



**SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION**

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September 26, 2000

TO: Mr. Dalton Floyd, Chair, and Members, Commission on Higher Education

FROM: Rosemary Byerly, <sup>RPB</sup>Chair, Committee on Finance and Facilities

SUBJECT: Proposed Establishment of the South Carolina Commission on Higher Education Foundation, Inc.

Attached are the Bylaws and Articles of Incorporation of the South Carolina Commission on Higher Education Foundation, Inc. for your consideration at the October 5 Commission meeting. Please note that the Committee on Finance and Facilities has not acted on these items. The Committee will meet at 9:30 a.m. immediately prior to the Commission meeting on October 5.

Establishment of the S. C. Commission on Higher Education Foundation, Inc.

At its meeting on September 7, 2000, the Finance and Facilities Committee presented the following proposal:

The Establishment of the South Carolina Commission on Higher Education Foundation, Inc. was recommended by the CHE Business Advisory Council. This Foundation will be a nonprofit corporation under the provisions established by the Secretary of State. It will be organized and operated for public charitable uses and for the benefit of and to carry out the purposes of the Commission on Higher Education as determined by the Board of Trustees. The purpose of the Foundation is to support and enhance public higher education in the State of South Carolina. The external legal review of the articles and bylaws, as well as the legal fees in conjunction with the filing, are private.

The Committee deferred action on the establishment of the South Carolina Commission on Higher Education Foundation, Inc. to give the Commission staff time to address concerns that were raised by Committee members.

Attached for your consideration are the revised Bylaws and Articles of Incorporation for the South Carolina Commission on Higher Education Foundation, Inc. Changes are underlined in the attachments. For your convenience, significant changes in the Bylaws are listed below:

- 1) Article Five, Section 4 on page 2 should read: Incorporators. The number of incorporators of the corporation shall be four (4) comprised of the following: one (1) member of the South Carolina Commission on Higher Education; one (1) member from the boards of trustees of the public colleges and universities in South Carolina; and, two (2) members from the private citizenry of the state of South Carolina. In their responsibility for appointing nine members of the corporation's initial Board of Trustees, as set forth in Article Five, Section 5 below, these incorporators may serve as trustees, insofar as their membership complies with the stipulations set forth in Section 5.
- 2) Article Twelve. Non-competition with Development Activities of Public Colleges and Universities in South Carolina

In furtherance of the purposes set out in its Articles of Incorporation, the corporation shall not engage in activities that compete in any intentional manner with the development activities of the public colleges and universities in South Carolina. Furthermore, the corporation shall not take or receive any

## BYLAWS

### OF

## SOUTH CAROLINA COMMISSION ON HIGHER EDUCATION FOUNDATION, INC.

### ARTICLE ONE

#### Purposes

The corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

### ARTICLE TWO

#### Powers

The corporation shall have such powers as are now or may hereafter be granted by the South Carolina Nonprofit Corporation Act, South Carolina Code Annotated, § 33-31-110, et seq., as amended, except as limited by the provisions of its Articles of Incorporation or these Bylaws.

### ARTICLE THREE

#### Offices

The corporation shall have and will continuously maintain in the County of Richland, of South Carolina, a principal office for the transaction of the corporation's business, and may have such other offices within the State of South Carolina as the Board of Trustees may from time to time determine.

### ARTICLE FOUR

#### Members

Section 1. No Regular Members. In accordance with Section 33-31-603 of the South Carolina Nonprofit Corporation Act, the corporation shall have no members within the meaning of Section 33-31-140 (23) of that law. All actions that would otherwise require approval by a majority of all members or approval by members shall require only approval of the Board of Trustees. All rights that would otherwise vest in members shall vest in the Trustees.

Section 2. Persons Associated with the Corporation. By resolution, the Board of Trustees may create any advisory boards, councils, memberships, honorary members, or other bodies as it deems appropriate. The Board of Trustees may also, by resolution, confer upon any such class or classes of such persons some or all of the rights of a member under the South Carolina Nonprofit Corporation Act other than the right to vote:

- (a) for the election of a trustee or trustees or an officer or officers; or,
- (b) on a disposition of all or substantially all of the assets of the corporation; or,
- (c) on a merger; or,

corporation and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Trustees may be removed from office by majority vote of the Board of Trustees. A trustee shall automatically be removed from office if he or she fails to attend three consecutive meetings of the Board of Trustees without being excused therefrom.

Section 7. Vacancies. Any vacancy occurring on the Board of Trustees of the corporation shall be filled by the Board of Trustees.

Section 8. Compensation of Trustees. No trustee shall receive any salary or other similar compensation for any services as a trustee; however, the Board of Trustees may authorize the reimbursement of actual and necessary expenses incurred by individual trustees performing duties as trustees.

Section 9. Inspection by Trustees. Each trustee shall have the right at any reasonable time to inspect all books, records, documents of every kind and the physical properties of the corporation for purpose reasonably related to such person's interest as a trustee, provided that such trustee shall not have the right to inspect those books, records, or documents made privileged or confidential by law. This inspection must be made by the trustee in person, provided that the trustee may be accompanied by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents. Nothing in this section shall affect the right of the Board of Trustees to conduct the business of the corporation as set forth in these Bylaws.

## ARTICLE SIX

### Indemnification of Trustees, Officers, and Other Agents

Section 1. Right of Indemnity. To the fullest extent permitted by law, the corporation shall indemnify its trustees, officers, employees, and other persons described in § 33-31-850, et seq. and the amendments thereto of the South Carolina Nonprofit Corporation Act, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in that section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in this bylaw, shall have the same meaning as in § 33-31-850, et seq.

Section 2. Approval of Indemnity. On written request to the Board by any person seeking indemnification under § 33-31-850, et seq., the Board shall promptly determine whether the applicable standards of conduct set forth in § 33-31-851 have been met and, if so, the Board shall authorize indemnification.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance. The Board may advance expenses to trustees, other officers, employees, or agents as permitted by §§ 33-31-853 and 33-31-856.

Section 4. Insurance. The corporation shall have the right to purchase and maintain insurance to the fullest extent permitted by law on behalf of its officers, trustees, employees, and other agents,

functions of the corporation. The trustees shall be elected in accordance with the Bylaws of the corporation and shall have the powers and duties set forth in these Articles of Incorporation and in the Bylaws, to the extent that such powers and duties are not inconsistent with the status of the corporation as a nonprofit corporation that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

## **ARTICLE SIX**

### **Members**

The corporation initially shall have no members. However, the Board of Trustees of the corporation shall have the power to admit members to the corporation in such manner, subject to such qualifications, and upon such terms and conditions and with such rights and privileges as may be provided from time to time in the Bylaws of the corporation and as are not inconsistent with any provision of these Articles of Incorporation. Members may be divided into one or more classes.

## **ARTICLES SEVEN**

### **Initial Board of Trustees**

The initial Board of Trustees of the corporation shall consist of twelve (12) members, whose names and addresses are set forth below and who shall serve as trustees until their successors have been elected and qualified as stipulated in the Bylaws of the corporation.

## **ARTICLE EIGHT**

### **Dissolution of Corporation**

Upon dissolution of the corporation, the Board of Trustees shall, after paying and making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation by distributing those assets exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for public charitable uses and purposes as shall at the time qualify as exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction for the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purposes.

## ARTICLE NINE

### Registered Office and Registered Agent

The initial registered office of the corporation shall be at 1333 Taylor Street, Suite 200, Columbia, South Carolina.

The initial registered agent of the corporation at such address shall be John Smalls.

## ARTICLE TEN

### Principal Office

The mailing address of the initial principal office of the corporation is Dr. Rayburn Barton, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, South Carolina 29201.

## ARTICLE ELEVEN

### Definitions

(a) For purposes of these Articles of Incorporation, "charitable purposes" include charitable, religious, educational, literary, or scientific purposes within the meaning of 501(c)(3) of the Internal Revenue Code, contributions for which are deductible under section 170(c)(2) of the Internal Revenue Code. All references in these Articles of Incorporation to sections of the Internal Revenue Code shall be considered references to the Internal Revenue Code of 1986, as from time to time amended, and to the corresponding provisions of any applicable future United States Internal Revenue Law, and to all regulations issued under such sections and provisions.

(b) For purposes of these Articles of Incorporation, the term "trustee" or "trustees" or "Board of Trustees" shall be equivalent to the corresponding term "director" or "directors" or "Board of Directors," as provided in applicable provisions of South Carolina law.

## ARTICLE TWELVE

### Limitation of Trustee Liability

(a) A trustee of the corporation shall not be personally liable to the corporation or its members for monetary damages for breach of duty of care or other duty as a trustee, except for liability (i) for an appropriation, in violation of his or her duties, of any business opportunity of the corporation, (ii) for acts or omissions not in good faith or which involve intentional

misconduct or a knowing violation of law, or (iii) for any transaction from which the trustee derived an improper personal benefit.

(b) Any repeal or modification of the provisions of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a trustee of the corporation with respect to any act or omission occurring prior to the effective date of such repeal or modification.

(c) If the South Carolina Nonprofit Corporation Act, South Carolina Code Annotated, § 33-31-110, et seq., as amended, or other state laws are amended to authorize the further elimination or limitation of the liability of trustees, then the liability of trustee of the corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended South Carolina Nonprofit Corporation Act.

(d) In the event that any of the provisions of this Article (including any provision within a single sentence) are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the fullest extent permitted by law.

### ARTICLE THIRTEEN

#### Amendments

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of a majority of all of the trustees then in office.

IN WITNESS WHEREOF, the incorporators have executed these Articles of Incorporation this

\_\_\_\_ day of \_\_\_\_\_, 2000.

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