limitations set forth in the Articles of Incorporation, these Bylaws and the laws of the State of Florida.

Section 4.2. Number. The Board shall be composed of at least twelve (12) Directors, consisting of Elected Directors and two (2) Ex-Officio Directors. The Board, as the Foundation’s members, may increase the number of Elected Directors by resolution, provided, that, there will be no more than twenty-one (21) Elected Directors at any time. The identity of the Ex-Officio Directors shall be described in this Article 4, Section 4.4.

Section 4.3. Selection of Elected Directors. Candidates for Elected Directors shall be presented to the Board of Directors for election at any regular or special meeting where there

is a quorum. Candidates for Elected Directors must be nominated by the Board Development and Governance Committee and confirmed by the College President prior to presentation to the Board of Directors. The Board Development and Governance Committee, whose members are appointed by and serve at the pleasure of the Chair, is tasked with reviewing Board member terms and nominating director candidates to fill vacancies. The majority of the Board Development and Governance Committee shall not be serving on the Executive Committee.

Section 4.4. Ex-Officio Directors. There shall be two (2) Ex-Officio Directors:

- a. The College President who shall be a non-voting member of the Board.
- b. Chair of the College Board of Trustees, or a member of the College Board of Trustees appointed by the Chair of the Board of Trustees, who shall be a voting member of the Board.

Section 4.5. Honorary Lifetime Directors. Former Directors (whether former Elected Directors or Ex-Officio Directors) who have contributed exemplary service and/or resources to the Foundation may be elected as an Honorary Lifetime Director (“Honorary Lifetime Director”) by a three-fourths ($\frac{3}{4}$) vote of the voting members of the Board then in office, provided, that (a) such Honorary Lifetime Director agrees to sign such documentation as is required by the Board, which may include a non-disclosure and restrictive covenant agreement, and (b) such Honorary Lifetime Director may be removed from such position by a two-thirds ($\frac{2}{3}$) vote of the voting Board members present at a meeting at which a quorum is present, whenever in the Board’s judgment such Honorary Lifetime Director should be removed For Cause. While Honorary Lifetime Directors are entitled to attend all Board meetings except as may be prohibited by applicable law, Honorary Lifetime Directors are not considered members of the Board or Directors of the Foundation. Accordingly, Honorary Lifetime Directors (a) shall have none of the obligations or responsibilities of members of the Board, (b) shall not vote or hold office and (c) shall not be counted regarding quorum, majority or the maximum number of Elected Directors provided in Article 4, Section 4.2. There shall be no limitation on the number of Honorary Lifetime Directors.

Section 4.6. Terms of Office.

- a. **Elected Directors.** An Elected Director’s term of office shall be three (3) years in length and until his or her successor has been elected and qualified or until his or her earlier resignation, removal from office, or death. Directors may be reelected to additional successive term(s). A vacancy on the Board of Directors with respect to an Elected Director may be filled by a vote of the remaining voting Directors so long as such candidate is first nominated by the Board Development and Governance Committee and confirmed by the College President pursuant to Article 4, Section 4.3. If a Director is elected to fill a vacancy before the end of the term of his or her predecessor, such Director shall serve for the remainder of the term of the Director being replaced.
- b. **Ex-Officio Directors.** An Ex-Officio Director will serve so long as he or she holds the office or the position which resulted in placement on the Board as an Ex-Officio Director pursuant to Article 4, Section 4.4. Any vacancy with respect to an Ex-Officio Director shall be filled by the person who succeeds the former Ex-Officio Director in the office or the position that gives rise to such position as an Ex-Officio Director pursuant to Article 4, Section 4.4.

Section 4.7. Resignation. An Elected Director may resign at any time by submitting a written resignation to the Chair, who will provide a copy to the Executive Director, the College President and the Executive Committee. The Executive Committee will note such resignation in the Foundation's corporate records.

Section 4.8. Removal. An Elected Director may be removed by a two-thirds (2/3) vote of the voting Board members present at a meeting at which a quorum is present, whenever in the Board's judgment the interests of the Foundation would be best served. An Ex-Officio Director shall cease to be an Ex-Officio Director immediately and automatically upon ceasing to hold the office or the position that gives rise to such position as an Ex-Officio Director pursuant to Article 4, Section 4.4.

ARTICLE 5. OFFICERS AND ELECTIONS

At the meeting nearest the end of the fiscal year, the Board will vote on a slate of officers as submitted by the Board Development and Governance Committee and confirmed by the College President. The following Officers will be elected to a two-year term from the membership of the Board: Chair, Vice Chair, Secretary and Treasurer. The offices of Secretary and Treasurer may be held by the same person. If a vacancy occurs in an office, an election may be held at any regular or special meeting of the Board, provided notice of the election is given in the notice of the meeting and the candidate for such office is first nominated by the Board Development and Governance Committee and confirmed by the College President.

ARTICLE 6. POWERS AND DUTIES OF OFFICERS

Section 6.1. Chair. The Chair will preside at all meetings of the Board and will do and perform other duties as may be assigned to him or her by the Board or these Bylaws. The Chair will also serve as Chair of the Executive Committee. The Chair will also, in a manner consistent with these Bylaws, the Articles of Incorporation and applicable law: (a) promote the Foundation, (b) ensure that the Board's directives are implemented and monitored, (c) call and conduct meetings of the Executive Committee, (d) create committees & appoint committee chairs, (e) collaborate with the Executive Director to carry out the Foundation's mission and (f) review reports and records and direct Directors and officers in their roles.

Section 6.2. Vice Chair. The Vice Chair will preside at all meetings of the Board in the absence or disability of the Chair and will do and perform other duties as may be assigned to him or her by the Chair, the Board, or these Bylaws. In the event of a vacancy or prolonged disability in the office of the Chair, the Vice Chair will also perform all duties of the Chair.

Section 6.3. Secretary. The Secretary will work with Foundation staff to assure that full and accurate minutes of all meetings of the Board and Executive Committee are kept; all notices required by these Bylaws are properly transmitted, and perform other duties assigned by the Board or these Bylaws. The Secretary will have charge of all official records of the Foundation which will at all reasonable times be open to examination by any Director. In the

absence of both of the Chair and Vice Chair from any Board or Executive Committee meeting, the Secretary shall assume the role of Chair in connection with such meeting.

Section 6.4. Treasurer. The Treasurer should possess a good understanding of finance, budgeting, and investments. He or she will be a member of the Audit, Risk & Compliance Committee and will report to the Executive Committee and Board of Directors on all matters related to the finances of the Foundation. In the absence of each of the Chair, Vice Chair and Secretary from any Board or Executive Committee meeting, the Treasurer shall assume the role of Chair in connection with such meeting.

Section 6.5. Resignation. An Officer may resign at any time by submitting a written resignation to the Chair, who will provide a copy to the Executive Director, the College President and the Executive Committee. The Executive Committee will note such resignation in the Foundation's corporate records. If the Chair is resigning, he or she may submit his or her resignation to the Vice Chair or, in their absence, either the Secretary or Treasurer, who will provide a copy to the Executive Director, the College President and the Executive Committee.

Section 6.6. Removal and Replacement. Any Officer may be removed by two-thirds (2/3) vote of the voting Board members present at a meeting at which a quorum is present and voting whenever in the Board's judgment the interests of the Foundation would be best served. In the event of any vacancy in an officer position for any reason, including removal by the Board, the Board may appoint a successor to perform such Officer's respective duties (so long as such successor Officer is first nominated by the Board Development and Governance Committee and confirmed by the College President prior to presentment to the Board of Directors), until the following meeting of the Board or any special meeting which may be held for the election of Officers.

ARTICLE 7. FOUNDATION EXECUTIVE DIRECTOR AND STAFF

Section 7.1. Appointment and Supervision. The College President shall appoint and supervise the Executive Director of the Foundation who shall serve as its chief staff executive.

Section 7.2. Status. The Executive Director shall be an employee of the College who is neither an Officer of the Foundation nor a member of the Board of Directors.

Section 7.3. General Duties. The Executive Director has day-to-day responsibilities for the Foundation, including carrying out the Foundation's goals and policies. The Executive Director will attend all Board meetings to the extent permitted by applicable law, report on the progress of the organization, answer questions of the Board members and carry out the duties described in the job description as delegated to the Executive Director by the College President.

Section 7.4. Levels of Authority. The Executive Director shall provide framework for the maintenance of appropriate internal controls, and ensure the responsible use of all funds entrusted to the Foundation. Accordingly:

- a. Any proposed budgeted or non-budgeted expenditure of Foundation funds must have the approval of the Foundation Executive Director or designee before payment.
- b. Any Foundation expenditure over \$50,000 will require a second level approval by the College supervising authority of the Foundation Executive Director.
- c. This Section 7.4.c applies to payments payable directly to the College. Budgeted payments payable to the College may be paid directly to the College so long as such payment obligations are documented with a contract or memorandum of understanding. Non-budgeted payments payable to the College of \$100,000 or under may be paid directly to the College so long as such payment obligations are documented with a contract or memorandum of understanding and approved in advance by the Executive Director and College President or designee. Non-budgeted payments payable to the College over \$100,000 may be paid directly to the College so long as such payment obligations are documented with a contract or memorandum of understanding and approved by the Executive Committee and ratified by the Board of Directors prior to payment.

Section 7.5. Staffing. The Executive Director will be responsible for hiring and supervising the staff of the Foundation.

Section 7.6. Resignation. The Executive Director will submit his or her resignation to the College President. The College President shall fill any vacancy in the position of Executive Director. Any Foundation staff who wish to resign their positions with the Foundation will submit their resignation through their supervisor to the Executive Director.

ARTICLE 8. THE CORPORATE SEAL

Section 8.1. The Corporate Seal. The corporate seal of the Foundation shall be in circular form and shall bear the words "Florida SouthWestern State College Foundation, Inc., Corporate Seal 1966."

ARTICLE 9. COMMITTEES OF THE BOARD OF DIRECTORS

Section 9.1. Executive Committee

- a. **Executive Committee Composition.** The Executive Committee will consist of at least five (5) Directors, including the following: the Chair, Vice Chair, the Ex-Officio Directors and up to three additional members appointed by the Chair annually from the membership of the Elected Directors, at his or her discretion, with preference given to the Elected Directors who are active in fundraising and College development. The Chair, or in his or her absence the Vice Chair, will preside at meetings of the Executive Committee. For clarity, the non-voting Ex-Officio Directors shall not vote on matters presented to the Executive Committee.

(1) **Meetings.** The Executive Committee will meet at the call of the Chair. The presence of one-third (1/3) of the voting members of the Executive

Committee will constitute a quorum of the Executive Committee and the affirmative vote of a majority of the voting members present will be necessary for the adoption of any action.

(2) **Powers.** Except as otherwise provided in Section 617.0825 of the Florida Statutes, the Executive Committee will have and may exercise all powers and authority of the Board when the Board is not in session; provided however, that the Executive Committee will not have the authority to (a) alter, amend, or repeal the Articles of Incorporation or the Bylaws of the Foundation or (b) elect Directors.

(3) **Fiscal Oversight.** By way of illustration and without limiting the broad scope of the authority of the Executive Committee, the Executive Committee will establish and be responsible for the fiscal policy of the Foundation, including budgets and fees. The final audit shall be presented to the Executive Committee and the Board of Directors for approval.

b. Executive Committee Actions; Records. Except as otherwise provided in Section 617.0825 of the Florida Statutes, the actions of the Executive Committee will not require confirmation by the Board. The Executive Committee shall maintain written minutes of its meetings.

9.2. Other Standing Committees

The Board Development and Governance Committee, the Audit, Risk, & Compliance Committee, and the Investment Committee will be standing committees of the Board of Directors. Special Committees may be formed from time to time by the Chair for special purposes as requested by the Board.

- a. Each standing committee's composition and responsibilities shall be detailed in its charter, and the charter shall be approved by the Board of Directors.
- b. Each standing committee member must be a member of the Foundation Board of Directors.

ARTICLE 10. MEETINGS AND QUORUM

Section 10.1. Regular Meetings. At least two regular meetings of the Board will be held during each fiscal year. The day, hour, and place of the meetings will be determined and called by the Chair.

Section 10.2. Special Meetings. Special meetings of the Board may be called by the Chair or the College President.

Section 10.3. Quorum and Voting. One-third (1/3) of the entire voting Board then in office who are physically present at any duly noticed meeting of the Board will constitute a quorum at such meeting of the Board. One-third (1/3) of the voting members of the Executive

Committee who are physically present at any duly noticed meeting of the Executive Committee will constitute a quorum at such meeting of the Executive Committee. Ex-Officio Directors who have the right to vote shall be counted in determining a quorum. Ex-Officio Directors who do not have the right to vote shall not be counted in determining a quorum. Except as otherwise provided by law or these Bylaws, any meeting of the Board or the Executive Committee at which a quorum is physically present, the vote of a majority of the voting Directors present at the time of the vote shall be the act of the Board. Any Director who is not able to be physically present at a meeting due to extraordinary circumstances such as illness may participate in a meeting by means of conference telephone or similar communications equipment enabling all Directors participating in the meeting to hear one another, and such participation shall constitute presence in person at such meeting for purposes of permitting such Director to participate in and vote on matters at such meeting, but not for determining whether a quorum is constituted at such meeting.

Section 10.4. Presiding Officer. The Chair, or in his or her absence, the Vice Chair, will preside at meetings of the Board or Executive Committee. In the absence of both of these Officers from any meeting, the Secretary shall assume the role of Chair in connection with such meeting. In the event none of these are available, then the Treasurer shall assume the role of Chair in connection with such meeting.

Section 10.5. Minutes. Minutes of any Board meeting will be presented for approval at the next meeting of the Board.

Section 10.6. Proxies. Proxies, general or special, will not be accepted for any purpose in the meetings of the Board or Committees.

Section 10.7. Roll Call. At the beginning of any meeting, the Secretary will determine the presence or absence of a quorum. The roll will thereafter only be called upon the request of the Chair or any Director and after each roll call the presence or absence of a quorum will be announced.

Section 10.8. Notice to Directors. The provisions of this Article 10, Section 10.8 are subject to the provisions of Article 10, Section 10.10. Regular meetings may be held without notice unless notice is required by law. If notice is required for a regular meeting, then the notice shall be provided prior to the date notice is required to be provided by such law, and if no such date is specified by such law, such notice shall be provided at least seven (7) days prior to the date, time and place of the meeting. Special meetings shall be preceded by at least two (2) days' notice of the date, time and place of the meeting. Notice of any meeting of the Board shall specify the means of remote communication, if any, by which Directors may participate in the meeting. Written notice (by electronic transmission, facsimile telecommunication, mail or other method of delivery) is effective: (a) when transmitted by electronic mail, if correctly directed to an electronic mail address authorized by the Director, (b) when transmitted by facsimile telecommunication, if correctly directed to a number authorized by the Director; (c) when mailed, upon deposit in the United States mail (as evidenced by the postmark or date stamped mailing receipt), if mailed postage prepaid and correctly addressed to the director's address as shown in the Foundation's record of Directors, and (d) on the date shown on the signed receipt, if sent by a commercial delivery service to the Director's address as shown in the Foundation's record of Directors and signed

for by or on behalf of the addressee. In computing any period of time hereunder, the day on which notice is given shall be excluded.

Section 10.9. Waiver of Notice. Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. This Article 10, Section 10.9 does not dispense with any public notice required by law.

Section 10.10. Public Notice. Public notice of any meeting of the Board of Directors or any Committee of the Board of Directors shall be made as required by Florida law and meeting shall be conducted in accordance with Florida's Sunshine Law (Section 286.011, Florida Statutes), and Policy Florida SouthWestern State College Board of Trustees.

ARTICLE 11. CONFLICTS OF INTEREST

All individuals serving on the Board of Directors shall comply with the Conflict of Interest Policy.

ARTICLE 12. MISCELLANEOUS PROVISIONS

Section 12.1. Regulations of the Board of Trustees. The Articles of Incorporation and Bylaws will be consistent with the applicable Board of Trustees Policies of the College, including the right of the College President to monitor and control the use of the name of the College and other College resources.

Section 12.2. Nondiscrimination. The Foundation will not discriminate on the basis of race, sex, gender, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information or veteran's status. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination.

Section 12.3. Indemnification

- a. Indemnification.** Every Director, Officer and Special Appointee of the Foundation shall be indemnified by the Foundation against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed on the Director, Officer or Special Appointee in connection with any proceeding, including any appeal, or any settlement of any proceeding to which the individual may be a party or in which he or she becomes involved as a result of serving as a Director, Officer, or Special Appointee. The indemnified party does not have to be a Director, Officer, or Special Appointee at the time the expenses or liabilities are incurred or imposed. In the event, however, of a settlement before entry of judgment, the indemnification shall apply only upon approval by the Board of Directors as being in the best interests of the Foundation. This indemnification is in addition to and not exclusive of all other rights to which the person may be entitled.

- b. Exceptions and Limitations.** The indemnification set forth above does not apply in the case of an action by, or in the right of, the Foundation. A Director, Officer or Special Appointee is entitled to indemnification only if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation and (where applicable) had no reasonable cause to believe his or her conduct was unlawful. This indemnification shall be made in accordance with Section 607.0850, Florida Statutes, as amended from time to time.

Section 12.4. Written Policies. The Foundation shall have written policies on ethics, conflicts of interest, personnel, discrimination, and sexual harassment, as followed by the College.

Section 12.5. Review of Mission. The President of the College or his or her designee shall periodically review the mission of the Foundation to ensure that it is in furtherance of the interests of the College.

ARTICLE 13. AMENDMENTS

The Bylaws of the Foundation may be altered or amended at any meeting of the Board by resolution approved by a vote of a majority of the entire Board members then in office who have the right to vote. Written notice of any proposed amendment of the Bylaws will be provided to each member of the Board prior to any meeting at which the proposed amendment is to be considered. Proposed amendments shall become effective only after approval by the College President or his or her designee.

ARTICLE 14. DEFINITIONS

1. “Articles of Incorporation” means the Amended and Restated Articles of Incorporation of the Foundation, as amended from time to time.
2. “Board of Trustees” means the Board of Trustees of the College.
3. “College” means the Florida SouthWestern State College.
4. “College President” means the President of the College.
5. “Directors” means only Elected Directors and Ex-Officio Directors, and not Honorary Lifetime Directors or Executive Director.
6. “Elected Directors” are those directors elected pursuant to Article 4, Section 4.3.
7. “Ex-Officio Directors” means the Directors listed in Article 4, Section 4.4.
8. “For Cause” means an individual’s actions or omissions that constitute a persistent failure to fulfill one’s duties in the best interests of the Foundation or in a manner that conforms to the Foundation’s high standards, or that may adversely reflect on the reputation of the Foundation or the College, as determined by the College President

after consulting with the Board of Directors. Any such determination may be made by the College President at any time and need not depend on the conclusion of any external determination or process.

9. “Special Appointee” means an individual volunteer, designated as such by the Board, who is not a Director or an Officer, but who serves at the request of the Board as a member of a Committee or special task force, or in a similar capacity.

Amended and Restated Bylaws of the Florida SouthWestern State College Foundation, Inc. adopted by its Board of Directors on January 17, 2019.