

Approved : October 19, 2018

**RADFORD UNIVERSITY ATHLETIC FOUNDATION  
AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**ARTICLE I  
NAME**

The name of the corporation is Radford University Athletic Foundation (hereinafter referred to as the "Foundation"), a Virginia nonstock corporation.

**ARTICLE II  
PURPOSE**

The Foundation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. Without limiting or expanding the foregoing, the purposes of the Foundation are to (1) promote the advancement and further the aims and purposes of the athletic programs of Radford University (the "University"), including its teams, facilities, departments, coaches, and all related activities, by the development and application of financial resources to the progress of such programs and through such other entities, including the University's affiliated foundations described in section 501(c)(3) of the Internal Revenue Code, as may be suitable to accomplish such purposes, and (2) accept, administer, apply, and use property acquired by gift, grant, devise, bequest, or otherwise for the purposes previously set forth.

**ARTICLE III  
RIGHTS AND RESTRICTIONS**

No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to its incorporator, directors, officers, or other private persons except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the

purposes set forth in Article II. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

#### **ARTICLE IV DISSOLUTION**

Upon the dissolution of the Foundation, and after all of its liabilities and obligations have been paid, satisfied, and discharged or adequate provisions made therefor, all of the Foundation's remaining assets shall be distributed to or among the University or any one or more foundations or other organizations affiliated with the University that are organized and operated exclusively for charitable and educational purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code. If none of the University or any of its affiliated foundations are then in existence or so organized and operated, the Foundation's remaining assets shall be distributed to one or more organizations selected by the Foundation's Board of Directors that are organized and operated exclusively for charitable or educational purposes within the meaning of sections 501(c)(3) and 170(c)(2)(B) of the Internal Revenue Code.

#### **ARTICLE V MEMBERS**

The Foundation shall have no members.

## ARTICLE VI DIRECTORS

The number of directors of the Foundation shall be not less than seven (7) and not more than seventeen (17). The Foundation's Board of Directors shall consist of the following classes of directors.

(a) Elected Directors. The Foundation shall have not less than four (4) and not more than fourteen (14) directors who are designated as the Elected Directors. The Foundation Board may include no more than two members of the University Board of Visitors whether elected or appointed. Additionally, one elected board member may be a University employee or faculty member. The number of Elected Directors shall be divided into four (4) groups with each group containing one-fourth of the total, as nearly equal in number as possible. The terms of the Elected Directors in the first group shall expire at the first annual meeting of the Board of Directors after their appointment, the terms of the Elected Directors in the second group shall expire at the second annual meeting of the Board of Directors after their appointment, the terms of the Elected Directors in the third group shall expire at the third annual meeting of the Board of Directors after their appointment, and the terms of the Elected Directors in the fourth group shall expire at the fourth annual meeting of the Board of Directors after their appointment. Thereafter, at each annual meeting of the Board of Directors, one group of Elected Directors shall be elected by the Board of Directors for a term of four years, to succeed those whose terms expire. An Elected Director may serve two consecutive terms and thereafter shall not be eligible to serve as an Elected Director until he or she has not served as an Elected Director for a term of two years or more. No individual shall be elected as an Elected Director without his or her prior consent.

(b) Ex-Officio Directors. The Foundation shall have two (2) directors who are designated as the Ex Officio Directors, who shall have full voting rights. The Ex Officio Directors shall be those individuals who hold the following official positions within the University:

- (i) The President, and
- (ii) The Athletic Director.

An Ex Officio Director shall serve ex officio for a term that equals his or her tenure in the office specified. No individual shall be an Ex Officio Director without his or her prior consent.

(c) Appointed Director. The Foundation shall have one (1) director who is designated as the Appointed Director, who shall have full voting rights. The Appointed Director shall be a member of the Board of Visitors of the University and shall be appointed annually by the Board of Visitors of the University to serve for a term of one year. An Appointed Director may serve three consecutive terms and thereafter shall not be eligible to serve as an Appointed Director until he or she has not served as the Appointed Director for a term of two years or more. No individual shall be appointed as the Appointed Director without his or her prior consent. A vacancy in the Appointed Director on the Board of Directors, including a vacancy resulting from the removal of the Appointed Director, shall be filled in the same manner as set forth in this subsection for the appointment of an Appointed Director and may, in the case of a resignation that will become effective at a specified later date, be filled before the vacancy occurs, but the new Appointed Director may not take office until the vacancy occurs.

**ARTICLE VII  
LIMIT ON LIABILITY AND INDEMNIFICATION**

7.1 Definitions. For purposes of this Article, the following definitions shall apply:

(i) "Foundation" means this Foundation only and no predecessor entity or other legal entity;

(ii) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation, and appeal, as well as any amounts expended in asserting a claim for indemnification;

(iii) "liability" means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation, including, without limitation, any excise tax assessed with respect to an employee benefit plan;

(iv) "legal entity" means a corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise;

(v) "predecessor entity" means a legal entity the existence of which ceased upon its acquisition by the Foundation in a merger or otherwise; and

(vi) "proceeding" means any threatened, pending, or completed action, suit, proceeding, or appeal, whether civil, criminal, administrative, or investigative and whether formal or informal.

7.2 Limit on Liability. In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the directors and officers of the Foundation shall not be liable to the Foundation.

7.3 Indemnification of Directors and Officers. The Foundation shall indemnify any individual who is, was, or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the Foundation) because such individual is or was a director or officer of the Foundation, or because such individual is or was serving the Foundation or any other legal entity in any capacity at the request of the Foundation while a director or officer of the Foundation, against all liabilities and reasonable expenses incurred in the proceeding, except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a director or officer of a legal entity controlled by the Foundation shall be deemed service at the request of the Foundation. The determination that indemnification under this section 7.3 is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a director, as provided by law, and in the case of an officer, as provided in section 7.4 of this Article; provided, however, that if a majority of the directors of the Foundation has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel selected by such person with the approval of the Board of Directors, which approval shall not be unreasonably withheld. Unless a determination has been made that indemnification is not permissible, the Foundation shall make advances and reimbursements for expenses incurred by a director or officer in a proceeding upon receipt of an undertaking from such director or officer to repay the same if it is ultimately determined that such director or officer is not entitled to indemnification. Such undertaking shall be an unlimited,

unsecured general obligation of the director or officer and shall be accepted without reference to such director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not of itself create a presumption that a director or officer acted in such a manner as to make such director or officer ineligible for indemnification. The Foundation is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its directors or officers to the same extent provided in this section 7.3.

7.4 Indemnification of Others. The Foundation may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its directors and officers pursuant to section 7.3, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the directors, officers, employees, and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the Foundation, and may contract in advance to do so. The determination that indemnification under this section 7.4 is permissible, the authorization of such indemnification, and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board of Directors, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under section 7.3 of this Article shall be limited by the provisions of this section 7.4.

7.5 Miscellaneous. The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors, and

administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Foundation. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Foundation, and indemnification under policies of insurance purchased and maintained by the Foundation or others. However, no person shall be entitled to indemnification by the Foundation to the extent he or she is indemnified by another, including an insurer. The Foundation is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Foundation or any other legal entity at the request of the Foundation regardless of the Foundation's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Foundation from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

7.6 Amendments. No amendment, modification, or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification, or repeal.



**ARTICLE VIII**  
**INTERNAL REVENUE CODE**

Each reference in these Articles of Incorporation to a section of the Internal Revenue Code means such section of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

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