

**FIFTH AMENDED AND RESTATED BYLAWS
OF
WESTERN CAROLINA UNIVERSITY FOUNDATION**

ARTICLE I

Name

Section 1.1 Name. The name of this corporation shall be Western Carolina University Foundation (hereinafter referred to as the "**Corporation**").

ARTICLE II

Offices and Agency

Section 2.1 Registered Office and Registered Agent. The Registered Office of the Corporation shall be located in North Carolina, and the Registered Agent of the Corporation shall have a business office identical with such Registered Office. The Corporation's Registered Office and Registered Agent may be changed from time to time by the board of directors of the Corporation (the "**Board**"), upon filing of such notices as may be required by law.

Section 2.2 Principal Office. The principal business office of the Corporation shall be located on the main campus of Western Carolina University in Cullowhee, North Carolina (the "**University**").

ARTICLE III

Purposes of the Corporation

Section 3.1 Purposes. The Corporation is organized and shall at all times be operated exclusively for the purposes set forth in the Corporation's Articles of Incorporation, as the same may be amended from time to time. The purposes and activities of the Corporation shall be limited so that it will at all times qualify as (i) an exempt educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), or the corresponding provisions of any future federal internal revenue law, and North Carolina General Statute § 55A-1-40(4), or the corresponding provisions of any future law.

ARTICLE IV

Board of Directors

Section 4.1 General Powers. The control and management of the business and affairs of the Corporation shall be vested in its board of directors (the "**Board**").

Section 4.2 Number, Election, Tenure, and Limitation on Serving.

(a) The number of directors (the "**Directors**") constituting the Board shall be no fewer than five (5) and no more than thirty-one (31), and shall include among its number the following individuals:

(i) the chancellor of the University, who shall serve ex-officio with vote and hold the office of president of the Corporation (“**President**”); (ii) the chair of the University’s board of trustees, who shall serve ex-officio with vote; (iii) the vice chancellor for advancement of the University, who shall serve ex-officio without vote and hold the office of Executive Secretary of the Corporation (“**Executive Secretary**”); and (iv) the vice chancellor for administration and finance of the University, who shall serve ex-officio without vote and hold the office of Treasurer of the Corporation (“**Treasurer**”). The exact number of Directors shall be determined from time to time by the Directors.

(b) A Director need not be a resident of North Carolina.

(c) The Board shall recommend a slate of director-nominees for consideration and action by the Directors at their annual meeting held during the spring semester. After receiving recommendations and nominations, new Directors shall be elected annually by majority vote of the Directors. If the annual meeting of the Directors is not held, the Directors then in office shall hold over until their successors shall be duly elected and qualified, absent resignation, removal or death.

(d) After the initial staggering of terms, providing for the expiration of approximately one-third (1/3) of the Director terms each year, each Director shall hold office for a term of three (3) years or until his/her successor shall have been elected and qualified. Each Director shall be eligible for re-election. A Director may be re-elected for a second term, but may not serve a third consecutive term until such Director has taken a leave of one (1) year before again being eligible to be re-elected to the Board. The prohibition of election to a third consecutive term described in this section shall be applied prospectively as of May 20, 2011. Ex-officio Directors shall serve so long as they hold their respective offices.

Section 4.3 Annual Meetings. An annual meeting of the Board shall be held each year in the spring semester for the purpose of qualifying newly elected Directors, electing officers of the Corporation, appointment by the Chair of committee members and committee chairs in accordance with Article VII of these Bylaws, and for the transaction of such other business as may properly come before the Directors. If the annual meeting shall not be held on the day designated by these Bylaws, a substitute annual meeting may be called by or at the request of the Board and such meeting shall be designated and treated for all purposes as the annual meeting.

Section 4.4 Regular and Special Meetings. The Board may provide by resolution the day, hour, and place for the holding of regular meetings of the Board without further notice as required by Section 5.6 below. Special meetings of the Board may be called by or at the request of the President, the Chair, or any two (2) Directors. The person or persons authorized to call special meetings of the Board may fix the day, hour, and any place as the time and place for holding any special meeting.

Section 4.5 Place of Meetings. Meetings of the Board may be held at the principal office of the Corporation or at such other place, either within or without the State of North Carolina, as shall be designated in the notice of the meeting or in a waiver of notice of the meeting signed by the President then in office. Directors may participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.6 Notice of Meetings. As provided in Section 5.4 above, regular meetings of the Board may be held without notice. The person or persons calling a special meeting of the Board shall, at

least ten (10) days before the meeting, give written notice thereof delivered personally or sent by United States mail or electronic mail to each Director at his/her address of record. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed with postage thereon prepaid. If sent by electronic mail, such notice shall be deemed to be delivered when sent. Such notice need not specify the purpose for which the meeting is called.

Section 4.7 Waiver of Notice. Any Director may waive notice of any meeting, either before or after the meeting. Written waivers of notice shall be filed by the Executive Secretary with the Corporation's records or as part of the minutes of the meeting. The attendance by a Director at a 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.

Section 4.8 Quorum. A majority of the number of Directors entitled to vote, as fixed by these Bylaws, shall constitute a quorum for the transaction of business at any meeting of the Directors. However, when one or more vacancies occur on the Board, a majority of the existing Directors holding office shall constitute a quorum.

Section 4.9 Voting. Each Director shall be entitled to one vote. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Directors.

Section 4.10 Proxies Prohibited. A Director may not vote by proxy.

Section 4.11 Manner of Acting. The act of a majority of the Directors entitled to vote at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by the Corporation's Articles of Incorporation or these Bylaws.

Section 4.12 Informal Action by Directors. Action taken by the Directors or members of a committee without a meeting is nevertheless a Board or committee action if written consent to the action in question is signed by all of the Directors or all of the members of the committee, as the case may be, and filed with the minutes of the Board or committee, whether done before or after the action is taken.

Section 4.13 Electronic Attendance. For any regular or special meeting of the Board, a Director may participate and vote, subject to the limitations provided in this Section, by means of a conference telephone or other electronic communication device that permits all persons participating at the meeting to simultaneously hear each other during the meeting. Any Director participating in a meeting by this means is deemed to be present in person at the meeting. If a Director elects to participate in a meeting via electronic communication as provided in this Section for convenience or other personal reasons, such participation shall be limited to no more than one (1) meeting per fiscal year unless otherwise required by inclement weather or other exigent circumstances. Notwithstanding the foregoing, the Chair in his/her discretion may conduct a meeting of the Directors by use of telephone conference or other electronic means for good cause, such as inclement weather or other exigent circumstances.

Section 4.14 Power to Elect and Appoint Officers. The officers of the Corporation shall be the President, the Executive Secretary, and the Treasurer, who shall hold office by virtue of their appointments as officers of the University. The officers of the Board shall be a chair (the "**Chair**"), a vice chair (the "**Vice Chair**"), and a second vice chair (the "**Second Vice Chair**"), who shall be appointed by the President. The Board shall have the power to appoint such other Board officers and agents as the Board may deem necessary for transaction of the business of the Board.

Section 4.15 Conflict of Interest. Directors shall have an obligation to disclose any conflict of interest with respect to the Corporation's activities at each meeting. When appropriate, Directors shall be expected to abstain from voting on certain matters when a conflict of interest has been identified in accordance with the Corporation's conflict of interest policy and procedure, any applicable rules and regulations of either the University or the University of North Carolina, or the North Carolina Nonprofit Corporation Act.

Section 4.16 Resignation. A Director may resign at any time by giving notice of resignation in writing addressed to the Executive Secretary of the Corporation, or by presenting a written resignation in person at a regular or special meeting of the Board.

Section 4.17 Removal. An elected Director may be removed from office at any time with or without cause by the Directors only if the number of votes cast to remove such Director would be sufficient to elect such Director at a meeting to elect Directors. A Director may be removed by the Directors only at a meeting called for the purpose of removing the Director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the Director. Notwithstanding the foregoing, an elected Director's failure to attend two (2) Board meetings in any twelve (12) consecutive month period may result in removal of such Director from the Board upon the approval of a majority of the remaining Directors at any regular meeting or special meeting of the Board or any regular meeting or special meeting of the Board's Executive Committee. If a Director is removed by the Board's Executive Committee, the Executive Committee shall inform the Board at its next regular meeting.

Section 4.18 Vacancies. Vacancies occurring on the Board (including, without limitation, a vacancy resulting from an increase in the number of Directors or from the failure by the Directors to elect the full authorized number of Directors) may be filled by the affirmative vote of a majority of the Directors at any regular or special meeting of the Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office, and he/she shall be eligible to be elected for two (2) consecutive full terms thereafter.

Section 4.19 Compensation. Directors shall not be compensated for their services as such, however, the Board may provide for the payment of any or all expenses incurred by Directors in attending regular and special meetings of the Board. This shall not preclude Directors from serving the Corporation in other capacities and receiving compensation for such other services.

Section 4.20 Self-Evaluation. Directors shall evaluate their performance at least once every three (3) years and submit their self-evaluation report to the Directors.

ARTICLE V Officers

Section 5.1 Officers of the Corporation. The officers of the Corporation shall consist of the President, the Executive Secretary, and the Treasurer, who shall hold office by virtue of their appointments as officers of the University. In addition, the Board may, at its option, elect additional officers, assistant officers and agents of this Corporation as needed from time to time. The same individual may simultaneously hold more than one office; however, the President shall not also hold or discharge the duties of the office of Executive Secretary or Treasurer simultaneously. No officer may act in more than one capacity where the actions of two or more officers are required.

Section 5.2 Officers of the Board. The officers of the Board shall be the Chair, the Vice

Chair, and the Second Vice Chair, who will be appointed pursuant to these Bylaws.

Section 5.3 Election and Term of Office. The Chair, the Vice Chair, the Second Vice Chair, and all other officers of the Board shall be appointed for a two (2) year term. The officers of the Corporation shall hold their office so long as they hold their respective offices with the University.

Section 5.4 Resignation. Any appointed officer of the Corporation or officer of the Board may resign at any time by providing written notification of such resignation to the President, and such resignation shall become effective immediately upon receipt of such notification or at such later date as may be specified in the notification.

Section 5.5 Removal. At any meeting of the Board, provided proper notice thereof is given and a quorum is present, any appointed officer of the Corporation may be removed, with or without cause, upon a majority vote of the Directors in attendance at the meeting.

Section 5.6 Vacancies. Vacancies among appointed officers of the Corporation occurring during the terms thereof shall be filled by the Board at any meeting of the Board. Any officer appointed to fill a vacancy occasioned by the removal, resignation or death of an officer shall hold office until his/her successor shall have been duly qualified and appointed, or until his/her earlier death, resignation, retirement, removal, or disqualification.

Section 5.7 Chair. The Chair shall preside at all meetings of the Board. The Chair shall have such other powers and duties as the Board may assign from time to time.

Section 5.8 Vice Chair. The Vice Chair shall perform the duties specified in Section 6.7 of this Article VI in the absence or disability of the Chair, and shall have such other powers and duties as the Chair or the Board may assign from time to time.

Section 5.9 Second Vice Chair. The Second Vice Chair shall perform the duties specified in Section 6.8 of this Article VI in the absence or disability of the Vice Chair, and shall have such other powers and duties as the Chair or the Board may assign from time to time.

Section 5.10 President. The President shall serve as the Corporation's chief executive officer, and shall exercise general control and supervision over the business and affairs of the Corporation, subject only to the ultimate authority of the Board. The President shall have the power and authority to sign and execute instruments in the name of the Corporation except in cases where the signing and the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation or shall be required by law otherwise to be signed or executed. In addition, the President shall have the power to authorize routine acquisitions and dispositions of real property, and such other powers and duties as may be assigned by the Board from time to time, and may delegate administrative duties to another officer or employee of the Corporation, or to an employee of the University; provided, however, that such delegation is consistent with the policies of the University and the University of North Carolina and applicable law.

Section 5.11 Treasurer. The Treasurer shall have charge of and be responsible for all funds and securities, receipts and disbursements of the Corporation, and shall deposit all monies and securities of the Corporation in such banks and depositories as shall be designated by the Board, provided that the Board may appoint a custodian or depository for any such funds or securities, and the Board may designate those persons upon whose signature or authority such funds may be disbursed. He or she shall be responsible for advising and assisting the Board with the following: (a) the development, implementation, and

administration of appropriate fiscal policies, practices, and operations; (b) the development, implementation, and administration of appropriate internal control and audit procedures; and (c) the performance of such other duties and exercise such other powers as the President or the Board may assign from time to time.

Section 5.12 Executive Secretary. The Executive Secretary shall have the general powers and duties vested in the office of Executive Secretary, including the following: (1) maintaining and keeping all corporate records of the Corporation; (2) recording and maintaining minutes of meetings of the Board; (3) providing proper notice as required by these Bylaws or as required by law; (4) authenticating the records of the Corporation when required; and (5) performing such other duties and exercise such other powers as the President or the Board may assign from time to time.

Section 5.13 Bonds. The Board may by resolution require any officer, agent, or employee of the Corporation to give bond to the Corporation, with sufficient sureties, conditioned on the faithful performance of the duties of his/her respective office or position, and to comply with such other conditions as may from time to time be required by the Board.

Section 5.1 Validity of Signatures. In case any person whose signature shall appear on any bond, note, or other evidence of indebtedness of the Corporation shall cease to be an officer or hold an office different from that held at the time of signature before the delivery of such instrument, such signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in such office until such delivery.

Section 5.15 Compensation. Officers shall not be compensated for their services as such, however, the Board may provide for the payment of any or all expenses incurred by officers on behalf of the Corporation.

ARTICLE VI Committees

Section 6.1 Purpose and Designation of Committees. The Corporation may maintain standing committees to serve in an advisory capacity to the Board regarding those aspects of the business and affairs of the Corporation to which they have been delegated responsibility. The Board may designate from time to time one (1) or more special committees, in addition to those standing committees required by these Bylaws, as deemed necessary to properly carry out the activities of the Corporation. The creation of a special committee must be approved by a majority of the Directors then in office. Such committees shall perform such duties as the Board may direct, in a manner consistent with these Bylaws.

Section 6.2 Appointment of Committee Members. The President shall have the power to appoint the members and the chairs of committees, who may or may not be Directors.

Section 6.3 Limitation of Authority. No committee shall be authorized to: (a) approve any action that requires the approval of the Directors pursuant to the North Carolina Nonprofit Corporation Act, the Corporation's Articles of Incorporation or these Bylaws; (b) with the exception of the Executive Committee pursuant to Section 6.12 of these By-Laws, elect, appoint or remove officers of the Board or Directors or fill vacancies on the Board or any committee; (c) adopt, amend or repeal the Corporation's Articles of Incorporation or these Bylaws; (d) approve any plan of dissolution, the distribution of assets, or approve any merger, sale, pledge or transfer of all or substantially all of the Corporation's assets; or (e) approve any self-dealing transaction.

Section 6.4 Regular and Special Meetings. The Board may provide by resolution the day, hour, and place for the holding of regular meetings of the committees without further notice as required by Section 7.5 below. Special meetings of the committees may be called by or at the request of the Board or the committee chair. The person or persons authorized to call special meetings of a committee may fix the day, hour, and any place as the time and place for holding any special meeting.

Section 6.5 Notice of Committee Meetings. As provided in Section 7.4 above, regular meetings of the committees may be held without notice. The person or persons calling a special meeting of a committee shall, at least ten (10) days before the meeting, give written notice thereof delivered personally or sent by United States mail or electronic mail to each committee member at his/her address(es) of record. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed with postage thereon prepaid. If sent by electronic mail, such notice shall be deemed to be delivered when sent. Such notice need not specify the purpose for which the meeting is called.

Section 6.6 Minutes. All committees shall keep regular minutes of their proceedings and report the same to the Board at the next succeeding regular or special meeting of the Board.

Section 6.7 Quorum and Attendance via Electronic Communication.

(a) A majority of the number of members of a committee entitled to vote shall constitute a quorum for the transaction of business at any committee meeting. However, when one or more vacancies occur on a committee, a majority of the existing committee members shall constitute a quorum.

(b) Committee members may participate in a regular or special meeting of the committee by, or conduct the meeting through the use of, any means of electronic communication by which all committee members participating may simultaneously hear each other during the meeting. A committee member participating in a meeting by this means is deemed to be present in person at the meeting.

Section 6.8 Manner of Acting/Proxies Prohibited. The act of a majority of the members of a committee entitled to vote at a meeting at which a quorum is present shall be the act of the committee. Committee members may not vote by proxy.

Section 6.9 Resignation/Removal of Committee Members. Any committee member may resign by providing written notification of such resignation to the President, and such resignation shall become effective immediately upon receipt of such notification or at such later date as may be specified in the notification. Any committee member may be removed, with or without cause, by the President.

Section 6.10 Vacancies. Vacancies occurring on any committee may be filled by the President. Any committee member appointed to fill a vacancy occasioned by the removal, resignation or death of a committee member shall hold office until the expiration of said former member's term of office, or until his/her earlier resignation or death.

Section 6.11 Number and Tenure of Committee Members. Each committee shall be comprised of at least two (2) persons, who may or may not be Directors, appointed as provided in Section 7.2 of this Article VII. The members and chair of each committee shall take office on the day of their appointment and hold office until the next annual meeting of the Board and their successors have been appointed, or until their earlier resignation, removal or death, or until the committee has been dissolved.

Section 6.12 Executive Committee. When the Directors are not in session and prudent management requires prompt action, the executive committee, comprised of the President, Chair, Vice Chair, the Second Vice Chair and each chairperson of the Committees, shall have and exercise all of the authority of the Directors in the management of the Corporation, except as such authority is limited by resolution of the Board or these Bylaws, and any such action shall be submitted to the Directors at their next meeting for informational purposes. The Treasurer and Executive Secretary shall also participate in meetings of the executive committee in an advisory capacity upon request of the President.

Section 6.13 Finance and Audit Committee. The finance and audit committee shall be a standing committee of the Board comprised of at least five (5) Directors, including the Treasurer. No employee of the Corporation may serve on the committee. The finance and audit committee shall be responsible for making recommendations to the Board pertaining to the current and long-term fiscal affairs of the Corporation, including: (i) reviewing the financial statements of the Corporation; (ii) reviewing investment portfolios and the management of endowment and trust funds of the Corporation; (iii) reviewing extraordinary acquisitions and dispositions of real estate holdings of the Corporation; (iv) receiving audit reports and annual tax information returns from the independent audit firm appointed by the Board, and reviewing internal controls and significant accounting and reporting issues; and (v) performing such other duties related to fiscal matters as may be assigned to the finance and audit committee by the Board in accordance with gift acceptance guidelines. The finance and audit committee may establish such subcommittees as may be necessary or desirable to the efficient discharge of its duties.

Section 6.14 Advancement Committee. The advancement committee, comprised of at least three (3) Directors, is established as a standing committee of the Board to provide input and oversight regarding the systematic generation of private philanthropic support of university priorities and initiatives. Members of this committee will: make their own meaningful gifts to both the University's annual fund and to any specific campaigns as a means of setting the standard for giving by the full board; provide insights on how best to execute solicitation strategies for the Board as a whole and for individual Directors; participate in the direct solicitation and stewardship of Board contributions as appropriate; partner with development and University leaders in the articulation of goals for Board contributions and Director engagement in the cultivation of support from key prospects outside of the Board; ensure that characteristics aligned with both influence and affluence continue to represent priorities for identifying and recruiting new Directors; ensure that gift acceptance and naming policies are current and provide appropriate inclusion of campaign requirements; work with development staff leaders to develop relevant metrics to monitor the University's overall fundraising program as well as any targeted campaigns; share fundraising and campaign progress and challenges on a consistent basis with the full Board; and provide mentorship to other organized volunteer groups and committees on their roles in developing a stronger base of private support for University, program, and unit priorities.

Section 6.15 Support Organization Oversight Committee. The support organization oversight committee shall be a standing committee of the Board comprised of at least three (3) Directors. The director of alumni engagement of the University shall serve as an ex-officio member of the committee without vote, and shall staff the committee. The support organization oversight committee shall be responsible for providing appropriate oversight to entities that are operating units of the Corporation and that provide support to the University's athletics and other programs, including the Catamount Club, the Alumni Association, and such other organization(s) existing from time to time. The support organization oversight committee shall receive routine and periodic reports on activities from the Catamount Club, which shall be reported to the Board at its regularly scheduled meetings. The committee also shall be responsible for approving, and recommending the approval by the Board, the governing documents of the Catamount Club, Alumni Association, and other or successor support/fundraising organization(s) affiliated with the Corporation.

Section 6.16 Board Development Committee. The Board development committee shall be a standing committee of the Board comprised of at least five (5) Directors. The committee is responsible for the following duties, without limitation: developing a listing of desired skills and attributes of potential Director-nominees; identifying and implementing best practices for effective governance; conducting annual performance evaluations of the Board and its committees; and identifying and presenting to the Board a listing of qualified Director-nominees, in consultation with the Chair and President of the Board and the vice chancellor for advancement. Included with this listing shall be information pertaining to the background and qualification of Director-nominees, as well as an assessment of the Director-nominee's availability and willingness to serve. The Board shall then present a slate of Director-nominees to the Directors for their consideration and election at the annual meeting of the Directors.

Section 6.17 Compensation. Committee members shall not be compensated for their services as such, however, the Board may provide for a charitable gift credit in the amount of any or all expenses incurred by committee members in attending committee meetings. This shall not preclude committee members from serving the Corporation in other capacities and receiving compensation for such other services.

ARTICLE VII **Contracts, Checks, Deposits and Funds**

Section 7.1 Contracts. The Board may authorize by resolution any officer or officers, agent or agents of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.2 Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances. Notwithstanding the foregoing, the Corporation may not acquire debt in excess of Five Hundred Thousand Dollars (\$500,000) that is not to be publicly traded without first notifying the University's chancellor or his/her designee, and consulting with the UNC vice president for finance.

Section 7.3 Expenditures and Financial Activities. All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall from time to time be determined by resolution of the Board; provided, however, that expenditures of the Corporation shall be subject to approval by the designated accountable officer for the University, and financial activities of the Corporation shall be subject to the same internal regulatory, finance, and accounting controls and policies that apply to the University.

Section 7.4 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories, and by such persons, as the Treasurer may determine.

ARTICLE VIII **Books and Records**

Section 8.1 Books and Records. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board and committees having delegated authority of the Board.

ARTICLE IX

Fiscal Year

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall be fixed to coincide with the fiscal year of the University.

ARTICLE X

Corporate Indemnification

Section 10.1 Indemnification by the Corporation.

(a) Any person who at any time serves or has served as a Director, officer, employee or authorized agent of the Corporation, or in such capacity at the request of the Corporation for any other corporation, partnership, joint venture, trust or other enterprise, shall have a right to be indemnified by the Corporation to the fullest extent permitted by law against (a) reasonable expenses, including attorney's fees, actually and necessarily incurred in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Corporation, seeking to hold such person liable by reason of the fact that such person is or was acting in such capacity, and (b) payments made in satisfaction of any judgment, money decree, fine, penalty or settlement for which such person may have become liable in any such action, suit or proceeding.

(b) The Board shall take all such action as may be necessary and appropriate to authorize the Corporation to pay the indemnification required by this Article XI, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and the reasonable amount of indemnity due.

(c) Any person who at any time after the adoption of these Bylaws serves or has served in any of the aforesaid capacities for or on behalf of the Corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Article XI.

(d) In addition to the foregoing, the Board shall have the right and power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or authorized agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee or authorized agent of another corporation, partnership, joint venture, trust or other enterprise against any liability incurred or asserted to be incurred in any such capacity, or arising out of any such status, whether or not the Corporation would have the power to indemnify him/her against such liability.

ARTICLE XI

Amendments to Articles of Incorporation and Bylaws

Section 11.1 Amendment to Articles of Incorporation. The power to adopt, amend, restate or repeal any provisions of the Corporation's Articles of Incorporation shall be vested only in the Members. The Corporation's Articles of Incorporation may only be amended, restated or repealed by a majority of the votes cast by the Directors. Notwithstanding the foregoing, the Directors shall not authorize any amendment to the Corporation's Articles of Incorporation which would have the effect of disqualifying

(a) the Corporation as a tax exempt organization under Section 501(c)(3) of the Code, or corresponding provisions of future revenue laws, or as an organization described in Section 509(a)(1) of the Code, or corresponding provisions of future revenue laws, or (b) contributions to the Corporation for deductions under Section 170(c)(2) of the Code, or corresponding provisions of future revenue laws.

Section 11.2 Amendments to Bylaws. The power to adopt, amend, restate or repeal these Bylaws shall be vested only in the Directors. These Bylaws may only be amended, restated or repealed by a majority of the votes cast by the Directors. Notwithstanding the foregoing, the Members shall not authorize any amendment to these Bylaws which would have the effect of disqualifying (a) the Corporation as a tax exempt organization under Section 501(c)(3) of the Code, or corresponding provisions of future revenue laws, or as an organization described in Section 509(a)(1) of the Code, or corresponding provisions of future revenue laws, or (b) contributions to the Corporation for deductions under Section 170(c)(2) of the Code, or corresponding provisions of future revenue laws.

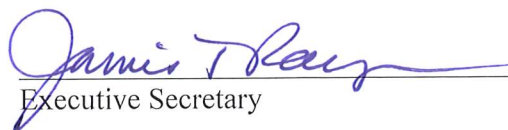
ARTICLE XII
Dissolution and Distribution

Section 12.1 Dissolution. The Corporation may be voluntarily dissolved if a plan of dissolution meeting the requirements of N.C.G.S. 55A-14-03 is approved by the President and an affirmative vote of a majority of Directors then in office at any regular or special meeting of the Board subject to the notice and quorum provisions set forth in these Bylaws.

Section 12.2 Distribution. Upon the dissolution of the Corporation in any manner or for any reason whatsoever, the Directors of the Corporation shall, after paying or making provision for payment of all liabilities of the corporation, distribute all of the remaining assets and property of the Corporation to the University; or, if the University is no longer in existence or is no longer qualified, to the Western Carolina University Research and Development Corporation, an organization exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code (herein, "R&D"). In the event that neither the University, R&D nor any of their respective successors are in existence, then the assets of the Corporation upon dissolution shall be distributed exclusively to such organization(s) organized and operated exclusively for charitable, educational or scientific purposes under Section 501(c)(3) of the Code as may be directed by the Directors of the Corporation. In the event the Directors do not direct the disposition of any assets of the corporation, then such assets shall be distributed to such tax-exempt organizations or entities, including without limitation, any federal, state and local governments, as may be directed by the Board of Governors of the University of North Carolina.

SECRETARY'S CERTIFICATION

This is to certify that the foregoing copy of the Fifth Amended and Restated Bylaws of Western Carolina University Foundation is a true and complete copy of the Corporation's Bylaws approved by the Board at a meeting duly held upon proper notice on the 30 day of October, 2020, to be effective for all purposes from and after the 30 day of October, 2020.


Executive Secretary

