

**AMENDED AND RESTATED BYLAWS OF
SOUTHWEST FLORIDA COMMUNITY FOUNDATION, INC.**

ARTICLE I.

General

- Section 1. Effective Date.** These Bylaws amend and restate in their entirety the Bylaws of the Southwest Florida Community Foundation, Inc. (the "Foundation") and are effective as of April 14, 2009.
- Section 2. Definitions.** As used in these Bylaws, the terms "public charity", "charitable purposes", and "qualified charitable organization" mean the same as their respective definitions in Article X, Section (c) of the Amended Articles of Incorporation of the Foundation.
- Section 3. References to Internal Revenue Code.** Any reference to a provision of the Internal Revenue Code of 1954 includes the corresponding provision or provisions then in effect of the Internal Revenue Code of 1986 and any subsequent Federal tax laws.

ARTICLE II.

Membership

- Section 1. Voting Members.** The voting members of the Foundation shall be those persons who are nominated, elected, and who qualify as members of the Board of Trustees, during their term of office as members of the Board of Trustees. Members of the Board of Trustees shall be selected in the manner set forth in Article III, Section 5. The termination or expiration of a member's status as a member of the Board of Trustees shall terminate such person's status as a member of the Foundation. In their capacity as members of the Foundation, the members of the Board of Trustees shall be referred to in these Bylaws as "Voting Members."
- Section 2. Affiliate Members.** The Board of Trustees may establish by amendment to the Bylaws additional classes of membership. Unless specifically provided to the contrary, such additional classes of membership shall not have voting rights or any rights to participate in the management of the Foundation.
- Section 3. Meetings; Notice.** The annual meeting of the Voting Members shall be held on a date during the month of April, May or June, as set by the Board of Trustees. Special meetings of the Voting Members may be called by the Chair of Trustees or by any seven (7) Voting Members. Notice of the Annual Meeting and any special meeting of the Voting Members shall be given not fewer than ten (10) days or more than sixty (60) days before the date of such meeting to each Voting Member by mail at his last known address. All such notices shall state the time and place of the meeting. Notice of any meeting may be waived in writing, either before or after the holding of such meeting, by any Voting Member. The attendance of any Voting Member at any such meeting shall be deemed to be a waiver by him of notice of such meeting.

Section 4. Quorum. A quorum for the transaction of business at any annual or special meeting of the Voting Members shall be a majority of the Voting Members of the Foundation; but a smaller number may adjourn from time to time, without further notice, until a quorum is secured.

Section 5. Voting. Each Voting Member shall be entitled to one vote on each matter properly submitted to the Voting Members for their vote, ratification, consent, waiver, release or other action. Voting Members shall not be permitted to vote by proxy. The act of a majority of the Voting Members present at a meeting at which a quorum is present shall be the act of the Members.

Section 6. Written Consents. Any action required or permitted to be taken by any provisions of law, the Articles of Incorporation or these Bylaws at any meeting of the Members may be taken without a meeting if a written consent, which may be distributed by fax or electronic means, thereto is signed by all Voting Members and filed in the minutes of the proceedings of the Voting Members.

**ARTICLE III.
Board of Trustees**

Section 1. Authority. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Foundation managed under the direction of, the Board of Trustees. It shall be the duty of the Trustees to carry out the aims and purposes of this Foundation and, to this end, to manage and control all of its property and assets. In carrying out its duties, the Board of Trustees is authorized to elect officers, to establish committees and designate committee members, and to employ or arrange for the services of such persons, including attorneys, agents and assistants, as in its opinion are necessary or desirable for the proper administration of the Foundation and to pay reasonable compensation for services and expenses thereof. The Board of Trustees may also, from time to time, appoint and retain as advisors, persons whose advise, assistance or support may be deemed helpful in determining policies and formulating programs for carrying out the Foundation's purposes and pay the reasonable expenses thereof.

Section 2. Number of Trustees. The Foundation shall have no more than Thirty (30) Trustees. The number of Trustees may be decreased from time to time by vote of a majority of the Board of Trustees, but shall never be less than three (3).

Section 3. Ex Officio Trustees. The following shall serve as *ex officio* members of the Board of Trustees, and may participate in all meetings of the Board of Trustees:

- a. the President/Chief Executive Officer of the Foundation (who shall not have voting rights);

The term of each *ex officio* member of the Board of Trustees shall be coterminous with his or her respective role in the position by which they have *ex officio* status.

Section 4. Term of Office. Except for *ex officio* members of the Board of Trustees (whose term shall be coterminous with their role in the position by which they have *ex officio* status), unless the Governance Committee nominates a candidate for election of a Trustee for a shorter term, the members of the Board of Trustees shall be elected for a term of three (3) years. At each annual meeting of the Board of Trustees of the Corporation, the successors of the Trustees whose terms expire at that meeting shall be elected. The Governance Committee may present candidates for election as Trustees as the Governance Committee determines advisable between annual meetings.

If the number of Trustees of the Foundation is changed, no decrease in the number of Trustees shall affect the term of any Trustee then in office.

Trustees shall not serve for more than three (3) consecutive three-year terms. A person who has served as Trustee for three (3) consecutive three-year terms shall not be eligible to serve as Trustee until he or she has not served as a Trustee for a period of one (1) year. During such time that a former Trustee is not eligible to be elected as a Trustee, the former Trustee may serve as an Advisory Trustee.

Section 5. Qualifications of Trustees. The Board of Trustees shall consist of residents in Southwest Florida, within or in the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida who have been (a) nominated by the Governance Committee and (b) elected by the Voting Members. In selecting candidates for election to the Board of Trustees, the Governance Committee shall select individuals who are knowledgeable and familiar with the educational, cultural, civic, public and other charitable needs in Southwest Florida, within or in the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida. In selecting candidates for election to the Board of Trustees, the Governance Committee shall endeavor to ensure that the Board of Trustees will reflect a diversity of community interests in Southwest Florida.

Section 6. Meetings; Notices. The Board of Trustees shall hold at least three regular meetings at such time and place as may be fixed by the Board, or if no time or place has been fixed by the Board, at such time and place as may be fixed by the Chair. Special meetings of the Board of Trustees may be called by the President/Chief Executive Officer or by the Chair and shall be called by him/her upon the request of any seven Trustees. Notice of all meetings of the Board of Trustees may be given by mail (sent not less than five days before the meeting) to the usual business or residence address of each Trustee or by electronic means (such as email or facsimile) which the Trustee has authorized (sent not less than three days before the meeting). Such notice may be waived by any Trustee and attendance at any such meeting shall be deemed to constitute a waiver of notice thereof; provided, however, that this notice provision shall be inapplicable with respect to any annual meeting of the Board of Trustees which is held directly following an annual meeting of the members at which any Trustee is first elected or appointed as such. A quorum for the transaction of business shall be a majority of the Board of Trustees then serving. Trustees or the

members of any committee thereof shall be deemed present at a meeting of the Board or of any such committee, as the case may be, if the meeting is conducted using a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Trustees shall not be permitted to vote by proxy.

Section 7. Election of Trustees. Trustees shall be elected in the following manner. Members of the Board of Trustees may submit the names of prospective Trustees to the Governance Committee. The Governance Committee shall prepare a list of nominees from among the candidates submitted by members of the Board of Trustees and other candidates independently selected by the Governance Committee. The Governance Committee shall submit the names of candidates for election to fill all vacancies on the Board of Trustees to the Secretary as soon as reasonably practicable prior to the meeting of the Board of Trustees at which such vacancies are to be filled. The Secretary shall forward a list of such nominees to each member of the Board of Trustees. At the meeting of the Board of Trustees to fill vacancies, the chair of the Governance Committee shall present its nominations. Nominees shall be elected upon receiving a majority of the votes cast at the meeting of the Board of Trustees.

Section 8. Removal of Trustees. Any Trustee may be removed by the vote of two-thirds (2/3) of all of the members of the Board of Trustees, with or without cause, whenever, in the judgment of two-thirds (2/3) of the members of the Board of Trustees, the best interests of the Foundation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person removed.

Section 9. Vacancies. Any vacancy occurring in the Board of Trustees shall be filled by vote of the Board of Trustees. A Trustee elected to fill a vacancy shall be elected for a three-year term, unless the Governance Committee nominates such Trustee for a shorter term.

Section 10. Appointment of Auditor. The Board of Trustees shall appoint an independent auditor to perform an audit of the Foundation's financial statements and related statements to be in accordance with generally accepted auditing standards. The auditor shall report to the Board of Trustees on its findings. The Board of Trustees may also request the auditor to review or prepare such financial data as may be necessary for returns or reports required by the State of Florida or the Federal Government to be filed by the Foundation. The auditor's reasonable charges and expenses shall be proper expenses.

Section 11. Publicity.

a. Annual Report. The Board of Trustees shall at least annually make such distribution of a written report of its financial condition, activities and distributions to representative persons and organizations in the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida as will, in the opinion of

the Board of Trustees, reasonably inform the interested public of the operations of the Foundation.

b. General Authority. The Board of Trustees shall take all other appropriate actions to make the Foundation and its purposes known to the people of the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida, and in that action seek gifts to the Foundation from a wide segment of the population of the community.

Section 12. Advisory Trustees. The Board of Trustees may establish by amendment to the Bylaws classes of Advisory Trustees. Unless specifically provided to the contrary, Advisory Trustees shall not have voting rights or any rights to participate in the management of the Foundation. Pursuant to the authority set forth in this section, the Board has established the following classes of Advisory Trustees:

a. Emeritus Trustee – The Governance Committee may recommend and the Executive Committee or Board of Trustees may from time to time elect persons to the office to be known as Trustee Emeritus. Such persons shall be those persons who the Board of Trustees shall determine, from time to time, have rendered long and continued service to the Board of Trustees of the Southwest Florida Community Foundation, Inc. and have served at least one 3-year term on the Board of Trustees, and may be elected to such office on majority vote of the Board of Trustees. A Trustee Emeritus shall have no vote. A person elected as Trustee Emeritus need not meet any specific category as established for other Trustees, and their term shall be for life, unless removed by the Trustees. There shall be no limit on the number of Trustees Emeritus herein authorized.

b. Senior Advisory Trustees – The Governance Committee may consider those Trustees who have completed three (3)-year terms for consideration and nomination by the Executive Committee [and] or Board as a senior advisor to the Foundation. Any former Trustee so nominated may accept appointment as either Senior Advisor or Emeritus status. Senior Advisory Trustees will be appointed for a three-year term and are required to fulfill the same annual commitment obligations as Trustees. Senior Advisory Trustees are entitled to vote at all meetings of committees to which they have been appointed. In addition, Senior Advisory Trustees shall be entitled to receive notice of and attend all Board of Trustee meetings (other than executive sessions), as well as any committees which they may request; however, Advisory Trustees shall not have the right to vote at any meetings of the Board of Trustees or any of committees to which they have not been appointed.

Section 13. Trustee Conflicts of Interest. No contract or other transaction between the Foundation and one (1) or more of its Trustees or any other corporation, firm, association, or entity in which one (1) or more of its Trustees are directors or

officers or has a material financial interest, shall be either void or voidable because of such relationship or interest or because such Trustee or Trustees are present at the meeting of the Board of Trustees or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his, her or their votes are counted for such purpose, if (1) the fact of such relationship or interest is disclosed or known to the Board of Trustees or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested Trustees; or (2) the contract or transaction is fair and reasonable to the Foundation. Common or interested Trustees may be counted in determining the presence of a quorum at a meeting of the Board of Trustees or a committee thereof which authorizes, approves or ratifies such contract or transaction.

**ARTICLE IV.
Officers**

Section 1. Appointment of President/Chief Executive Officer. The Board of Trustees shall appoint, designate and elect a salaried employee of the Foundation President/Chief Executive Officer of the Foundation, to serve at the pleasure of the Board of Trustees, subject to any contractual arrangement with him or her.

Section 2. Appointment of Chief Financial Officer and Chief Operating Officer. The President/Chief Executive Officer shall be authorized to appoint and designate one or more salaried employees of the Foundation to serve as Chief Financial Officer and Chief Operating Officer (which positions may be separated or combined at the pleasure of the President/Chief Executive Officer), to serve at the pleasure of the President/Chief Executive Officer, subject to any contractual arrangement with him or her.

Section 3. Appointment of Other Officers. The Board of Trustees, in its annual meeting, shall elect from its members the following officers:

- a. a Chair, who shall preside over all meetings of the Trustees and Executive Committee, and perform such other duties as normally incident to Chair;
- b. a Vice Chair, who shall serve as Chair in the absence of the Chair, and who shall succeed the Chair after expiration of the Chair's term (unless the Board of Trustees shall elect another to serve as Chair);
- c. a Secretary/Treasurer;
- e. such other officers as the Board of Trustees may designate from time to time.

The officers elected pursuant to this Section 3 of Article IV, shall serve for terms of two (2) years, but may be removed from such stations upon the vote of two-thirds (2/3) of the members of the Board of Trustees, for any reason or no reason.

Section 4. President/Chief Executive Officer. The President/Chief Executive Officer shall be the chief executive officer of the Foundation and shall have such duties, responsibilities and powers as may be necessary to carry out the directions and policies of the Board of Trustees or as are prescribed in these Bylaws or otherwise delegated by the Board of Trustees and shall at all times be subject to the policies, control and direction of the Board of Trustees. The President/Chief Executive Officer shall have the authority to:

- a. Sign and make contracts and agreements in the name of the Foundation;
- b. Sign notes, drafts or bills of exchange, warrants or other orders for the payment of money duly drawn on behalf of the Foundation;
- c. Supervise all employees of the Foundation, including the power to hire and fire such employees as he or she deems advisable; and
- d. Have general charge of and control over the affairs of the Foundation and perform all the duties incident to such position and office, including the purchase or sale by the Foundation of tangible or intangible assets up to \$10,000, the enforcement of the rights and claims of the Foundation and all other things which the President/Chief Executive Officer is required to do by law.

Section 5. Chief Financial Officer. Subject to the direction of the President/Chief Executive Officer, the Chief Financial Officer shall be responsible for the maintenance of the Foundation's financial books and records in compliance with the requirements of law and the financial policies of the Foundation.

Section 6. Chief Operating Officer. Subject to the direction of the President/Chief Executive Officer, the Chief Operating Officer shall be responsible for the day-to-day administration of the Foundation in compliance with the requirements of law and the operational policies of the Foundation.

Section 7. Chair. The Chair shall be a member of the Board of Trustees and shall preside over all meetings of the Board of Trustees and Voting Members of the Foundation. In the absence of the Chair or in the event for any reason it shall be impracticable for the Chair to act personally, the Vice-Chair shall preside at all meetings of the Board of Trustees. The Chair shall perform such other powers and duties as may from time to time be assigned to him or her by the Board of Trustees, or as may be prescribed by these Bylaws.

Section 8. Vice-Chair. The Vice-Chair shall be a member of the Board of Trustees and shall, in the absence of the Chair, preside over all meetings of the Board of Trustees and Voting Members of the Foundation. The Vice-Chair shall serve as Chair of the Governance Committee. The Vice-Chair shall perform such other powers and duties as may from time to time be assigned to him or her by the Board of Trustees, or as may be prescribed by these Bylaws.

Section 9. Secretary/Treasurer. Subject to the general direction of the Board of Trustees, the Secretary/Treasurer shall be the custodian of the corporate records and of the seal of the Foundation. The Secretary/Treasurer shall keep the minutes of the meetings of the members and of the Board of Trustees in one or more books provided for that purpose and shall see that all notices are duly given in accordance with the provisions of these Bylaws or as otherwise required by law. The Secretary/Treasurer shall have general charge of all money and other property belonging to the Foundation, disburse the same under directions of the Board of Trustees and keep an accurate account of same and in general to perform all of the duties instant to the office of Treasurer and such other duties as from time to time may be assigned to such person by the President and Chief Executive Officer, or Chair or by the Board of Trustees. In the performance of his or her duties as Secretary/Treasurer, the Secretary/Treasurer shall be assisted by the Chief Financial Officer of the Foundation and such other staff members of the Foundation as may be assigned.

Section 10. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by majority vote of the Board of Trustees as soon as it is practical.

Section 11. Compensation. Except for the President/Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer, officers of the Foundation shall serve without compensation. Notwithstanding the foregoing, the Board of Trustees may authorize reimbursement of reasonable substantiated costs and expenses incurred by an officer in carrying out his or her duties for the Foundation.

ARTICLE V Committees

Section 1. Executive Committee. The Board of Trustees shall create an Executive Committee consisting of the President/Chief Executive Officer (non-voting), the Chair, the immediate past Chair, the Vice-Chair, the Secretary/Treasurer, the chairs of each of the standing committees specified in Article V, Section 3 of these bylaws, and two members recommended by the new Chair and nominated by the Governance Committee from the members of the Board of Trustees at large. All members of the Executive Committee shall be members of the Board of Trustees. Except as otherwise provided herein, the Executive Committee shall, during the intervals between the meetings of the Board of Trustees, possess and may exercise all the powers of the Board of Trustees in the management of the affairs of the Foundation. Fifty percent of the members of the Executive Committee present at any meeting shall constitute a quorum thereof. The Executive Committee shall keep full records and accounts of its proceedings and transactions. All actions by the Executive Committee shall be reported to the Board of Trustees at its meeting succeeding such action and shall be subject to control, revision and alteration by the Board of Trustees.

Section 2. Advisory Boards and Committees. The Board of Trustees or the Executive Committee may authorize and appoint members of standing and/or temporary committees to consider appropriate matters, make reports to the President/Chief Executive Officer and/or Board of Trustees, and fulfill such other advisory functions as may be designated. The Board of Trustees or the Executive Committee may remove members of standing and/or temporary committees at will. The designation of such standing and/or temporary committees, and the members thereof, shall be recorded in the minutes of the Board of Trustees.

Section 3. Standing Committees. The Board of Trustees shall create the Standing Committees described below. Members of Standing Committees shall be elected to serve for one-year terms. The Governance Committee shall nominate and the Board of Trustees shall elect the Chair of each Standing Committee, who shall serve in such capacity for a two-year term. The members of each Standing Committee shall be nominated by the Governance Committee and elected by the Board of Trustees for one year terms. A majority of the members of each Standing Committee shall be members of the Board of Trustees, and the chair of each Standing Committee shall be selected by the Board of Trustees from among the committee members who also serve as trustees. Fifty percent of the members of each Standing Committee present at any meeting shall constitute a quorum thereof. Each Standing Committee shall designate a Secretary who shall prepare and maintain a record of the proceedings of the Standing Committee. All actions by each Standing Committee shall be reported to the Board of Trustees at its meeting succeeding such action. Any actions that would change existing Foundation policy shall be recommended by the Committee to the Board or Executive Committee for its approval at its next meeting. The Standing Committees provided for in these Bylaws shall consist of the following:

- a. Governance.
- b. Finance.
- c. Audit.
- d. Asset Development.
- e. Marketing, Visibility and Communication.
- f. Grantmaking.
- g. Scholarship.

Subject to the further direction of the Board of Trustees, the Standing Committees shall have the responsibilities set forth in these Bylaws.

Section 4. Governance. The Governance Committee shall have the responsibility to nominate persons to fill vacancies on the Board of Trustees and Standing Committees, to review and recommend revisions to the Articles of

Incorporation and Bylaws of the Foundation, to prepare and update the policies of the Foundation, to provide orientation materials to new and prospective trustees and to attend to any other matters that may be assigned to the Governance Committee by the Board of Trustees, the Executive Committee or the President/Chief Executive Officer. The Vice-Chair shall serve as the Chair of the Governance Committee.

Section 5. Finance. The Finance Committee shall have the responsibility to oversee the Foundation's assets. It shall also review and recommend the Foundation's budget and spending policies and be responsible for such other matters assigned by Board of Trustees, the Executive Committee or the President/Chief Executive Officer. The Secretary/Treasurer shall serve as the Chair of the Finance Committee.

Section 6. Audit. The Audit Committee operates under a Charter as amended November 2, 2006 and has the responsibility to oversee the Foundation's accounting and financial reporting policies and practices, the Foundation's internal controls (including disclosure controls and procedures); the quality and objectivity of the Foundation's financial statements and the independent audit thereof; related activities and recommend to the Board the appointment, compensation, and oversight of the work performed by the Foundation's independent auditors for the purpose of preparing or issuing an audit report or related work; act as a liaison between the Foundation's independent auditors and the Board; provide oversight related to the timely and accurate filings by the Foundation of Form 990 and all relevant schedules, as well as other external reporting as required by the Internal Revenue Service; and be responsible for such other matters assigned to it by the Board of Trustees, the Executive Committee, or the President/Chief Executive Officer.

Section 7. Asset Development. The Asset Development Committee shall develop and implement programs to enhance and promote the Foundation's relationships with its existing donors, and be responsible for such other matters assigned to it by the Board of Trustees, the Executive Committee, or the President/Chief Executive Officer.

Section 8. Marketing, Visibility and Communication. The Marketing, Visibility and Communication Committee shall develop and implement programs that bring a greater awareness of the Foundation to the community at large, as well as to specific individuals, and be responsible for such other matters assigned to it by the Board of Trustees, the Executive Committee, or the President/Chief Executive Officer.

Section 9. Grantmaking. The Grantmaking Committee shall develop and implement procedures for the receipt and review of grant applications, recommend grant awards, and monitoring and reviewing the performance of grant recipients. The Grantmaking Committee shall also be responsible for such other matters assigned to it by the Board of Trustees, the Executive Committee, or the President/Chief Executive Officer.

Section 10. Scholarship. The Scholarship Committee shall develop and implement procedures for the receipt and review of scholarship applications, recommend scholarship awards, and monitoring and reviewing the performance of scholarship recipients. The Scholarship Committee shall also be responsible for such other matters assigned by Board of Trustees, the Executive Committee or the President/Chief Executive Officer.

Section 11. CEO Evaluation and Compensation. The CEO Evaluation and Compensation Committee (which shall not be a standing committee of the Board of Trustees) shall be responsible for establishing the terms of employment of the President/Chief Executive Officer, conducting an evaluation of his or her performance at least annually, and determining any changes in compensation or benefits. In determining appropriate compensation or benefit changes, the committee shall review and take into account, among other things, compensation data for executives serving in comparable positions and the standards and best practices for executive compensation developed by professional organizations, including, without limitation, the Council on Foundations. The CEO Evaluation and Compensation Committee shall maintain documentation setting forth the basis for their determinations. The CEO Evaluation and Compensation Committee shall be comprised of the Chair, the Vice Chair and the Immediate Past Chair. The recommendations of the CEO Evaluation and Compensation Committee shall be subject to approval by the Executive Committee, and the terms of employment of the President/Chief Executive Officer shall be reported to, but not require the approval of, the full Board of Trustees.

ARTICLE VI. Indemnification

Section 1. Indemnification. Any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, (including any action by or in the right of the Foundation by reason of the fact that he or she is or was a Voting Member, Trustee, Officer, employee, or agent of the Foundation, or is or was serving at the request of the Foundation as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise) shall be indemnified by the Foundation against expenses (including reasonable attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such actions, suit, or proceeding, if he or she had no reasonable cause to believe his or her conduct was unlawful, to the maximum extent permitted by and in the manner provided by the Florida Nonprofit Corporation Code and, if applicable, the United States Internal Revenue Code of 1986 as amended.

Section 2. Liability. No person who is serving or has served as a Trustee shall have any personal liability to the Foundation for monetary damages for breach of duty of care or other duty as a Trustee; provided that this provision shall not eliminate or limit the liability of such person for any appropriation, in violation of his or

her duties, of any assets of the Foundation; for acts or omissions not in good faith or which involved intentional misconduct or knowing violation of the law; or for any transaction from which such person derived an improper personal benefit. The limitation of liability conferred in this Section shall be in addition and not in lieu of all other limitations, immunities, and indemnities conferred by law, these Articles and the Bylaws of the Foundation.

Section 3. Limited Liability of Volunteers. Each individual (other than an employee of the Foundation) who provides services to or on behalf of the Foundation without compensation ("Volunteer") shall be immune from liability to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from any act or omission as a Volunteer, defined in Section 768.1355 of the Florida Volunteer Protection Act, and to the fullest extent provided by Section 617.0834 of the Florida Nonprofit Corporation Law or any similar successor provision thereto. For purposes of this section, it shall be conclusively presumed that any Volunteer who is licensed, certified, permitted or registered under state law and who is performing services to or on behalf of the Foundation without compensation is not acting within the scope of his or her professional practice under such license, certificate, permit or registration, unless otherwise expressly indicated to the Foundation in writing.

Section 4. Insurance. The Foundation shall purchase D&O insurance on behalf of the Officers and Trustees, and may purchase and maintain insurance on behalf of any person who is or was a trustee, officer, employee or agent of the Foundation, or who is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Foundation would have the power to indemnify such person against the liability under this Article VI.

ARTICLE VII. Gifts to the Foundation

Section 1. Acceptance By Foundation. Donors may make gifts to the Foundation by naming or otherwise identifying the Foundation, whether or not an agent is designated to have custody of the property contributed. Gifts shall vest in the Foundation upon receipt and acceptance by it (whether signified by an officer, employee or agent of the Foundation). The Foundation may enter into agreements with custodian agents for custody of funds of the Foundation, specifying additional terms of such custody.

Section 2. Incorporation of Terms of Articles of Incorporation and Bylaws. Each donor by making a gift to the Foundation accepts and agrees to all of the terms of the Articles of Incorporation and these Bylaws, and provides that the funds so created shall be subject to the provisions of these Bylaws for the presumed

intent of donors, variance from a donor's restrictions and amendments and termination, and to all other terms of the Articles of Incorporation and these Bylaws and any agreement between the Donor and the Foundation and agents having custody of the funds of the Foundation, each as from time to time amended.

Section 3. Foundation as Trust Beneficiary. If a gift is made to a Trustee in Trust to make income or other payments for a period, of a life or lives or other period, to any individuals or for non-charitable purposes, followed by payments to the Foundation, or in Trust to make income or other payments to the Foundation, followed by payments to any individuals or for non-charitable purposes, only the payments to the Foundation shall be regarded as subject to the Foundation's Articles of Incorporation and these Bylaws, and then only when the Foundation becomes entitled to their use. The Board of Trustees may take such action as it from time to time deems necessary to protect the Foundation's right to receive such payments.

Section 4. Restrictions on Gift. Any donor may, with respect to a gift made by such donor to the Foundation, provide at the time of the gift restrictions which are not inconsistent with the charitable purposes of the Foundation, as to (a) the field of charitable purposes or particular charitable organizations or purposes to be supported, (b) the manner of distribution, including amounts, times and conditions of payment, and whether from principal and/or income, (c) the geographical limits or use of the gift (including use in or for areas outside the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida), and (d) the name, as a memorial or otherwise, for a fund given, or addition to a fund previously held, or an amenity for the gift. Provided however, the provisions herein shall be subject to and subservient to any requirement of the Internal Revenue code, or operative related regulations, to assure the gift qualifies for applicable charitable gift, income, estate, excise or other tax exemptions, and does not operate to disqualify the Foundation as a public charity. The Foundation further reserves the right to impose such other limitations, as may be a part of established Foundation policy.

Section 5. Common Investment. No gift shall be required to be separately invested or held unless so provided by a restriction of the donor, or it is necessary in order to follow any other restriction of the donor as to purpose or investment, or in order to prevent tax disqualification, or it is required by law.

Section 6. Limitation to Charitable Purposes. Each gift to and fund of the Foundation shall be presumed to be intended to be used for charitable purposes, to be productive of a reasonable return of income which is to be distributed at least annually, or if accumulated is to be accumulated only in a reasonable amount and for a reasonable period for a charitable purpose or purposes, and to be used only for such of those purposes and in such manner as not to disqualify the gift or fund from deduction as a charitable contribution, gift or device in computing any federal income, gift or estate tax of the donor or his estate and not to disqualify the Foundation from exemption from federal income tax as a

qualified charitable organization and/or from classification as a public charity; and each gift and fund shall not be otherwise applied. If a restriction by the donor, however expressed, would, if followed, result in use contrary to the intent so presumed, or the Board of Trustees is advised by counsel that there is substantial risk of such result, the restriction shall not be followed, but shall be varied by the Board of Trustees so far as necessary to avoid such result, except that if a donor has clearly stated that compliance with the restriction is a condition of the gift, then the gift shall not be accepted in case of such advice unless an appropriate judicial or administrative body first determines that the condition in the restriction need not be followed. Reasonable charges and expenses of counsel for such advice in proceedings shall be proper expenses.

Section 7. Modification of Conditions or Restrictions. Whenever the Board of Trustees decides the conditions or circumstances are such or have so changed since a restriction by the donor as to purpose, or matter of distribution, use or investment was provided, that literal compliance with the restriction is unnecessary, undesirable, impractical or impossible, or the restriction is not consistent with the Foundation primarily serving effectively the charitable needs of the vicinity of Lee, Charlotte, Hendry, Glades and Collier Counties, Florida, it may, by the affirmation vote of a majority of the members of the Board of Trustees, order such variance from the restriction and such application of the whole or any part of the principal or income of the fund as in its judgment is then necessary more effectively to serve the charitable purposes of the Foundation.

ARTICLE VIII.

Distribution and Disbursements

Section 1. Generally. The Board of Trustees, the Executive Committee or the appropriate standing committee not less frequently than annually shall determine all distributions to be made from income and principal of this Foundation (including funds held by agents of the Foundation) pursuant to provisions of the Articles of Incorporation and these Bylaws, and make, or authorize and direct the respective agents having custody of funds of this Foundation to make, payments to organizations or persons to whom payments are to be made, in such amounts and at such times and with such accompanying restrictions, if any, as it seems necessary to assure use for the charitable purposes and in the manner intended; and to determine through distribution of funds given for charitable purposes, and may direct distribution for such fact gathering, analysis, investigation and research from funds given for such purposes or from funds given without restriction as to purpose. Disbursements for other proper administrative expenses incurred by the Board of Trustees, including salaries for such professional and other assistance as it from time to time deems necessary shall be directed to be paid so far as possible, first from any funds which are available for such purpose, and any balance out of other available funds of the Foundation.

Section 2. Distributions to Further Charitable Purposes. The Board of Trustees or its distribution committee may in furtherance of the Foundation's charitable

purposes when needs therefore have been determined and with appropriate provisions to assure use solely for such purposes, direct distributions to such persons, organizations, governments, or governmental agencies as in the opinion of the Board of Trustees or its distribution committee can best carry out such purposes or help create new qualified charitable organizations to carry out such purposes.

Section 3. Funds for Other Charities. The Board of Trustees may receive or establish separate funds for other charitable agencies which shall in each case be qualified charities under the requirements of the Internal Revenue Code (presently Section 501(c)(3) of the IRC). Such funds shall be endowed funds with the principal maintained in perpetuity, except when the Board of Trustees may establish funds for communities and geographic areas of Southwest Florida, and while Trustees may receive the advice of such community or geographic fund participants, the Board of Trustees shall approve or confirm all disbursements made for and on behalf of such funds, and distribution shall be made only to qualified charities as described above.

**ARTICLE IX.
Corporate Seal**

Section 1. Generally. The Board of Trustees may provide a seal for the Foundation, which shall be in the charge of the Secretary or such other officer as the Board of Trustees, may from time to time direct, and shall be affixed to such documents that may require the corporate seal.

**ARTICLE X.
Fiscal Year**

Section 1. Generally. The Fiscal Year of the Foundation shall be the twelve month period ending on the 30th day of June, or such other period as may be designated by the Board of Trustees.

**ARTICLE XI.
Amendments and Dissolution**

Section 1. Amendment of Bylaws. The Board of Trustees, by a vote of two-thirds (2/3) of such members at a meeting called for that purpose or at any annual meeting of such members, may amend these Bylaws in order to maintain deductibility of gifts to the Foundation for a federal income, gift and estate tax purposes for donors and their estates; or to maintain the federal income tax exemption of the Foundation as an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 and/or its classification as a public charity; in order to conform to and within a provision or provisions of the laws of the State of Florida and the United States; and/or in such other respects consistent with the objectives and purposes of the Foundation, as the Board of Trustees may from time to time find necessary or desirable

Section 2. Dissolution. The Voting Members, by a vote of two-thirds (2/3) of such members at a meeting called for that purpose, may

- a. direct a transfer of all Foundation funds to a new corporation organized for exclusively charitable purposes and with provisions consistent with those of the Articles of Incorporation and these Bylaws; and
- b. thereupon, dissolve this Foundation.