

**RESTATED BYLAWS
OF
YELLOW JACKET FOUNDATION, INC.**

ARTICLE I. NAME AND PLACE.

Section 1. NAME. The name of this Corporation shall be the corporate name that is set forth in the Corporation's Articles Of Incorporation, as amended or restated from time to time. The Corporation is presently named Yellow Jacket Foundation, Inc. (herein "YJF" or the "Corporation").

Section 2. OFFICE. The principal office of the Corporation shall be the principal office as identified in the Annual Report of the Corporation filed with the South Dakota Secretary of State from year to year. Currently the principal executive office is 1200 University St., Unit 9673, Spearfish, SD 57799-9673.

ARTICLE II. PURPOSE.

Section 1. The YELLOW JACKET FOUNDATION, INC. was established and incorporated within the State Of South Dakota under the authority of IRC Section 501 (c)(3) of the U.S. Tax Code for the purpose of supporting BLACK HILLS STATE UNIVERSITY in Spearfish, South Dakota. IRC Section 501 (c)(3) exempts the YELLOW JACKET FOUNDATION, INC. from federal and state income taxes and results in the YELLOW JACKET FOUNDATION, INC. being eligible to receive tax-deductible contributions.

Section 2. The YELLOW JACKET FOUNDATION BOARD (herein "YJF BOARD") hereby ratifies and reaffirms the statement of Purpose set forth in Article 2 of the Articles of Incorporation filed October 8, 1974.

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ARTICLE III. MISSION STATEMENT.

The mission of the YELLOW JACKET FOUNDATION, INC. (herein "YJF") is to cultivate a culture of philanthropy in advancement of the goals of BLACK HILLS STATE UNIVERSITY (herein "BHSU") in the expansion, promotion, and improvement of the athletic programs of the University. The YJF shall support BHSU athletic programs by providing funds to the University for student athletic scholarships and Athletic Department operations. YJF through its BOARD and/or EXECUTIVE COMMITTEE and other committees as may be established from time to time shall provide other compensation or financial assistance which are consistent with the programs, activities, and endeavors involved in the charitable and educational purposes for which YJF was formed within the meaning of IRC Section 501 (c)(3). Nothing herein shall create a duty on the part of YJF to provide support directly or indirectly to any particular athletic program to allocate its support in any particular manner in relation to BHSU athletic programs.

ARTICLE IV. NO GENERAL OR AT-LARGE MEMBERS.

Section 1. YJF shall have no general or "at-large" members. The YJF and its purposes shall be conducted and administered through a Board of Directors, (herein "BOARD") and the EXECUTIVE COMMITTEE.

ARTICLE V. DIRECTORS.

Section 1. GENERAL POWERS. The BOARD and the EXECUTIVE COMMITTEE shall be vested with full power to determine the YJF policies within the purposes and limits of (a) the Articles, (b) these Bylaws, (c) applicable South Dakota law, (d) the rules and regulations of the NCAA and any athletic conference of which the University is a member and (e) any contractual obligations.

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Section 2. NUMBER, ELECTION AND APPOINTMENT. The BOARD shall be comprised of the following members:

a. "Ex-Officio Directors" of the YJF BOARD. The following persons shall be Ex-Officio members of the YJF BOARD; (i) the President of the University, (ii) Vice President of University Advancement, (iii) the Director of Athletics of the University, (iv) Assistant Athletic Director of External Operations. **The Vice President of University Advancement shall be a voting member of the YJF BOARD.**

b. "At-Large Directors" of the YJF BOARD. There shall be from five (5) to thirty (30) At-Large Directors serving three (3) year terms. As the terms of the current At-Large Directors expire, their successors will be elected by the YJF BOARD pursuant to nominations by a Nominating Committee, from any persons interested in the purposes of the Corporation as described above. Nominees must qualify for election in accordance with YJF BOARD membership criteria as established by resolution from time to time. All At-Large Directors are voting Directors, one vote each.

c. "Appointed Directors" of the YJF BOARD. The YJF BOARD shall have the option to appoint two (2) members to the YJF BOARD from among the following:

- i.** The current committee Chairman of the Yellow Jacket Booster Club (formerly Green and Gold Club),
- ii.** The immediate Past President of the YJF BOARD, or
- iii.** The current President of the University Alumni Association.

Appointed Directors are non-voting positions.

d. Honorary Lifetime Directors. The YJF BOARD may elect honorary life-time Board members who are long term donors or substantial one time donors to the YJF of

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time or money or both. These YJF BOARD members shall have the rights and privileges as a YJF BOARD member of the Corporation, including voting rights, and their terms as Directors will be for their lifetimes.

Section 3. NOMINATION AND ELECTION OF DIRECTORS. The At-Large Directors will be nominated as provided in Section 2 prior to any annual meeting or special meeting of the YJF BOARD. The Nominating Committee will recommend to the President the persons who, in Nominating Committee's opinion, should fill any expected or actual vacancies on the YJF BOARD. The Vice President will present the nominations for Directors at a meeting. The At-Large Directors will be elected from the nominations presented by the Vice President by a majority of the Directors present at a meeting at which a quorum is present.

Section 4. TERMS OF OFFICES.

a. The **Ex-Officio Directors** shall serve as Directors for as long as they hold their respective positions of employment at the University.

b. The **Appointed Directors**, if any, shall serve as Directors for as long as they hold their respective positions of office.

c. The terms of office of the **At-Large Directors** shall be three (3) year terms. To the extent possible the YJF BOARD shall stagger terms so there is at no time less than five (5) At-Large Directors serving YJF. The YJF BOARD declines to establish any regulation that prohibits an At-Large Director from serving a certain number of consecutive terms.

d. **Directors** must be individuals but need not be residents of the State of South Dakota, citizens or residents of the United States.

Section 5. VACANCIES. The term of a Director elected to fill a vacancy of an At-Large Director shall expire at the time the prior At-Large Director's three (3) year

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term being filled expires. Vacancies on the YJF BOARD resulting from "Appointed Directors" not completing his or her respective term for whatever reason need not be filled.

Section 6. ANNUAL MEETINGS. Annual meetings of the YJF BOARD shall be held each year at such times and at such offices of the Corporation in Spearfish, South Dakota, or elsewhere as the YJF BOARD of Directors may determine. The Annual Meeting shall be held during the months of September or October of each year. A notice which meets the requirements of Article XII of these Bylaws, stating the place, date and time of such meeting, shall be given by a Secretary (or its designee) to each Director, prior to the date of the Annual Meeting. To the extent practical, a copy of the Minutes of the prior year annual meeting and a proposed agenda for the Annual Meeting being noticed shall also be provided.

Section 7. REGULAR MEETINGS. The President of the YJF BOARD may designate the place (which may be within or without the State of South Dakota) date, and time for regular meetings of the YJF BOARD to be held more frequently than annually. Notice of such resolution shall be given to all Directors within a reasonable time after the adoption of the resolution stating the date, time and place of such regular meetings.

Section 8. SPECIAL MEETINGS. Special meetings of the YJF BOARD may be called at any date, time and place, whether within or without the State of South Dakota, by the Chief Executive Officer, the President or by five (5) at-large Directors. Notice meeting the requirements of Article XII of these Bylaws stating the place, date and time of such meeting, shall be given by the Secretary (or its designee) to each Director. It shall not be necessary to describe in such notice the purpose for such special meeting.

Section 9. ELECTRONIC/TELEPHONIC ATTENDANCE PERMITTED. The YJF BOARD or EXECUTIVE COMMITTEE may permit any or all Directors to participate in an annual, regular or special meeting by, or conduct such a meeting

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through the use of, any means of communication by which all participants may simultaneously hear one another during the meeting. A participant attending by this means is deemed to be present in person at the meeting.

Section 10. ACTION BY CONSENT OF DIRECTORS. Any action required or permitted to be taken at a meeting of the YJF BOARD (or committee thereof) may be taken without such a meeting if one or more written consents, describing and evidencing the action so taken, shall be signed by all of the members of all the YJF BOARD (or committee thereof) and included in the minutes or filed with the corporate records reflecting the action taken, with such action to be effective when the last Director or Committee Member signs the consent, unless the consent specifies a different effective date. Such a consent is to have the same effect as a meeting vote and may be described as such in any document.

Section 11. QUORUM. One third (1/3) of the number of Directors in office immediately before the meeting begins shall constitute a quorum for the transaction of business at any meeting of the YJF BOARD, but if less than one third (1/3) of the Directors are present at a meeting, a majority of the Directors present may adjourn the meeting to meet again at a stated day and hour without further notice.

Section 12. VOTING. The affirmative vote of a majority of the Directors present at a meeting of the YJF BOARD at which a quorum is present shall be the act of the YJF BOARD. Each Director who is present in person, or by proxy, at a YJF BOARD meeting will be entitled to one (1) vote on each matter submitted to a vote of the YJF BOARD. The voting at all meetings of the YJF BOARD may be viva voca (by word of mouth). A Director who is present at a meeting of the YJF BOARD when corporate action is taken is deemed to have assented to the action taken unless:

- a. such Director objects, at the beginning of the meeting or promptly upon his arrival, to holding the meeting or transacting business at the meeting;
- b. such Director's dissent or abstention from the action taken is entered in

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the minutes of the meeting; or

c. such Director delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting. This right of dissent or abstention is not available to a Director who votes in favor of the action taken.

Section 13. RULES OF ORDER AND TYPICAL ORDER OF BUSINESS.

a. The meeting of the YJF BOARD of Directors, EXECUTIVE COMMITTEE and any other committee appointed by the YJF BOARD shall be conducted generally in accord with the latest printed version of Robert's Rules of Order of Parliamentary Procedure. Rules of Parliamentary Procedure are embraced to maintain order, ensure majority rule and to protect the rights of the minority and absentees. Parliamentary Procedure is recognized to provide fairness and a structure for appropriate decorum to facilitate the transaction of business and expedite the progress of meetings.

b. **TYPICAL ORDER OF BUSINESS.** The President, Chief Executive Officer or Committee Chairperson shall endeavor to conduct meetings generally in accord with the following:

1. Call to Order by the Presiding Officer
2. Roll Call/Determination of a Quorum
3. Adoption of the Agenda
4. Reading and Approval of the Minutes of Last Meeting
5. Reports of Officers
6. Reports of Standing Committees
7. Reports of Special Committees
8. Discussion and Disposal of Unfinished Business
9. New Business (Including elections of At-Large Directors and two (2) Appointed Directors)
10. Program, if applicable

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- 11. General Announcements and Committee Appointments**
- 12. Adjournment**

c. The above Order Of Business is not mandatory but is recommended. The Order Of Business may be supplemented and detracted from based upon the circumstances created by the nature of the business at hand from time to time.

d. The role of a Presiding Officer is defined as follows notwithstanding Robert's Rules or other parliamentary rules:

1. The Presiding Officer of any meeting held pursuant to these Bylaws shall not be required to remain impartial or relinquish the chair in order to debate the merits of the motion.
2. Presiding Officer shall be entitled to vote on any vote by viva voca (by word of mouth)
3. The Presiding Officer will count in determination of a quorum.
4. The Presiding Officer shall introduce business in proper order.
5. The Presiding Officer shall recognize speakers.
6. The Presiding Officer shall determine if a motion is in order, call for seconds, call for discussion, keep the discussions relevant to the pending motion and maintain order.
7. Presiding Officer shall put motions to a vote and announce the results.
8. Presiding Officer may employ unanimous consent or general consent when appropriate.

Section 14. EXECUTIVE COMMITTEE AND OTHER COMMITTEES. There shall be an EXECUTIVE COMMITTEE as provided in Section 15 of this Article. There shall also be a Nominating Committee appointed by the President of the YJF BOARD, as provided in Section 16 of this Article. The President shall appoint such other committees as may be approved by the YJF BOARD. With respect to all committees of the YJF BOARD other than the EXECUTIVE COMMITTEE, the YJF BOARD: (a) will

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approve the size of such committees, and (b) will have the right to finally approve all appointees who shall serve as members of each such committee. Each such committee shall have and may exercise the authority of the YJF BOARD to the extent specified either in these Bylaws or such YJF BOARD resolution or amendments thereto establishing such committee, consistent with the laws of the State of South Dakota, the South Dakota Non-Profit Corporations Act and the Articles; provided, however, that such a committee may not:

- a. authorize distributions (except as provided by Article IX, Section 1);
- b. elect, appoint or remove Directors or fill vacancies on the YJF BOARD or on any of its committees;
- c. adopt, amend or repeal the Articles;
- d. adopt, amend or repeal the Bylaws;
- e. approve the dissolution or merger of the Corporation, or the sale, pledge or transfer of all or substantially all of the Corporation's assets;
- f. take any other actions which committees are prohibited from taking by the Act.

The requirements of these Bylaws and the Articles governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the YJF BOARD, apply to such committees and their members as well.

Section 15. EXECUTIVE COMMITTEE.

a. There shall be an EXECUTIVE COMMITTEE as defined by these Bylaws. Subject to the limitations set forth in Section 14 above, the EXECUTIVE COMMITTEE shall have concurrent authority with the President of the YJF BOARD to recommend

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policy and generally supervise and manage the business, property, affairs and operations of the Corporation but subject to the same stated purposes and limitations as set forth in Article V, Section 1 of these Bylaws. The EXECUTIVE COMMITTEE will meet at the direction of the Chief Executive Officer except as otherwise provided herein.

b. Unless others are elected by vote of 75% of the At-Large and Appointed Directors, the voting members who will serve on an EXECUTIVE COMMITTEE shall be:

- (1) The Vice President of University Advancement (a.k.a "CEO"),
- (2) President of the University,
 - (i) The Director of Athletics
 - (ii) The Assistant Director of External Operations (All as non-voting members)
- (3) President of the YJF BOARD,
- (4) Immediate Past President of the YJF BOARD,
- (5) Vice President of the YJF BOARD,
- (6) Current Chairman of the Yellow Jacket Booster Club,
- (7) The elected Secretary of YJF BOARD,
- (8) The elected Treasurer of YJF BOARD.

The voting members of the EXECUTIVE COMMITTEE are identified in (1), (3), (4), (5), (6) and (7) above.

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c. A majority of those designated or appointed to serve on the EXECUTIVE COMMITTEE in office immediately before the meeting begins shall constitute a quorum for the transaction of business at any meeting of the EXECUTIVE COMMITTEE. If less than a majority of those appointed are present at a noticed meeting, a majority of those present may adjourn the meeting to meet again at a stated day and hour without further notice.

d. Voting by those appointed to serve on the EXECUTIVE COMMITTEE will be as provided in Section 12 of Article V of these Bylaws.

e. The EXECUTIVE COMMITTEE shall hold an annual meeting immediately following the annual meeting of the YJF BOARD OF DIRECTORS. The EXECUTIVE COMMITTEE shall hold such regular or special meetings as may be established by resolution. Notice of such meeting shall conform to the requirements of Article XII of these Bylaws.

Section 16. NOMINATING COMMITTEE. There shall be a Nominating Committee appointed by the President from members of the YJF BOARD and/or the EXECUTIVE COMMITTEE. The Vice President shall be the Chairman of the Nominating Committee.

Section 17. COMPENSATION. No Director or Committee appointee shall receive any salary or other compensation for services unless otherwise specifically ordered by resolution approved by the YJF BOARD; provided, however, that nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefore in the ordinary course of business.

Section 18. REMOVAL. Any one (1) or more of the Directors may be removed by a vote of a majority of the YJF BOARD, either with or without cause, at any special meeting of the YJF BOARD called for that purpose, with the notice of the meeting being

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required to state the purpose, or one of the purposes, of the special meeting is consideration of the removal of a Director or Directors. Except for the expiration of their terms as described in Article V Section 5 (a) the Ex-Officio Directors may not be removed from the YJF BOARD.

Section 19. RESIGNATION. A Director may resign at any time by delivering written notice to the YJF BOARD, its President or to the Corporation. A resignation is effective when the notice thereof is delivered unless the notice specifies a later effective date.

Section 20. LIMITATION OF LIABILITY. No Director shall be liable for any mistake or error of judgment in the management of the Corporation, in the selection of the Corporation's investments, or in the expenditure of its funds, so long as he is not guilty of willful misconduct, gross negligence or is guilty of acting in furtherance of a conflict of interest for direct self betterment.

Section 21. RECUSAL. Any Director or Committee Member who is directly financially interested in any matter of business before the YJF BOARD, EXECUTIVE COMMITTEE or other Committee must recuse him or herself and disengage from policy making participation related thereto.

ARTICLE VI. OFFICERS.

Section 1. NUMBER AND QUALIFICATIONS. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Vice President, a Secretary and a Treasurer. The elected officers may act through such assistant officers and agents as shall be determined and approved by the YJF BOARD or the EXECUTIVE COMMITTEE. Any two (2) or more offices may be held simultaneously by the same person, and the same officer may execute, acknowledge, verify and/or deliver any instrument or documents in the name of and on behalf of the Corporation in more than one official capacity. Officers will be chosen from the at-large Directors, but need not

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be residents of the State of South Dakota, or to citizens or residents of the United States. The Chief Executive Officer, President, Vice President, Secretary and Treasurer constitute the senior executive officers of the Corporation.

ARTICLE VII. DUTIES OF OFFICERS.

Section 1. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer shall be the Vice President of University Advancement and (with the assistance of such other Officers as he may engage and direct to assist him): **a)** shall have, along with the President of the YJF, general supervision and management over the business, property and affairs and operations of the Corporation; **b)** shall have along with the President the power and authority to co-sign, co-make, and co-execute (along with another Officer, as required by Sections 1 and 2 of Article IX), and deliver any and all deeds or conveyances, leases, contracts, assignments, releases, share certificates, promissory notes, pledges, guaranties, credit agreements and all other documents and instruments on behalf of the Corporation; **c)** shall have custody of all books, records, and papers of the Corporation; **d)** shall keep accurate and detailed records of all receipts and disbursements of the Corporation; **e)** shall deposit all funds of the Corporation into depositories approved by the EXECUTIVE COMMITTEE; **f)** shall vote, either personally or by proxy, shares or other ownership interests in any other corporation or other legal entity, domestic or foreign, registered in the name of this Corporation; and **g)** perform all other duties declared by the YJF BOARD or the EXECUTIVE COMMITTEE to be incident to the office of the Chief Executive Officer.

Section 2. PRESIDENT. The President of the YJF BOARD shall: **a)** preside at all meetings of the YJF BOARD and any Committees of the YJF BOARD, or shall designate some other person to preside at such meetings; **b)** have along with the Chief Executive Officer, general supervision and management of the business policy of the Corporation; **c)** have along with the Chief Executive Officer, general supervision and management of the business, property, affairs and operations of the Corporation; **d)** ascertain that all orders and resolutions of the YJF BOARD and EXECUTIVE

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COMMITTEE are implemented; and e) perform all duties incident to the office of President and such other duties as may be prescribed by the YJF BOARD and the Chief Executive Officer.

Section 3. VICE PRESIDENT. A Vice President shall perform such duties as may be prescribed by the Chief Executive Officer, EXECUTIVE COMMITTEE and/or the President. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President will perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President will perform other duties assigned by the Chief Executive Officer, the President, the YJF BOARD or the EXECUTIVE COMMITTEE.

Section 5. SECRETARY. The Secretary (or designee) shall: a) keep and prepare the minutes of the meetings of the YJF BOARD and the EXECUTIVE COMMITTEE in one or more books provided for that purpose; b) see that all notices are given in accordance with the provisions of these Bylaws and as required by law; c) keep a register of the post office address of each Director and Committee member, which shall be furnished to the Secretary by such Directors; d) assist the Chief Executive Officer in keeping, maintaining and/or filing the books, records, and papers of the Corporation; e) assist the Chief Executive Officer in keeping, maintaining and/or filing, or causing to be filed, such reports, except financial reports and statements, as the Corporation is required to keep, maintain and/or file; and f) in general, perform all duties incident to the office of Secretary and such other duties as may be assigned to the Secretary by the Chief Executive Officer, the President and/or the EXECUTIVE COMMITTEE.

Section 6. TREASURER. The Treasurer (or designee) shall: a) keep accurate and detailed records of all receipts and disbursements of the Corporation; b) assist in preparing, or having prepared, such reports of the financial condition of the Corporation as may be required; c) timely furnish to the Directors and EXECUTIVE COMMITTEE financial statements as are required pursuant to Article XIV, Section 2 of these Bylaws;

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and d) in general, perform all of the duties incident to the office of Treasurer and such other duties as may be assigned to the Treasurer by the Chief Executive Officer or by the President.

Section 7. ATHLETIC "PROMOTIONAL ACCOUNTS". The CEO and the Director of Athletics shall have complete authority to authorize activities that create income and the expenditure of such funds from what is known as Athletic "Promotional Accounts" without further input or approval by the YJF BOARD or the EXECUTIVE COMMITTEE.

ARTICLE VIII. CORPORATE EMPLOYEES.

No person employed by the Corporation will be considered to be an employee of the University or the State of South Dakota, solely because of his employment by the Corporation.

ARTICLE IX. CHECKS, CONTRACTS AND DEPOSITS.

Section 1. CHECKS. Checks, drafts, or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation in an amount that exceeds \$5,000.00 shall be signed by at least two (2) different persons among the following: The Chief Executive Officer, The Controller for the University, The Vice President for Finance and Administration for the University, and/or the President of the YJF BOARD or its elected Treasurer.

Checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation in an amount that equals or is less than \$5,000.00 may be signed by any one of the above main persons.

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Section 2. CONTRACTS, NOTES, ETC. Deeds or conveyances, leases, contracts, assignments, releases, share certificates, promissory notes, pledges, guaranties, credit agreements and all other documents and instruments executed in the name of the Corporation and encompassing an amount that exceeds \$5,000.00: 1) shall be signed by at least two (2) different persons, as follows: a) one (1) of such persons shall be the Chief Executive Officer; and b) one (1) of such persons must be the President, or in his absence the Vice President.

Section 3. DEPOSITS. All funds of the Corporation, not otherwise employed, shall be deposited to the credit of the Corporation in such banks, savings, institutions, trust companies, or other depositories as the EXECUTIVE COMMITTEE, by resolution may select. The Treasurer, or his designee, shall deposit all funds of the Corporation.

Section 4. GIFTS, BEQUESTS, ETC. Cash gifts may be accepted by The EXECUTIVE COMMITTEE, the President of the University, the President of the YJF or any other YJF BOARD member. "In-kind" gifts may be accepted by the same parties conditionally, based upon final approval of the EXECUTIVE COMMITTEE. The EXECUTIVE COMMITTEE may decline on behalf of the Corporation any "in-kind" contribution, gift, bequest, or devise when in its opinion the acceptance or proposed special purpose would not be in the best interest of the Corporation or the University. Unless the YJF BOARD or EXECUTIVE COMMITTEE determines otherwise, an environmental assessment shall be required on all real property before the Corporation takes title to the property.

ARTICLE X. FISCAL YEAR.

The annual accounting period and taxable year of the Corporation shall begin on the 1st day of July each year and end on the last day of the month of June each year, unless otherwise changed by appropriate resolution of the EXECUTIVE COMMITTEE.

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ARTICLE XI. SEAL.

There may be a corporate seal in such form as may be approved by the YJF BOARD. The seal shall be affixed to such instruments and documents as required by law and may be EXECUTIVE COMMITTEE or any Officer of the Corporation thereof.

ARTICLE XII. NOTICES.

Section 1. APPLICABILITY. Any notice required by the Act, the Articles, these Bylaws, or otherwise, to be given to any Director, Committee member, or Officer of the Corporation shall be governed by and given in accordance with the requirements of this Article XII, unless the provisions of the Act, the Articles, or other statutes are applicable to the particular circumstances and require different notice protocols.

Section 2. DELIVERY. Any notice may be communicated in person; by telephone, telegraph, teletype, electronic mail or other form of wire or wireless communication, by private carrier or first class mail. Notice may be communicated orally when exigent circumstances make such notice reasonable.

Section 3. EFFECTIVENESS. Oral notice is effective when communicated if communicated in a comprehensible manner. Written notice regardless of how transmitted is effective when delivered as described in this Section. Written notice given by mail shall be effective at the earliest of the following: **a)** when received; **b)** five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or **c)** on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee. Electronic written communication shall be effective the date sent if delivery is confirmed or if there is no other indication that the message was not delivered.

Section 4. WRITTEN WAIVERS. Whenever any notice is required to be given to any Director or Officer of the Corporation by the Act or any other statute, the Articles,

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these Bylaws, or otherwise, such person or persons may waive notice. A waiver thereof must be writing, signed by the person or persons entitled to such notice (whether before or after the date and time stated in the notice), and delivered to the Corporation.

Section 5. WAIVER BY ATTENDANCE. A Director's attendance at or participation in, a meeting thereof, as the case may be, waives such person's objection: a) to lack of any required notice or a defective notice of the meeting, unless such person, at the beginning of the meeting or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting, and b) to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice (if the purposes are required to be described in the notice), unless such person objects to consideration of the matter when it is presented and does not thereafter vote for or assent to action taken with respect to the matter.

ARTICLE XIII. AMENDMENTS.

Section 1. GENERAL. These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by the YJF BOARD at any annual, regular or special meeting of the YJF BOARD. Any such action shall require an affirmative vote of 75% of the entire YJF BOARD of Directors.

ARTICLE XIV. RECORDS AND REPORTS.

Section 1. MINUTES. The Corporation shall keep as permanent records minutes of all meetings of its YJF BOARD and EXECUTIVE COMMITTEE, a record of all actions taken by the YJF BOARD and EXECUTIVE COMMITTEE without a meeting, and a record of all minutes of and actions taken by a committee of the YJF BOARD or EXECUTIVE COMMITTEE in place of the YJF BOARD or EXECUTIVE COMMITTEE on behalf of the Corporation.

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Section 2. ACCOUNTING AND FINANCIAL RECORDS. The Corporation shall maintain appropriate accounting records and shall furnish the Directors and EXECUTIVE COMMITTEE members annual financial statements maintained in accord with generally accepted accounting principles. The Chief Executive Officer may upon resolution of the YJF BOARD or the EXECUTIVE COMMITTEE arrange for the preparation of an audit by a certified public accounting firm.

Section 3. RECORDS AT PRINCIPAL OFFICE. The Corporation shall keep a copy of the following records at its principal office at all times:

- a. its Articles;
- b. its Bylaws or restated Bylaws and all amendments to them currently in effect;
- c. its most recent annual report required under the Act and delivered to the South Dakota Secretary of State;
- d. a list of the names, business or home addresses and electronic mail addresses if available of its current Directors, EXECUTIVE COMMITTEE members and officers;
- e. record of minutes to be available for inspection by any Director; and
- f. most recent financial statement to be available for inspection by any Director.

Section 4. PUBLIC INSPECTION. The Corporation shall comply with all applicable requirements for public inspection and distribution of its application for tax exemption and annual information returns of tax-exempt organizations as required by Treasury Regulation Section 301.6104(d), as amended, including any other statute, treasury regulation or promulgation of similar import.

Section 5. CONFIDENTIALITY. Notwithstanding any other provision of these Bylaws, and except as otherwise required by law or the rules and regulations of the NCAA, the Corporation will not release personal or financial information given in confidence to the Corporation by a current or former Member or Director.

ARTICLE XV. INDEMNIFICATION.

Section 1. POWERS OF CORPORATION-INDEMNIFICATION-DEFENSE OF ACTIONS. South Dakota law authorizes each nonprofit corporation to indemnify any person who is or was 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, other than an action by or in the right of the Corporation, by reason of the fact that the person is or was a director, officer, employee or agent of the Corporation. Such persons may be indemnified against expenses, including attorney's fee, judgments, fines and amounts paid in settlement actually or reasonably incurred by that person in connection with such action, suit or proceeding so long as the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation. With respect to any criminal action or proceeding the right to indemnification applies when the affected person had no reasonable cause to believe such conduct was unlawful. South Dakota law provides that an adverse termination of an action, suit or proceeding, including a conviction or an entry of nolo contendere or its equivalent does not create a presumption that the person did not act in good faith or presumption that the actions opposed the best interests of the Corporation or a presumption that the person had reasonable cause to believe that the conduct was unlawful. See SDCL 47-22-65.1

Section 2. AUTHORIZATION OF INDEMNIFICATION-REQUIREMENTS-MANNER OF DETERMINATION. SDCL 47-22-65.3 provides the manner of authorization of indemnification and that a determination to indemnify must be made by the YJF BOARD via a majority vote of a quorum consisting of Directors who are not parties to the action, suit or proceeding.

Section 3. INSURANCE. South Dakota law may authorize the Corporation to purchase and maintain insurance on behalf of a Director/Officer against liability asserted against or incurred by an individual in that capacity or arising from the individual status as Director/Officer whether or not the Corporation would have the power to indemnify such individual against the same liability under the South Dakota

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Non-Profit Corporations Act or these Bylaws. It is understood that the purchase of liability insurance may constitute a waiver of the immunity provided by SDCL 47-23-29.

ARTICLE XVI. SEVERABILITY.

If any provision of these Bylaws or its application to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions or application of these Bylaws that can be given effect without the invalid provision or application, and, to this end, the invalid provision of these Bylaws is severable.

ARTICLE XVII. TITLES

If the titles change for any of the positions described in these amended BYLAWS which qualify the individual holding the Officer position as an Ex-Officio Director, CEO or Appointed Director, the position held under the prior title will not be deemed vacated by rather occupied under the new title.

ARTICLE XVIII. MONITORING AND CONTROL BY THE UNIVERSITY.

Section 1. CORPORATE COMPLIANCE. The Articles, Bylaws and all actions of the Corporation will be consistent with, and subject to, the applicable rules of the University and the State Board of Regents of the State of South Dakota, including, but not limited to: **a)** the right of the University to monitor and control the Corporation for purposes of compliance with the rules and regulations of the NCAA; and **b)** the right of the University to monitor and control the use of the resources of the University, including the name of the University.

Section 2. NON-DISCRIMINATION. The Corporation will not discriminate based upon race, color, religion, sex, sexual preference, marital status, age, national origin, or disability.

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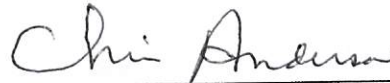
ARTICLE XIX. INCORPORATION OF POWERS BY REFERENCE

The Corporation shall have all of the "Powers of Corporation" specified in South Dakota Compiled Laws Chs. 47-22-52 through 68 as amended from time to time notwithstanding the absence of specific mention of any one or more of such powers elsewhere in these bylaws.

ARTICLE XX. DISSOLUTION

These BYLAWS acknowledge in the event this charitable corporation is required to dissolve, its BOARD must comply with all applicable state law requirements for distribution of its remaining assets, if any.

KNOW ALL PERSONS by these presents that we, the undersigned officers of the YELLOW JACKET FOUNDATION, INC., do hereby certify that the foregoing RESTATED BYLAWS are duly adopted by the Corporation on the 1st day of August, 2012, and the same do now constitute the Bylaws of the Corporation.



**PRESIDENT OF THE
YELLOW JACKET FOUNDATION, INC.
BOARD OF DIRECTORS**

ATTEST:



SECRETARY