



Item: AF: A-3

AUDIT AND FINANCE COMMITTEE

Tuesday, February 19, 2013

SUBJECT: REQUEST FOR APPROVAL OF AMENDMENTS TO THE FAUF BYLAWS

PROPOSED COMMITTEE ACTION

Review and recommend Board of Trustees approval of Amendments to the Florida Atlantic University Foundation, Inc. ("FAUF") Bylaws.

BACKGROUND INFORMATION

To more efficiently carry out FAUF's activities as a University Direct Support Organization, the FAUF Board of Directors approved amendments to the following sections of the FAUF Bylaws: Article II, Section 9, relating to constructive resignation of directors; Article IV, relating to the term of officers and directors; and Article VI, relating to the signature authority of the Executive Director.

Pursuant to University Regulation 6.013, the Board of Trustees must approve amendments to the bylaws of Florida Atlantic University Direct Support Organizations before they become effective.

IMPLEMENTATION PLAN/DATE

The Amended Bylaws will become effective upon approval of the full Board of Trustees.

FISCAL IMPLICATIONS

N/A

Supporting Documentation: Proposed Amended Bylaws of the Florida Atlantic University Foundation, Inc.

Presented by: David Kian, General Counsel

Phone: 561-297-3007



**BYLAWS
OF
FLORIDA ATLANTIC UNIVERSITY FOUNDATION, INC.**

**AMENDED
April 10, 2008
January 27, 2009
April 23, 2009
April 12, 2012
February 7, 2013
Article I**

PURPOSE

The name and purposes of the Corporation shall be set forth in the Articles of Incorporation as in effect from time to time. In accordance with Article II of the Articles of Incorporation, the Florida Atlantic University Foundation, Inc. (the "Foundation") is organized and operated with all powers of a Florida Not For Profit Corporation and University direct support organization and, among other things, is to receive, hold, invest and administer any gifts or property and to make expenditures to or for the use and benefit of Florida Atlantic University (the "University").

Article II

BOARD OF DIRECTORS

Section 1. Number of Directors. The Board shall be comprised of Elected Directors, Ex-officio Directors and Directors Emeritus. There will be no less than 15 and no more than 35 Elected Directors.

Section 2. Duties. Each Elected Director shall demonstrate outstanding qualities of leadership and managerial ability and a personal commitment to promote the advancement of higher education and the University through dedicated service to the Foundation, including representing and promoting the charitable interests of the Foundation to benefit the University as demonstrated through his or her contribution of time, resources and professional knowledge. All Elected Directors shall serve on at least one standing committee.

Section 3. Powers. The Board shall manage and govern the business and affairs of the Foundation and may exercise all of the powers granted to the Foundation under its Articles of

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Incorporation and under Chapter 617, Florida Statutes (the “Act”), in each case, as amended from time to time, and as are consistent with section 1004.28, Florida Statutes.

Section 4. Selection of Elected Directors. Elected Directors shall be full voting members of the Board. Elected Directors shall be nominated by the Nominating Committee in accordance to Article VII, Section 2 (b), after consultation with the University President. All persons nominated as directors shall be approved and elected by a majority vote of the Board of Directors. No individual may serve as an Elected Director while also being an employee of FAU, paid or unpaid, as applicable to new Board members.

Section 5. Ex-officio Directors. Ex-officio Directors shall be non-voting members of the Board. Ex-officio Directors shall be: a designee of the University President, the President of the University Alumni Association, the University Faculty Senate President (or his/her designee), the University Student Government President, the Lifelong Learning Society President, the University Club President, and a designee of the Chair of the University Board of Trustees if the Board of Trustees Chair elects to exercise this option.

Section 6. Directors Emeritus. After a period of meritorious service, to be determined by the Executive Committee, and upon the approval of the Board, a Board member (or former Board member) may be designated a Director Emeritus and, as such, shall be invited thereafter to participate in Board activities as a non-voting member.

Section 7. Terms of Office.

- (a) Elected Directors. An Elected Director shall serve a three (3) year term and shall not be eligible to serve more than two (2) terms consecutively. An Elected Director who has served two (2) terms consecutively may be re-elected to the Board after the expiration of one year following the end of his or her last term and will have the status of a new Director. An Elected Director may not serve as a member of the University Board of Trustees. If an Elected Director is appointed to the University Board of Trustees at any time during his or her term, his or her vacancy shall be filled in the manner provided for election of Directors in Article II, Section 4.
- (b) Ex-officio Directors. Ex-officio Directors will serve so long as they hold the office or position which resulted in their placement on the Board.
- (c) Directors Emeritus. Directors Emeritus will serve as such until the first to occur of their resignation, death, incapacity or removal.

Section 8. Removal. An Elected Director and Directors Emeritus may be removed by a two-thirds (2/3) vote of the Board members present and voting at a duly noticed regular or special meeting of the Board at which a quorum is present, whenever in the Board’s judgment the interests of the Foundation would be best served. Membership shall also be automatically terminated by death, incapacity, or resignation.

Section 9. Resignation. An Elected Director may resign at any time by submitting a written resignation to the Chair and the Executive Director. Any Director who is not present for more than 50% of the full Board or more than 50% of the assigned committee meetings in fiscal

year, and whose absences are not excused by the Chair of the Board or the Chair of the committee, as applicable, shall be deemed to have constructively submitted his or her resignation to the Chair and the Executive Director of the Foundation. The Chair shall refer the matter to the Nominating Committee, which shall make a recommendation to the Executive Committee whether to accept the constructive resignation or to excuse the absences. The Executive Committee will decide whether to accept the constructive resignation or to excuse the absences. If the Executive Committee accepts the constructive resignation, the director in question will be considered to be no longer on the Board, subject to reinstatement by a majority vote of the other Elected Directors.

Section 10. Vacancies. Vacancies occurring during a term will be filled for the unexpired portion in the manner provided for the election of Directors in Article II, Section 4. Vacancies that are filled with less than two (2) years of the term remaining will not be counted as a term for purposes of eligibility to serve two terms consecutively. An anticipated vacancy may be filled in advance, but the new Elected Director shall not take office until the vacancy occurs.

Article III

MEETINGS OF BOARD OF DIRECTORS

Section 1. Types of Meetings.

- (a) Regular Meetings. Regular meetings of the Board shall be held a minimum of two (2) times each fiscal year as determined by the Executive Committee.
- (b) Special Meetings. Special meetings of the Board may be called at any time by the Chair, the Executive Director, the University President, two or more Officers of the Foundation, or by nine or more voting members of the Board.

Section 2. Notice of Meetings. Notice of regular meetings of the Board, stating the date, time and place of the meeting, shall be sent by the Executive Director or the Secretary to each Director by mail, electronically, or facsimile at least ten (10) days before the meeting. Notice of special meetings of the Board, stating the purpose, date, time and place of the meeting, shall be given to each Director by those calling the meeting at least five (5) days before the meeting. Reasonable public notice of all meetings will be posted.

Section 3. Waiver of Notice. Notice of a meeting of the Board need not be given to any Director who signs a waiver of notice either before or after the meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the date and place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a Director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened under the provisions of the Florida Not-

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for-Profit Corporation Act or under the provisions of the Articles of Incorporation or the Bylaws.

Section 4. Quorum and Voting. Thirty percent (30%) of the Directors who possess voting rights will constitute a quorum at any duly noticed meeting of the Board. One-third of a Committee [except for the Executive Committee, which requires fifty percent (50%)], will constitute a quorum at any meeting of a Committee. All questions will be determined by a majority vote of those present and voting, except as otherwise provided in the Articles of Incorporation.

Section 5. Presiding Officer. The Chair, or in his or her absence, the Vice Chair, will preside at meetings of the Board. In the absence of both of these Officers from any meeting, the meeting will be conducted by a Director or Officer designated by the Chair. If there is no designee, then the Executive Director may appoint any Director to preside.

Section 6. Minutes. Minutes of any Board meeting will be presented for approval at the next meeting of the Board.

Section 7. Proxies. Proxies, general or special, will not be accepted for any purpose in the meetings of the Board or its Committees.

Article IV

OFFICERS AND ELECTIONS

Officers will be nominated by the Nominating Committee as provided in Article VII, Section 2(b). At the meeting nearest the end of each fiscal year, the Board will elect Officers who will serve a one (1) year term commencing immediately following their election, as follows: Chair, Vice Chair, Secretary, and Treasurer. The Board may provide for other Officers as it deems necessary, and other Officers will be elected in the same manner and serve the same term. An elected Officer of the Board may not serve as a member of the University Board of Trustees. If an elected Officer of the Board is appointed to the University Board of Trustees at any time during his or her term in office, the Executive Committee may fill the vacancy in accordance with Article V, Section 5. The time an Elected Director spends as an Officer of the Foundation shall not be included as part of his/her Term of Office under Article II, Section 7(a) for term limit purposes. Therefore, an Elected Director who has served as an Officer may serve more than three (3) years on the Foundation Board or more than six (6) years if serving two (2) consecutive terms, up to a maximum of 8 years in total.

Article V

POWERS AND DUTIES OF OFFICERS

Section 1. Chair. The Chair shall 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 serve as Chair of the Executive Committee, and he or she shall be a voting member of all Committees of the Board. The Chair may serve two consecutive one-year terms.

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Section 2. Vice Chair. The Vice Chair shall preside at all meetings of the Board and the Executive Committee in the absence of the Chair. The Vice Chair shall do and perform such other duties as from time to time may be assigned by the Board or the Chair, or these Bylaws. In the event of the incapacity, unavailability, or vacancy of the Chair, the Vice Chair shall have all powers and perform all duties of the Chair. At the request of the Chair, the Vice Chair may serve in lieu of the Chair as a voting member of any Committee of the Board that the Chair so designates. It is anticipated, but not required, that the Vice Chair will be nominated and elected as Chair subsequent to serving as Vice Chair. The Vice Chair may serve two consecutive one-year terms.

Section 3. Secretary. The Secretary shall be responsible for insuring that minutes of all meetings of the Board are kept in a book provided for that purpose and notices required by these Bylaws are given. The Secretary shall be in charge of all books and papers as the Board may direct, all of which shall at all reasonable times be open to the examination of any Director. The Secretary shall perform all duties incident to the office of Secretary and shall have the power to delegate, with the approval of the Executive Committee, the performance of such duties to other officers or staff of the Foundation.

Section 4. Treasurer. The Treasurer shall receive and keep the funds of the Foundation and pay out the same in furtherance of the purposes of the Foundation. The Treasurer shall report, at a minimum, the financial status of the Foundation at each Annual Meeting of the Board, and enter regularly accurate accounts of all moneys received and paid out on account of the Foundation. The Treasurer shall perform all duties incident to the office of Treasurer and shall have the power to delegate, with the approval of the Executive Committee, the performance of such duties to other officers or staff of the Foundation.

Section 5. Absence or Incapacity of Officers. In the event of resignation, appointment to the University Board of Trustees, removal, absence, inability, or refusal to act of any Officer, the Executive Committee may appoint a successor to perform such Officer's respective duties until the following meeting of the Board or any special meeting which may be held for the election of Officers.

Section 6. Resignation. An Officer may resign at any time by submitting a written resignation to the Chair and the Executive Director. If the Chair is resigning, he or she may submit his or her resignation to the Vice Chair and the Executive Director. If the Executive Director is resigning, he or she may submit his or her resignation to the Chair and the University President.

Section 7. Removal. Any Officer may be removed by a two-thirds (2/3) vote of the Board members present and voting whenever, in the Board's judgment, the interests of the Foundation would be best served.

Article VI\

POWERS AND DUTIES OF EXECUTIVE DIRECTOR

Executive Director. The Executive Director shall be generally responsible for the carrying out of the plans, purposes and objectives of the Board, as well as the routine day-to-day business

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functions of the Foundation. The Executive Director must be faithful in the performance of his or her duties as the Board may require and will exercise the authority to accept gifts, collect revenues, and make expenditures, and is responsible for maintenance and management of the Foundation's activities and personnel, and will perform other duties assigned to him or her by the Board or these Bylaws. Specifically, the Executive Director is authorized to sign contracts and other documents with the same authority and powers as an Officer of the Foundation. This includes the authority to sign the Foundation's 990 tax return or other documents required by the Internal Revenue Service or the State of Florida. Where two (2) signatures of Officers are required, the Executive Director may sign in lieu of one (1) of the Officers. The Executive Director shall be appointed by the Board, after consultation with the University President, and shall serve and be evaluated by the Board.

Article VII

COMMITTEES

Section 1. Standing and Special Committees: Standing Committees will be permanent. Special Committees will be constituted for special purposes as requested and approved by the Board. Members of Special Committees will be appointed by the Chair unless the Board or the Foundation's Articles of Incorporation provide otherwise.

- (a) Term of Office. Committees will have a minimum of two (2) elected directors appointed at the beginning of the fiscal year for one-year terms. Committee members will serve from the time of appointment until the end of the fiscal year.
- (b) Appointments. Appointments to Committees and designation of the respective chairs for service during the ensuing fiscal year (other than appointments and designations of particular persons to Committees as are required by these Bylaws) will be made by the Chair prior to the commencement of the new fiscal year. All Standing Committee chairs must be Elected Directors. The Chair's designation of respective chairs shall be approved by the Board of Directors at a special meeting of the Board of Directors convened before the commencement of the new fiscal year.

Section 2. Designated Standing Committees. The following Committees shall be Standing Committees of the Board:

- (a) Executive Committee. The Executive Committee will consist, at a minimum, of the Chair, the Vice Chair, the Treasurer, the Secretary and the chairs of the Standing Committees of the Board and the immediate past Chair. The Chair will serve as chair and the Vice Chair will serve as vice chair of the Executive Committee. Additional board members may be appointed to the Executive Committee by the Chair in accordance with Section 1(b) of this Article.
 - (i) Meetings of the Executive Committee. The Executive Committee will meet at the call of the Chair or the Executive Director, at a minimum of three (3) times during the fiscal year. The presence of fifty percent (50%) of the members of the Executive Committee will constitute a quorum of the Executive Committee and the affirmative vote of a majority of members present will be necessary for the adoption of any resolution. No

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subsequent revision or alteration by the Board of action taken by the Executive Committee will affect the rights of third parties.

- (ii) Powers. The Executive Committee will have and may exercise all powers and authority of the Board when the Board is not in session and may act in lieu of any Committee, provided however, that the Executive Committee will have no authority to alter, amend, or repeal the Articles of Incorporation or the Bylaws of the Foundation or to elect Directors.
- (b) Nominating Committee. The Nominating Committee shall recommend to the Executive Committee for election the names of prospective Elected Directors, Officers, and successors to any vacancies. The Nominating Committee shall receive recommendations for nominees at least fifteen (15) days prior to the regular meeting nearest to the end of the fiscal year and make recommendations for new Directors and Officers to the Executive Committee at the regular meeting nearest to the end of the fiscal year. The Nominating Committee shall be comprised of no less than three (3) and no more than seven (7) Board members and must include the Executive Director. The Nominating Committee is responsible for Board development and shall be responsible for identifying future Board leadership, orienting and mentoring new Elected Directors, and assuring diversity (race, gender, expertise, geography) of the Board's composition. It is desired but not imperative that the nominees for Chair and Vice Chair have prior Executive Committee experience. The Nominating Committee may not advance the names of any of its members as proposed Officers. Upon approval, the Executive Committee will forward the names submitted to it to the full Board for its approval.
- (c) Investment Committee. The Investment Committee shall formulate investment strategy suited to the market conditions and recommend to the Executive Committee the investment policies of the Foundation, establish and recommend to the Executive Committee appropriate asset allocation, and select, evaluate, and recommend to the Executive Committee investment advisors and managers. The Investment Committee shall be comprised of no less than three (3) and no more than nine (9) Board members. At least three (3) members of the committee shall have financial expertise.
- (d) Real Estate Committee. The Real Estate Committee shall be responsible for reviewing all real estate and other real property holdings and recommending to the Executive Committee, the acquisition, acceptance, utilization, disposal or sale of all real property in the name of the Foundation. The Real Estate Committee shall be comprised of at least three (3) and no more than (7) Board members. At least two (2) members of the committee shall have expertise in real estate.
- (e) Finance Committee. The Finance Committee shall be responsible for the fiscal policy of the Foundation, including setting administrative fees, reviewing budgetary and financial practices, and reviewing the Foundation's annual operating budget developed by the Foundation staff, for the purpose of presenting the Finance Committee's recommendation to the Executive Committee at its scheduled meeting, which must take place at least 15 days prior to the regular Board meeting nearest to the end of the fiscal year. It shall be

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comprised of no less than three (3) and no more than seven (7) Board members, and the Treasurer shall serve as Chair.

- (f) Development Committee. The Development Committee shall review, approve and recommend to the Executive Committee general fund-raising initiatives and policies, and shall be responsible for the coordination of all fundraising activities conducted by the Foundation in support of the University.
- (g) Audit Committee. The Audit Committee shall make recommendations to the Executive Committee for an annual financial audit of the Foundation's accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to Florida Statutes, Section 11.45(8), and by the University's Board of Trustees. The Audit Committee shall also (i) make recommendations to the Executive Committee for an annual audit report to be submitted, within nine (9) months after the end of the Foundation's fiscal year, to the Auditor General and the State Board of Education for review and (ii) report on the audit to the Board at the first Board meeting after the annual audit is completed. The Audit Committee shall be comprised of no less than three (3) and no more than seven (7) Board members whose responsibility shall be to make recommendations to the Executive Committee for the selection of the Foundation's auditor, for review and evaluation of the overall audit plan, to present recommendations regarding audit findings to the Executive Committee, and to ensure the effectiveness of the Foundation's internal accounting controls. The majority of members of the audit committee shall have financial expertise. In reference to any investigation which the Audit Committee believes is necessary and which is within the authority given to it by Audit Committee Charter, the Audit Committee is authorized to act on its own and without approval of the Executive Committee.

Section 3. Committee Records. Each Committee shall maintain written minutes of its meetings.

Article VIII

FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of July and end on the last day of June in each year.

Article IX

SEAL

The Board shall provide a corporate seal, which shall be in the form of a circle and shall inscribed thereon the name of the corporation and the words "Seal," "Florida not-for profit" and the year of incorporation.

Article X

MISCELLANEOUS PROVISIONS

Section 1. Non-discrimination. The Foundation will not discriminate based on race, color, religion, gender, age, national origin or disability.

Section 2. Foundation Employees. The Foundation may employ staff as required, but such employees shall not be considered to be employees of the State of Florida by virtue of their employment by the Foundation. Subject to the approval of the Executive Director and the University President, University employees performing duties for the Foundation may receive additional compensation from the Foundation.

Section 3. Confidentiality of Foundation Documents. As stated in Florida Statutes Section 1004.28, Foundation records are confidential and exempt from Florida public records laws. Upon receipt of a reasonable and specific request, the Foundation will provide all documents not exempt from the Florida Public Records Law and which were requested.. The Foundation will furnish this information in a format reasonably responsive to the request, at a reasonable cost to the requesting party. The Foundation will not, however, release any record or information that includes personal or financial information about a donor, prospective donor, alumnus, volunteer, or employee. All fund-raising activities undertaken by University staff, faculty, or students, or by volunteers are undertaken on behalf of the Foundation. All documents associated with such activities in possession of any University staff, faculty, student, or any volunteer is a record of the Foundation and is confidential.

Section 4. Indemnification.

- (a) Indemnification. Every Director and Officer 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 or Officer in connection with any proceeding, including any appeal, or any settlement of any proceeding to which the Director or Officer may be a party or in which he or she becomes involved as a result of serving as a Director or Officer. The indemnified party does not have to be a Director or Officer 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 or Officer 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.

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No insured shall settle any claim, incur any defense costs, assume any contractual obligations or admit any liability with respect to any claim without the Foundation's written consent with shall not be unreasonably withheld. The Foundation shall not be liable for any settlement, defense costs, assumed obligations or admission to which it is not consented. This indemnification shall be made in accordance with Section 607.0850, Florida Statutes, as amended from time to time.

Section 5. Limitation of Authority. The Foundation may not give, either directly or indirectly, any gift to a political committee or committee of continuous existence (as defined in Florida Statutes, Section 106.011) for any purpose other than a purpose that has been certified by a majority roll call vote of the Board at a regularly scheduled meeting as being directly related to the educational mission of the University.

Section 6. Meetings. All meetings of the Board and its Committees shall be conducted in accordance with Florida Statutes Section 286.011.

Article XI

AMENDMENTS

Section 1. These Bylaws may be altered, amended or repealed by resolution approved by the affirmative vote of a majority of Directors present at any duly noticed meeting at which a quorum is present.

Section 2. The Articles of Incorporation of the Foundation may be amended by resolution approved by the affirmative vote of a majority of Directors present at any duly noticed meeting at which a quorum is present.

Section 3. These Amended and Restated Bylaws were duly adopted at a meeting of the Board of Directors held on April 12, 2012

Secretary

Date