

DEC 16 2003

**RESTATED ARTICLES OF INCORPORATION
(INCLUDING CHANGE OF NAME)
OF
TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION
(FORMERLY THE SOUTHWEST TEXAS STATE UNIVERSITY DEVELOPMENT FOUNDATION)**

Corporations Section

Texas State University – San Marcos Development Foundation, pursuant to the provisions of Article 4.06 of Texas Nonprofit Corporation Act, hereby adopts Restated Articles of Incorporation which accurately copy the Articles of Incorporation and all amendments thereto that are in effect to date and as further amended by such Restated Articles of Incorporation as hereinafter set forth and which contain no other change in any provision thereof.

ARTICLE ONE

The name of the corporation is **TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION**. The name under which the corporation was formed is The Southwest Texas State University Development Foundation. Articles of Incorporation were filed by the Secretary of State on November 9, 1977, and have previously not been amended.

ARTICLE TWO

The Articles of Incorporation of the corporation are amended by the Restated Articles of Incorporation as follows:

- (a) by changing the name of the corporation to **TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION** and then changing references to it throughout the Articles to reflect the name change of Southwest Texas State University as of September 1, 2003, to **TEXAS STATE UNIVERSITY – SAN MARCOS** and thus of its Development Foundation.
- (b) by amending Section V with language regarding its charitable mission and by restating some of the language in the original Articles;
- (c) by amending Section VI to restate prohibitions on the use of the corporation's resources;
- (d) by amending Section VII relating to dissolution to change the name of the University and reword it somewhat;
- (e) by amending Section VIII to include the limitations of liability for trustees as provided by Article 13.02-7.06 of Texas Miscellaneous Corporation Laws Act;
- (f) by amending Section IX to set forth the current principal office address of the corporation, its registered office, and its registered agent;

- (g) by amending Section X to provide that in all events the Board of Trustees shall always consist of at least three persons and to memorialize the initial Board of Trustees;
- (h) by amending Section XI to memorialize the incorporators of the corporation;

ARTICLE THREE

Each such amendment made by these Restated Articles of Incorporation has been effected in conformity with the provisions of Texas Non-Profit Corporation Act and such Restated Articles were duly adopted in the following manner:

The amendment was adopted by unanimous written consent in October and November 2003, effective October 18, 2003.

ARTICLE FOUR

The Articles of Incorporation and all amendments and supplements thereto are hereby superseded by the following Restated Articles of Incorporation which accurately copy the entire text thereof and as amended as above set forth:

I

The name of the corporation is **TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION**.

II

The corporation is a nonprofit corporation.

III

The period of the corporation's existence is perpetual.

IV

The corporation shall have no members.

V

The corporation is formed for exclusively charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect and as it may hereafter be amended, and to assist in the development and support of Texas State University – San Marcos, in San Marco, Texas (hereafter, sometimes the "University"). In furtherance of the corporation's purposes, the corporation is authorized to receive property by

gift, devise, or bequest and to invest and reinvest the same, and to apply the income and principal thereof as the Board of Trustees may from time to time determine, either directly or through contributions to the University, for the purpose of assisting the University in obtaining and maintaining the best faculty and staff available, and for the establishment and maintenance of facilities and laboratories to be used by the University in conformity with the laws of the State of Texas and with the legal consent of the State of Texas; for the advancement of research and other literary and/or scientific undertakings.

VI

No part of the net earnings or funds of the corporation shall inure to the benefit of, or be distributable to, any member, trustee, director, or officer of the corporation, the University, Texas State University System or any of its components, or any private shareholder or private individual, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the corporation for carrying out its purposes set forth herein. No substantial part of the activities of the corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as now in effect or as it may hereafter be amended, and in the corresponding laws of the State of Texas), and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in Section 501(c)(3) of said Code or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation contributions to which are deductible under Section 170(c)(2) of such Code.

VII

In the event that the corporation should ever dissolve, any remaining assets and property of the corporation shall, after paying or making provision for the payment of all liabilities of the corporation and for necessary expenses thereof, be applied to accomplish the charitable, educational purposes, and scientific purposes for which the corporation is organized by distributing such assets to the Board of Regents of Texas State University System (its successors and assigns), to be used solely for the charitable, educational, and scientific purposes of Texas State University – San Marcos; provided, however, that Texas State University System (its successors and assigns) must at the time of distribution be a political subdivision of the State of Texas or otherwise recognized as an entity exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. In no event shall any of the assets be distributed to any member, trustee, director, or officer of the corporation, or any private shareholder or private individual.

VIII

Neither the University nor any official therefore, nor any Trustee, officer, or agent of the corporation shall ever be personally liable for any debt or other obligation of the corporation.

No trustee of the corporation shall be liable to the corporation or its members (if any) for monetary damages for an act or omission in such trustee's capacity as a trustee, except to the extent the trustee is found liable for:

- (1) a breach of the trustee's duty of loyalty to the corporation or its members (if any);
- (2) an act or omission not in good faith that constitutes a breach of duty of the trustee to the corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;
- (3) a transaction from which the trustee received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the trustee's office; or
- (4) an act or omission for which the liability of a trustee is expressly provided for by an applicable statute.

IX

The street address of the corporation's registered office is 601 University Drive, J.C. Kellum Building, Suite 960, San Marcos, Texas 78666. The name of the corporation's registered agent at such address is Carroll Wiley.

X

The direction and management of the affairs of the corporation and the control and disposition of its property and funds shall be vested in its Board of Trustees. The number of persons on the Board shall be fixed by the Bylaws of the corporation, which Bylaws shall be adopted by the Board of Trustees and, with respect to selection procedure for the corporation's Board, approved by the Board of Texas State University System; provided, however, that there must always be at least three (3) trustees. All amendments to the Articles of Incorporation and to the Bylaws shall be adopted by a majority vote of the trustees then in office in compliance with the Texas Non-Profit Corporation Act, as now in effect or as it may hereafter be amended, and, further, said amendments shall be approved by the Board of Regents of Texas State University System, said approval to be effective as of the date made by the Board of Trustees of the corporation.

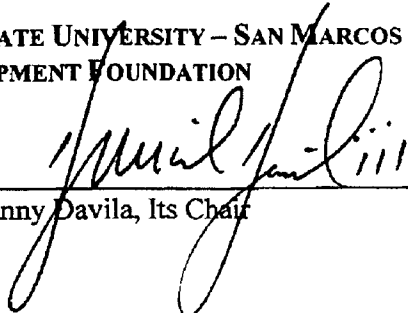
The initial trustees of the corporation and their addresses at that time were: Dr. W. Pence Dacus, then Vice President for Institutional Advancement at Southwest Texas State University, San Marcos, TX 78666; Mr. Willard Deason, 4713 Highland Terrace, Austin, TX 78731; Mr. J.R. Thornton, 344 West Woods Street, San Marcos, TX 78666; and Mr. Roy Mitte, 3701 Westlake Drive, Austin, TX 78746.

The incorporators of the corporation were: Dr. W. Pence Dacus, Mr. Roy Mitte, and Mr. J.R. Thornton.

Dated: As of October 18, 2003
San Marcos, Texas

**TEXAS STATE UNIVERSITY – SAN MARCOS
DEVELOPMENT FOUNDATION**

By: _____


Danny Davila, Its Chair