

**MINUTES OF REGULAR MEETING
BOARD OF TRUSTEES**

A Regular meeting of the Board of Trustees of the Kalamazoo Valley Community College District, 6767 West O Avenue, Kalamazoo, Michigan, was held on Tuesday, December 14, 2021, at the KVCC Texas Township Campus, 6767 West O Avenue, Kalamazoo, Michigan, in the Student Commons Theater, room 4240.

Chairperson Stinson convened the meeting at 7:30 a.m. and led everyone in the reciting of the Pledge of Allegiance.

ROLL CALL

Present: Chairperson Stinson, Trustees Buck, Farmer, Gustas, Miller and Patton
L. Marshall Washington, President
Sherry Weber, Recording Secretary

Excused: Trustee DeLuca

Other Attendees: Dannie Alexander, VP for Campus Planning and Operations
Paige Eagan, Provost and VP for Instruction and Student Services
Aaron Hilliard, VP for Human Resources
Tracy Labadie, Assoc. VP for Collaboration, Compliance and Analytics
Brian Lueth, VP for Finance and Business
Tim Welsh, VP for Information Technology
Linda Depta, Executive Director of KVCC Foundation
Nkenge Bergan, Special Assistant to the Provost and Associate VP for Student Development Services
Don Benthin, Director of Public Safety
Scott Myers, KVCC Humanities Faculty
Tim Farrow, KVCC Political Science Faculty
Cheryl Almeda, KVCC Foundations Development Faculty
Rachel Bair, Director for Sustainable and Innovative Food Systems
Rachel Smith, Research Assistant
Gena Mead, Bookstore Manager
Meredith Vanderhill, AC Office Manager
Evan Pauken, Director of Student Retention and Completion
Dan Mondoux, Director for Research, Accreditation and Completion

APPROVAL OF AGENDA

It was **MOVED** by Trustee Miller, **SECONDED** by Trustee Patton, and **CARRIED** that the agenda be approved as presented.

CONSENT AGENDA

It was **MOVED** by Trustee Miller, **SECONDED** by Trustee Gustas, and **CARRIED** that the Consent Agenda Items for the month of December 2021, which includes the Secretary's Report, the Treasurer's Report, the Personnel Report, the December Graduation Report, and the Course and Curriculum Report be approved as presented and that copies of the reports be attached to and made an official part of the minutes of the meeting.

PUBLIC PARTICIPATION

There was no one present who desired to address the Board.

INFORMATIONAL REPORTS

Chairperson Stinson called on President Washington to present the President's Reports for the month of December 2021.

President Washington called on Linda Depta to present on the Marketing and Foundation Master Plan update.

President Washington called on Tracy Labadie to present on the Mission Statement Recommendations Update.

President Washington shared other updates regarding the College, reviewed the Board calendar, Facts at a Glance and Impact of Federal Dollars and gave updates on other general topics of interest.

CLOSED SESSION TO DISCUSS COLLECTIVE BARGAINING NEGOTIATIONS

It was **MOVED** by Trustee Patton, and **SECONDED** by Trustee Buck, and **CARRIED** that the Board recess the open meeting and go into a closed session to discuss collective bargaining negotiations. The motion **CARRIED** by the following **ROLL CALL VOTE**:

AYES: 6 NAYS: 0 ABSENT: 1 ABSTENTIONS: 0

The Board recessed the closed meeting at 8:24 a.m.

At 8:40 a.m., the Board reconvened the open meeting.

ACTION ITEMS

Kalamazoo Valley Community College Federation of Teachers Agreement

It was **MOVED** by Trustee Miller, **SECONDED** by Trustee Patton, and **CARRIED** that the Board endorse the three year Agreement between Kalamazoo Valley Community College Federation of Teachers and Kalamazoo Valley Community College. The motion **CARRIED** by the following ROLL CALL VOTE:

AYES: 6 NAYS: 0 ABSENT: 1 ABSTENTIONS: 0

Authorization for Additional Network Switches Capital Expenditures

It was **MOVED** by Trustee Gustas, **SECONDED** by Trustee Farmer, and **CARRIED** that the Board approve the \$370,000 of capital expenditures in fiscal 2022 be authorized for additional network switches.

College - Foundation Agreement, Amendment of the Foundation Articles of Incorporation and Bylaws

It was **MOVED** by Trustee Farmer, **SECONDED** by Trustee Miller and **CARRIED** that the Board adopt the College - Foundation Agreement.

“RESOLVED FURTHER, that amended and restated College – Foundation Agreement is hereby approved and adopted and shall amend and restate in its entirety and replace the College – Foundation Agreement, existing on the date hereof.”

It was **MOVED** by Trustee Farmer, **SECONDED** by Trustee Gustas and **CARRIED** that the Board adopt the amended and restated Articles of Incorporation.

“RESOLVED FURTHER, hereby approved and adopted to amend and restate in their entirety and replace those Articles of Incorporation of the Foundation, as amended, existing on the date hereof.”

It was **MOVED** by Trustee Farmer, **SECONDED** by Trustee Patton and **CARRIED** that the Board adopt the amended and restated Bylaws and the following resolution.

“RESOLVED FURTHER, that the restated Bylaws are hereby approved and adopted and these shall amend and restate in their entirety and replace those Bylaws of the Foundation, as amended, existing on the date hereof.”

“RESOLVED FURTHER, that the Officers of the College, or any one of them, are hereby authorized and directed to take any action as they, or any one of them, deems necessary or appropriate to effectuate the foregoing resolutions.”

**Agreement between
Kalamazoo Valley Community College
And**

Kalamazoo Valley Community College Foundation

This College / Foundation Affiliation Agreement ("Agreement") between Kalamazoo Valley Community College, a Michigan community college, with an address of 6767 West O Ave., Kalamazoo, MI 49003-4070 (the "College") and Kalamazoo Valley Community College Foundation, with an address at 6767 West O Ave., Kalamazoo, MI 49003-4070 (the "Foundation") is made effective on December 14, 2021.

Background

The College was established and operates under the provisions of the Michigan Community College Act of 1966, as amended, and provides academic courses to students. The Foundation was organized and incorporated in 1980 for the purpose of supporting the College and affiliated entities. According to its Articles of Incorporation, the Foundation is responsible for solicitation, accepting and receipting of all charitable gifts to the Kalamazoo Valley Community College Foundation.

The College and the Foundation have previously entered into a certain Agreement between the College and the Foundation, dated September 18, 2000 regarding services between the parties and an Indemnity Agreement between the College and Foundation dated July 1, 2005 pursuant to which the College offers certain indemnity protection to the Foundation. The parties wish to amend and restate their agreements and understandings in one agreement.

Accordingly, it is the intention of the parties by this Agreement to amend, restate and define the basic rights and responsibilities of the College and the Foundation to each other. Accordingly, the parties mutually agree to the following terms and conditions.

Terms and Conditions

In consideration of the premises, mutual covenants, and agreements contained herein, the Foundation and the College agree as follows:

1. FOUNDATION RESPONSIBILITIES

1.1 Use of College Name and Marks. The Foundation is granted the use of the name Kalamazoo Valley Community College Foundation and may use the name, logos and marks of the College in accordance with any guidelines and requirements set forth by the College from time to time.

1.2 General Gifts Funds Administration. During the term of this Agreement the Foundation, acting as an independent contractor, not as an agent of the College, shall be responsible for, and on behalf of the College, all private fundraising efforts and for the

management of funds that originate with those activities. Foundation fund management services shall include the following:

(a) Distributions from the designated endowment funds, not to exceed the maximum amount available for distribution (based on the payout rate established by the Foundation, accrued earnings and other fund management principles), will be transferred to the College's accounts at an agreed upon time. The Foundation at its discretion may create a schedule of payments for a program or project.

(b) Distributions of restricted current-use funds will be made on an on-demand basis following notification to the respective College department of the availability of the funds.

(c) Distributions of unrestricted funds shall be made in accordance with the Grant Award Guideline of the Foundation.

(d) The Foundation will provide to the College, through the College's Vice President for Business and Finance, a monthly accounting of all fund transfers.

(e) To the maximum extent possible, the Foundation shall be the repository for all current and future gifts to the benefit of the College, unless the donor specifies or the circumstances warrant otherwise. The management of these funds, including investment strategies and payout rates, is the prerogative of the Foundation Board of Directors.

(f) The Foundation is authorized to accept restricted gifts on behalf of the College. The College agrees, through the Office of the President, to provide the Foundation annually with a list of private gift funding priorities. The Foundation will then pursue funding for the priorities on the basis of funding realities. The Foundation agrees not to solicit or accept gifts for any use specified by a donor that is inconsistent with the College's mission, goals, or objectives. When a question exists as to the acceptability of an offered gift, the Foundation's Executive Director will confer with the College President or their designee before directing a response to the donor. In any event, the ultimate prerogative for the acceptance of any gift by the College rests with the President.

1.3 Management of Unrestricted Funds. Any gift, grant, conveyance, devise, and bequest received by the Foundation, the principal and income of which has not been designated for a special use by the donor or testator, shall be managed in accordance with the following procedures:

(a) While the Foundation is authorized to commingle for investment purposes undesignated assets with other funds for designated uses, the Foundation shall maintain a separate accounting of undesignated funds received and gains, profits, and losses resulting from said investments.

(b) The Foundation is entitled to "capture" a certain reasonable percentage of

undesignated gift revenues and related income to offset its operating expenses. Such percentage shall be reviewed and agreed upon by the College and the Foundation.

1.4 Audit. The Foundation will provide the College with a copy of its annual financial statements audited by an independent public accounting firm selected by the Foundation Board of Directors.

1.5 Reporting to the Institution. On an annual basis, the Foundation will provide the College with (a) an annual report on its activities including a compendium of donors; (b) a copy of current policies on investment and pay-out (if altered from the prior year); and (c) a statement confirming that all gifts made to the Foundation during the prior year were appropriately acknowledged. In addition, interim reports will be available to designated College personnel, and the Foundation shall provide such other schedules, records, and data as may be reasonably requested by the College.

1.6 Coordination with the College's Office of Business and Finance. The Foundation shall provide the College's Office of Business and Finance with any and all financial reports otherwise provided to the Foundation's Board of Directors and the Board's investment committee.

1.7 Access to Records by College Personnel. The Foundation shall provide the College President access to the records of the Foundation upon reasonable notice. The President may designate additional persons to have similar access.

2. COLLEGE RESPONSIBILITIES

2.1 Use of College Personnel and Facilities. In view of Foundation needs that may be readily met by the College through use of its trained personnel and available facilities, the College agrees, during the term of this Agreement, to do the following:

(a) Provide at no cost offices and utilities adequate for the performance of the services of the Foundation;

(b) Provide at no cost payroll services, including the allocation of related benefits;

(c) Provide at no cost full accounting services for the Foundation, but the College shall have no liability or responsibility for the accuracy of financial information supplied by the Foundation;

(d) Provide at no cost technology support services as well as online access to such College files as are relevant to the business and purpose of the Foundation; and

(e) Provide at nominal rates (where applicable) access for the Foundation to the College's auxiliary services, including printing, mailing, audio-visual, duplicating, events scheduling, and related facilities.

2.2 Funding for Foundation Operations. The College recognizes that the Foundation may make provisions for underwriting a portion of its annual budget through assessing of fees on managed endowments. The College also recognizes that it has an obligation to underwrite or otherwise compensate for a reasonable portion of the Foundation’s annual operating budget in consideration of services provided to the College by the Foundation. Therefore, the College’s annual contribution to Foundation operations will be structured as follows:

(a) Professional and support staff will be employees of the College. The Foundation staff will report and be supervised within the College administrations.

(b) Operating expenses will be provided in the form of an annual budget by the College. This annual support is negotiable on an annual basis.

(c) In addition to direct budgetary support, the College shall provide the Foundation with certain amenities and services as outlined in Section 2.1.

2.3 Indemnification.

(a) The College shall indemnify and hold harmless the Foundation for activities conducted within the scope of the Foundation’s Articles of Incorporation. The College agrees to provide the Foundation with protection from loss that the College is able to provide through its membership in the Michigan Community College Risk Management Authority (“MCCRMA”), *provided* that the duty to indemnify shall be limited to the coverage extended to the College by reason of its membership in the MCCRMA. The Foundation, in order to invoke this indemnity, shall be subject to the same terms, exclusions and conditions of membership and coverage in the MCCRMA as the College, and therefore, the MCCRMA Joint Powers Agreement is incorporated by reference and made a part of this Agreement, as well as any limitations and exclusions pursuant to any agreements for excess coverage.

(b) To the extent permitted by law, the College shall indemnify and hold harmless each director, officer, and employee, and each former director, officer, and employee of the Foundation against expenses, judgments, decrees, fines, penalties or amounts paid in settlement in connection with the defense of any past, pending or threatened civil action, suit or proceedings, to which he or she was, is or may be made a party by reason of being or having been such director, officer or employee, provided a determination is made by the board of the MCCRMA that:

(i) Said director, officer or employee was not, and has not been adjudicated to have been grossly negligent or guilty of misconduct or dishonesty in the performance of his or her duty to the Foundation of which he or she is or was a director, officer or employee; and

(ii) He or she acted in good faith in what he or she reasonably believed to be the best interest of the Foundation.

2.4 Exclusions from Indemnification. By way of further limitation, the following activities will not be within the scope of this Agreement and the following exclusions shall apply:

(a) Indemnity will not be provided with regard to the acquisition, purchase, sale, lease or holding of real property;

(b) Indemnity will not be provided with regard to any defaults or failure to pay any monies which have been borrowed by way of note, mortgage, pledge or otherwise;

(c) Indemnity will not be provided with regard to any issuance of notes, bonds, debentures or other forms of obligations by the Foundation;

(d) Indemnity will not be provided if there is any other existing valid policy or policies under which payment of the loss may be actually made;

(e) Indemnity will not be provided with regard to any claims arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, waste materials or other irritants, contaminants or pollutants, into or upon the land, the atmosphere, or any water course or body of water;

(f) Indemnity will not be provided with regards to claims for, based upon, arising out of, directly or indirectly resulting from or in consequences of, or in any way involving seepage, pollution or contamination of any kind;

(g) Indemnity will not be provided with regard to any claims by any director, officer or employee for wages and/or other employee benefits.

3. MUTUAL RESPONSIBILITIES

3.1 Coordination of Fundraising. The College shall cooperate with the Foundation in the development of its fundraising programs, including providing information, data, plans, speakers, facilities for meetings on the college campus, and such other materials and services that may reasonably be necessary for the successful conduct of such programs and capital campaigns. In return, the Foundation will do the following:

(a) Coordinate all special fundraising projects with the College;

(b) Provide expertise, assistance, and training for the College's administration, faculty, and staff for development and fundraising tasks;

(c) Conduct its public relations and publications program in coordination with the College's office of public affairs; and

(d) Maintain a well-coordinated donor relations program in an effort to minimize overlap and over-solicitation of current and prospective donors.

3.2 College Representation on the Foundation Board of Directors. As set forth in the Foundation Bylaws, the President of the College shall be seated as an *ex-officio*, voting member of the Foundation Board of Directors. The President shall appoint any other member of the College administration to the Foundation Board as an *ex-officio*, non-voting member as deemed appropriate. The College's chief financial officer shall be seated as an *ex-officio*, nonvoting member, except as that person shall hold a seat on the Foundation's investment committee and shall vote on committee actions in that capacity. These positions shall be in addition to the provision for a member of the College Board of Trustees to serve as a voting member of the Foundation Board as contemplated by the Foundation's Bylaws. In the event of a conflict between any provision of this Section 3.2 and the Foundation Bylaws, the Foundation Bylaws shall control.

3.3 Compliance with Laws; Policies and Procedures. The parties shall comply with all applicable laws, regulations, rules and ordinances in the performance of their duties under this Agreement. Specifically, the parties acknowledge the Foundation's responsibilities under the Uniform Prudent Management of Institutional Funds Act, MCL 451.921, *et seq.*, and the Foundation shall adopt and implement policies and procedures to ensure compliance with the same.

4. OTHER

4.1 Term. This Agreement takes effect on the date first written above and shall continue in full force and effect until terminated. Either party may terminate this Agreement by giving written notice to the other party of no less than 90 calendar days.

4.2 Termination of the Foundation. In the event that the Foundation ceases to operate for any reason, all of the Foundation's assets shall accrue to the College for its exclusive purpose, as contemplated by the Foundation's Articles of Incorporation.

4.3 FERPA. For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), the College hereby designates the Foundation as a school official with a legitimate educational interest in the educational records of the students who participate in the programs carried out hereunder to the extent that access to the records are required by the Foundation to carry out the activities anticipated by this Agreement. The Foundation agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA.

4.4 Authority to Bind. Each party to this Agreement represents and warrants that the execution, delivery and performance of this Agreement and the consummation of the transactions provided in this Agreement have been duly authorized by all necessary action of the respective party and that the person executing this Agreement on its behalf had the full capacity to bind that party.

4.5 Existing Agreements. This Agreement amends and supersedes the Indemnity Agreement between the College and Foundation dated July 1, 2005 and the Agreement between

the College and the Foundation dated September 8, 2000 regarding services provided between the parties. The parties acknowledge and agree that this is the final agreement of the parties with respect to the subject matter and supersedes all prior understandings or agreements, oral or written, with respect thereto.

4.6 Amendment of Agreement. No change, modification, termination or amendment of this Agreement will be valid or binding unless such change, modification or amendment is contained in a writing signed by both parties.

4.7 Assignment. Neither party can assign this Agreement without the prior written consent of the other party.

4.8 No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their authorized successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any person or entity, other than the parties hereto and their authorized successors and permitted assigns any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

4.9 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under applicable law, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

4.10 The authorized representatives of the parties have executed this Agreement to be effective as of the date first written above.

FOR THE COLLEGE:

FOR THE FOUNDATION:

Date

Date

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
LANSING, MICHIGAN
RESTATED ARTICLES OF INCORPORATION
OF
KALAMAZOO VALLEY COMMUNITY COLLEGE FOUNDATION
(A Michigan Nonprofit Corporation)

Pursuant to the provisions of the Michigan Nonprofit Corporation Act, being Act 162, Public Acts of 1982, as amended, the undersigned corporation (the "Corporation") executes the following Restated Articles of Incorporation:

1. The present name of the Corporation is: Kalamazoo Valley Community College Foundation.
2. The corporation identification number assigned by the Bureau is 800885543.
3. All former names of the Corporation are: None
4. The date of filing the original Articles of Incorporation was: January 18, 1980.

The following Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the Corporation:

ARTICLE I

The name of the Corporation is KALAMAZOO VALLEY COMMUNITY COLLEGE FOUNDATION. The Corporation is sometimes referred to herein as the "KVCC Foundation" and as the "Foundation."

ARTICLE II

1. The purposes for which the Foundation is organized are as follows:

The KVCC Foundation shall operate as a charitable, nonprofit corporation exclusively for the benefit of Kalamazoo Valley Community College, a Michigan community college, including its Kalamazoo Valley Museum. The Foundation shall provide support for the objectives, goals and mission of Kalamazoo Valley Community College. The Foundation shall assist in accomplishing the educational purposes of Kalamazoo Valley Community College. The Foundation shall have the following powers and authority:

A. To promote, sponsor, and assist in the educational, literary, scientific, charitable and related activities for the objectives, goals and mission of Kalamazoo Valley Community College.

B. To act as a conduit through which charitable contributions to Kalamazoo Valley Community College are made.

C. To solicit, accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, by judicial order or decree or otherwise, any property, both real and personal, of whatever kind, nature, or description and wherever situated. Nothing contained in this section shall require the Foundation to accept any specific gift.

D. To award scholarships and grants to the students, faculty and staff of Kalamazoo Valley Community College.

E. To sell, exchange, convey, mortgage, lease, transfer, or otherwise dispose of, any such property, both real and personal, for the objects and purposes as set forth above.

F. To invest and reinvest the principal and income of the Foundation in accordance with federal law and the laws of the State of Michigan that cover authorized investments for directors.

G. To provide support for the research activities, intellectual property development, economic development and related commercialization activities of Kalamazoo Valley Community College.

H. To exercise such other powers that now are or hereafter may be conferred by law upon a corporation for the purposes herein set forth; namely, the promoting of the objectives, goals, and mission of Kalamazoo Valley Community College.

2. The Foundation is organized exclusively to perform those charitable, religious, educational, and scientific purposes permitted under Section 501(c)(3) of the Internal Revenue Code of 1986 ("Code") or corresponding provision of any future tax code, including the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code, or corresponding section of any future federal tax code.

Notwithstanding any other provision of these Articles, the Foundation shall not carry on any activity not permitted to be carried on: (1) by an organization which is described in Section 501(c)(3) of the Code and which is exempt from federal income tax under Code Section 501(a); or (2) by an organization, contributions to which are deductible under Code Section 170(c)(2).

3. The Foundation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or against any candidate for public office.

4. No substantial part of the activities of the Foundation shall be to attempt to influence legislation.

5. The Directors of the Foundation and the Foundation as an institution shall not knowingly support any organization whose purpose or activities are terrorist in nature or subversive to the national security of the United States of America or its populace.

ARTICLE III

The Foundation is organized upon a nonstock, directorship basis.

ARTICLE IV

The Foundation is to be financed by gifts, grants, contributions, investment income and fees from its exempt activities.

ARTICLE V

1. The street address of the current registered office is:

6767 W. O Ave.
Kalamazoo, MI 49009

2. The mailing address of the current registered office is:

P.O. Box 4070
Kalamazoo, MI 49003-4070

3. The name of the current resident agent at the registered office is:

Linda Depta

ARTICLE VI

No part of the net earnings of the Foundation shall be distributed to, or inure to the benefit of, any Director or Officer of the Foundation, contributor, member or individual as prohibited by Code Section 501(c)(3), except that the Foundation may pay reasonable compensation for services rendered and make reasonable payments in furtherance of the purposes set forth in Article II hereof.

ARTICLE VII

1. To the fullest extent permitted under the Michigan Nonprofit Corporation Act (the "MNCA"), as the same presently exists or may hereafter be amended, a director and a volunteer officer of the Foundation shall not be personally liable to the Foundation or its members for money damages for any action taken or any failure to take any action as a director or volunteer officer, except liability for any of the following:

- (a) The amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled.
- (b) Intentional infliction of harm on the Foundation or its members.
- (c) A violation of Section 551 of the MNCA.
- (d) An intentional criminal act.
- (e) A liability imposed under Section 497(a) of the MNCA.

2. To the fullest extent permitted under Section 209(1)(d) of the MNCA, as the same presently exists or may hereafter be amended, the Foundation assumes all liability to any person other than the Foundation or its members for all acts or omissions of a volunteer director occurring on or after the date this Article becomes effective in accordance with the pertinent provisions of the MNCA, incurred in the good faith performance of the volunteer director's duties as such. Pursuant to Section 541(6) of the MNCA, as the same presently exists or may hereafter be amended, a claim for monetary damages for a breach of a volunteer director's duty to any person other than the Foundation or its members shall not be brought or maintained against the volunteer director, but such a claim shall be brought or maintained instead against the Foundation, which shall be liable for any breach of the volunteer director's duty.

3. In addition to the Foundation's assumption of liability pursuant to subsection 2 above, to the fullest extent permitted under Section 209(1)(e) of the MNCA, as the same presently exists or may hereafter be amended, the Foundation assumes the liability for all acts or omissions of each volunteer director, each volunteer officer or any other volunteer occurring on or after the date that this Article becomes effective in accordance with the pertinent provisions of the MNCA if all of the following are met:

- (a) The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
- (b) The volunteer was acting in good faith.
- (c) The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
- (d) The volunteer's conduct was not an intentional tort.
- (e) The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in Section 3135 of the Insurance Code of 1956, 1956 PA 218, MCL 500.3135.

Pursuant to Section 556 of the MNCA, as the same presently exists or may hereafter be amended, a claim for monetary damages for a volunteer director, volunteer officer or other volunteer's acts

or omissions shall not be brought or maintained against a volunteer director, volunteer officer or other volunteer. The claim shall be brought and maintained against the Foundation.

4. The terms “volunteer director” and “volunteer” shall have the same definitions as set forth in the MNCA, as the same presently exists or may hereafter be amended.

5. Any repeal, amendment or other modification of this Article shall not adversely affect any right or protection of a director or officer of the Foundation existing at the time of such repeal, amendment or other modification. If the MNCA is amended, after this Article becomes effective, then the liability of directors, officers and other volunteers shall be eliminated or limited to the fullest extent permitted by the MNCA as so amended.

ARTICLE VIII

The Foundation is subject to the approval of and review by the Kalamazoo Valley Community College Board of Trustees, the governing board of Kalamazoo Valley Community College. The Foundation shall provide the Kalamazoo Valley Community College Board of Trustees annually with copies of its annual financial statements and also with a copy of its report of its activities for the year covered by said financial statements.

ARTICLE IX

The Foundation shall use its funds only to support the objectives, goals and missions of Kalamazoo Valley Community College, and no part of said funds shall be distributed at any time to the directors or officers of the Foundation.

Upon the dissolution of the Foundation, after the Foundation has paid or made provision for the payment of the Foundation's liabilities and debts, all of the Foundation's assets, real and personal, shall be distributed to Kalamazoo Valley Community College, or to any successor entity of Kalamazoo Valley Community College that are described in and exempt from income tax under Section 501(c)(3) of the Code (or corresponding revision of any future United States income tax laws). If at the time of dissolution, there is no successor to Kalamazoo Valley Community College, the distribution will be made to such organization or organizations as the Foundation's Board of Directors may select which are qualified as tax exempt under Section 501(c)(3) of the Code (or corresponding revision of any future United States income tax laws) and whose purposes and goals are consistent with the purposes and goals of Kalamazoo Valley Community College. Any such assets not so disposed of, for whatever reason, shall be disposed of by order of the Circuit Court for the County of Kalamazoo to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for purposes described in Section 501(c)(3) of the Code (or corresponding revision of any subsequent income tax laws) and which is exempt from Federal Income Tax under Section 501(a) of the Code (or any corresponding revision of any subsequent income tax laws).

These Restated Articles of Incorporation restate, integrate and do further amend the provisions of the Articles of Incorporation and were duly adopted on the 14th day of December 2021, in accordance with the provisions of Section 641 of the MNCA, with the necessary number of votes cast in favor of these Restated Articles of Incorporation.

Signed this _____ day of _____, 2021.

KALAMAZOO VALLEY COMMUNITY COLLEGE

By: _____ Chairperson

Bylaws

Kalamazoo Valley Community College Foundation (Amended as of December 14, 2021)

Article I – Name

The name of this nonprofit corporation is “Kalamazoo Valley Community College Foundation” and is also sometimes referred to as the “KVCC Foundation” or the “Foundation.”

Article II - Location

The Foundation shall have and shall continuously maintain a registered office within the State of Michigan. The principal office of the Foundation shall be located on the campus of Kalamazoo Valley Community College (sometimes referred to herein as “the College”) at Kalamazoo, Michigan.

Article III - Purpose

The purposes of the Foundation shall not be inconsistent with the purposes of the College. The purpose or purposes of the Foundation are as further set forth in the Articles of Incorporation of the Foundation, as may be amended or restated from time to time in accordance with the Michigan Nonprofit Corporation Act (the “MNCA”).

Article IV - Board of Directors

1. *Composition.* The Foundation Board of Directors shall consist of a maximum of twenty-one and a minimum of eleven elected directors, who shall be elected to staggered three-year terms by the Foundation Board of Directors upon nomination as provided in these bylaws. In addition, there also shall be designated members of the Board of Directors as hereinafter defined. All directors, whether elected directors or designated directors, shall have equal voting rights as directors and as members of any committee established pursuant to Article VI hereof.
2. *Nomination and Election.* At any time as may be convenient to the chairperson of the Foundation, the nominating/governance committee shall nominate for election as a director of the Foundation as many or as few persons as the Nominating and Governance committee chairperson may deem appropriate, provided there are at least eleven and not more than twenty-one elected directors. Election of a director or of a slate of directors shall take place by a plurality vote of the Foundation Board of Directors.
3. *Term of Office.* The standard term of each elected director shall be three years, concluding with the annual meeting of the Board of Directors of the Foundation in the year in which the term ends. An elected director may be elected or re-elected to a term of less than three years to fill a vacancy, but may not be elected to a term exceeding three years. To the best extent possible, elected directors shall serve staggered three-year terms, so that the terms of approximately one-third of all elected directors will expire each year. The practices, procedures, and rules governing re-election of directors are identical in all respects to those for the election of new directors. A director may serve a maximum of three consecutive full three-year terms; provided, however, if a director is initially elected to a term of less than three years to fill a vacancy, that director may be re-elected to a maximum of three consecutive full three-year terms thereafter. If the board chairperson is retiring from the board at the end of their third and final term, the retiring board chairperson shall remain on the board as ex-officio past chairperson for one year.

4. *Resignation and removal from office.* Any director may resign by submitting a letter of resignation to the Executive Director or secretary of the Foundation. Unless otherwise specified in the resignation, the resignation shall take effect upon receipt, and the acceptance of the resignation shall not be necessary to make it effective. Any elected director may be removed from office for cause by two-thirds vote of the remaining members of the Board of Directors of the Foundation, and upon concurrence of the president of the College. All rights and privileges associated with the office of director of the Foundation shall cease on termination of office, whether by completion of term, resignation, or removal from office.

5. *Filling Vacant Director Positions.* A vacancy in an elected director position may be filled by the Board of Directors of the Foundation upon nomination by the Nominating and Governance Committee. A director elected to fill a vacant elected director position shall serve for the remainder of the term of office of such former director creating the vacancy.

An elected director elected by the Foundation Board of Directors because of an increase in the number of elected directors shall serve for an initial term that is approved by the directors, not to exceed three (3) years, with the number of years in the initial term being such that the terms of approximately one-third of all elected directors will expire every year.

6. *Designated Directors.* The president of the College shall serve as a designated director and ex officio voting member on the Foundation Board. Additionally, the College Board of Trustees shall annually appoint, from its membership of trustees, a liaison member to the Foundation, who shall serve as a designated director on the Foundation Board, with full voting rights. The Director of Development (or equivalent position) of the College shall be the Executive Director of the Foundation, as set forth further herein; such person shall also serve as a non-voting, ex-officio member of the Board of Directors. Each person serving as a designated director shall serve as director only so long as such person holds the corresponding position as officer or trustee of the College, and if such person ceases to hold such position as an officer or trustee, for any reason, then such person shall cease to be a director of the Foundation, and this director position shall be vacant until this person's successor is appointed and shall assume the position as a designated director.

7. *Ex-officio Liaisons.* The chief financial officer of the College shall serve as Assistant-Treasurer for the Foundation, a non-voting, ex-officio liaison to the Foundation Board and shall also be a voting member of the investment committee. Additionally, the president of the College may appoint one or more additional ex-officio liaisons to the Foundation Board, whom shall have such other powers and shall discharge such other duties as may be assigned from time to time by the president of the College. An ex-officio liaison shall have no authority to bind the Foundation or vote on Foundation matters, except in their capacity as a committee member, if any, or in a separate officer capacity of the Foundation, if so designated.

8. *Power and Authority.* The business, property, and affairs of the Foundation shall be managed by its board of directors, except as otherwise provided in the MNCA, the Articles of Incorporation, the Affiliation Agreement between the College and the Foundation, or these bylaws. The Board of Directors shall have full power and authority to manage the business of the Foundation in a manner that is not inconsistent with the laws of the State of Michigan, the Articles of Incorporation, these bylaws and the policies, procedures and practices of the College. The Foundation shall provide the College annually with copies of the Foundation's annual financial statements and also with copies of a report of the Foundation's activities for the year

covered by said financial statements. In the management and control of property, business and affairs of the Foundation, the Board of Directors is vested with all of the powers possessed by the Foundation itself so far as this delegation of authority is consistent with the laws of the State of Michigan, the Articles of Incorporation, these bylaws and the policies, procedures and practices of the College.

9. *Meetings of the Board of Directors.* There shall be an annual meeting of the Board of Directors at such time and place as shall be established by the Board of Directors or by the chairperson of the Foundation, subject to the concurrence of the president of the College, for purposes of electing directors and appointing officers and for such other purposes as shall properly come before the meeting. Regular meetings of the Board of Directors shall be as established by the Board of Directors of the Foundation. Other meetings of the Board of Directors of the Foundation may be called by the chairperson of the Foundation, by the Foundation's chairperson's designated representative, by the president of the College, or by the chairperson of the College Board of Trustees. There shall be no less than one regular meeting of the Board of Directors during the first six months of the fiscal year (July 1 through December 31) and no less than one regular meeting of the Board of Directors during the second six months of the fiscal year (January 1 through June 30). Written notice of the meeting shall be sent to each director at least five (5) days prior to the date of any meeting; written notice includes notice sent by e-mail or other forms of electronic transmission as defined in the MNCA. The Executive Director of the Foundation shall be responsible for issuing the notification of the meeting, for selecting a suitable location and facility for the meeting, and for all other necessary and appropriate meeting arrangements. Unless otherwise specified by the Board of Directors, all meetings of the Board of Directors will be held on the campus of the College in Kalamazoo, Michigan.

Notwithstanding the foregoing, no notice need be given to any person who submits a signed waiver of notice before or after a meeting. A director's attendance at or participation in a meeting waives any required notice to such director of the meeting, unless the director, at the beginning of the meeting, or when said director arrives, objects to the meeting or the transacting of business at the meeting and after objecting does not vote for or assent to any action taken at the meeting.

10. *Quorum.* A quorum of the Board of Directors shall consist of a majority of the directors who are then in office. If a quorum cannot be obtained, a meeting may proceed and any action taken shall be valid if subsequently ratified by action of the Board of Directors acting at a meeting at which a quorum of the Board of Directors is present or if unanimously consented to in writing by all members of the Board of Directors within one year of the date of the meeting.

11. *Voting; Proxies.* The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless a greater vote is required by law, by the Articles of Incorporation or by these bylaws. Each director present shall have one vote. Except for voting by unanimous written consent, pursuant to Section 11 below, directors must be present in person to vote (including being present by remote communication). No director shall be permitted to vote by proxy at any meeting for any purpose whatsoever, and directors cannot send persons to act in their place.

12. *Action by Unanimous Consent.* Action required or permitted to be taken at a meeting of the Board of Directors or a committee thereof may be taken without a meeting if, before or after

the action, all members of the Board of Directors or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the Board of Directors or the committee. The consent has the same effect as a vote of the Board of Directors or the committee for all purposes.

13. *Discharge of Duties.* A director or officer shall discharge the duties of that position in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner they reasonably believe is in the best interests of the Foundation. In discharging such duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- (a) one or more directors, officers, or employees of the Foundation, or of a domestic or foreign corporation or business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented;
- (b) legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence;
- (c) a committee of the board of which they are not a member if the director or officer reasonably believes that the committee merits confidence.

A director or officer is not entitled to rely on information described in subsections (a), (b) or (c) above if they have knowledge concerning the matter in question that makes reliance otherwise unwarranted.

If a director or officer is subject to the Uniform Prudent Management of Institutional Funds Act, MCLA 451.921 to 451.931 ("UPMIFA"), the director, in discharging the duties under such act shall conform to the standards of UPMIFA.

14. *Directors' Liability for Corporate Actions.* As provided in Section 551(1) of the MNCA, Directors who vote for or concur in making a loan to a director or officer of the Foundation or to a subsidiary that is contrary to the MNCA, are jointly and severally liable to the Foundation for its benefit or for the benefit of its creditors for any legally recoverable injury suffered by the Foundation or those creditors as a result of the action in an amount that does not exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed. A director is not liable under this section if said director complied with the requirements of Section 541 of the MNCA, which requirements are generally stated in Section 13 above.

15. *Presumption of Director's Concurrence in Absence of Dissent.* If a director is present at a meeting of the Board of Directors, or an executive committee of which they are a member, and action on a corporate matter referred to in Section 14 of this Article is taken at that meeting, the director is presumed to concur in that action unless the dissent of such director is entered in the minutes or unless such director files a written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment of the meeting. The right to dissent of such director does not apply to a director who voted in favor of the action.

A director, who is absent from a meeting of the Board of Directors or an executive committee of which such director is a member, and action on a corporate matter described in Section 14 is taken at that meeting, such director is presumed to concur in the action unless such director

files a dissent with the secretary of the Foundation within a reasonable period of time after such director has knowledge of the action.

16. *Participation in Meeting by Telephone, Video Conference or Remote Communication.* An officer or member of the Board of Directors or of a standing or special committee of the Foundation may participate in a meeting by means of telephone or video conference or other means of remote communication by means of which all persons participating in the meeting can communicate with each other. This includes participation through the internet or other forms of electronic communications approved by the board, provided that a record of the communications at the meeting can be created and maintained for the minutes of the meeting. If telephone or video conference or other means of remote communication will be used in a meeting, the notice of the meeting shall advise directors/committee members of this and provide them with instructions on how to remotely connect to the meeting. Participation in a meeting pursuant to this Section constitutes presence in person at the meeting and a director/committee member may vote, as if physically present at the meeting.

The board may adopt procedures for conducting meetings by means of electronic communications devices. Such procedures shall comply with the MNCA, the Articles of Incorporation and these bylaws.

Report to Directors. The Foundation, at least once each calendar year, shall prepare or have prepared a report of the Foundation for the preceding fiscal year and present the report at the annual meeting of the Board of Directors and such other times as the board may direct. The report shall include all of the following for the Foundation's preceding fiscal year:

- (a) its income statement;
- (b) its year-end balance sheet, including trust funds and funds restricted by donors or the board;
- (c) its statement of source and application of funds, if such statement is prepared by the Foundation; and
- (d) any other information required by the MNCA.

The report may be distributed by electronic transmission or by making the report available for electronic transmission. If the report is distributed electronically, the Foundation shall provide the report in written form to a director on request.

17. *Examination of Books and Records.* A director may examine any of the Foundation's books and records for a purpose reasonably related to their position as a director. A director wishing to examine any books and records shall submit a notice to the secretary of the Foundation that they wish to examine books and records and attempt to reasonably describe the books and records to be inspected. The Foundation shall use its best efforts to gather the requested books and records for examination. The examination shall take place at the office of the Foundation, unless the board or chairperson selects another location that is reasonably near to the Foundation's office. The Foundation shall allow the examination to be conducted within a reasonable period of time following receipt of the notice from the director asking to examine the books and records. The board may adopt additional procedures for the examination of books and records by a director.

Article V - Officers

1. *Officers.* The officers of the Foundation shall be the chairperson of the Foundation, the vice chairperson or vice chairperson(s) of the Foundation, the chairpersons of the standing committees, the secretary, the treasurer and the Executive Director. The chairperson, vice chairperson(s) and chairpersons of the standing committees of the Foundation shall be nominated for election by the Foundation's nominating/governance committee in accordance with the provisions of Article VI, Section 9. Such officers shall be elected at the annual meeting of the Board of Directors. Other officers shall be appointed or designated as provided in these bylaws and shall serve for such term as the board may assign. The chairperson, vice chairperson(s) and chairperson of the nominating/governance committee shall hold office for a term of two (2) years or until the annual meeting of the Board of Directors of the Foundation held in the second year following their appointment, whichever occurs first, provided that their successors have been duly elected and qualified or until their resignation, removal or disqualification.
2. *Qualifications.* The chairperson and vice-chairperson(s) of the Foundation and the chairpersons of the standing committees must be selected from among the directors of the Foundation. The Executive Director/secretary and the treasurer shall be selected as provided herein. The president of the College may not serve as an officer of the Foundation. A member of the Kalamazoo Valley Community College Board of Trustees (other than the president of the College) may serve as an officer of the Foundation. If an officer of the Foundation is selected as president of the College, that person must resign their office in the Foundation, relinquishing all rights, privileges, and responsibilities associated therewith, prior to their installation as president of the College. Any person may hold more than one office provided the duties thereof can be consistently performed by the same person. Each person who is an officer due to the person's position at the College shall serve as an officer only so long as such person holds the corresponding position as officer of the College, and if such person ceases to hold such position as an officer, for any reason, then such person shall cease to be an officer of the Foundation, and this officer position shall be vacant until this person's successor is appointed and shall assume the position as officer. There shall be no other restrictions, limitations, or qualifications for officers except as may be specified in these bylaws.
3. *Chairperson.* The chairperson of the Foundation shall serve as chairperson of the Board of Directors and as chairperson of the executive committee. The chairperson of the Foundation shall be a member of the executive committee and the nominating/governance committee and shall be permitted to attend meetings of all other standing and special committees. The chairperson shall perform all duties commonly incident to the office and shall have such other powers and shall discharge such other duties as may be assigned from time to time by the Board of Directors. For purposes of the MNCA, the chairperson shall also be deemed the president of the Foundation.
4. *Vice Chairperson(s).* The vice chairperson of the Foundation shall serve as the Chairperson of the Nominating and Governance Committee, perform the duties of the chairperson of the Foundation and shall act as chairperson of the Foundation in the absence or disability of the chairperson (if there is more than one vice chairperson, then the vice chairperson designated by the board to perform the duties of the chairperson shall serve in place of the chairperson). The vice chairperson(s) shall have such other powers and shall discharge such other duties as may be

assigned from time to time by the chairperson of the Foundation or by the Board of Directors. There shall be no less than one and no more than three vice chairperson(s) of the Foundation, the number of which is at the sole discretion of the Board of Directors. For purposes of the MNCA, the vice chairperson(s) shall also be deemed the vice president(s) of the Foundation.

5. *Secretary; Assistant Secretary.* The secretary of the Foundation shall record all votes and the minutes of all proceedings of the Board of Directors, and of all standing and special committees of the Foundation and shall maintain a permanent record of all such votes and all such minutes. The secretary shall be responsible for the safety, security, and proper storage of all The Foundation meeting minutes, of these bylaws, of the Articles of Incorporation, and of all other legal documents of the Foundation, in such manner that all such documents, papers, and records may be fully and completely retrieved in a timely fashion as may be required by law or by the Board of Directors or by any officer of the Foundation or other duly authorized persons. The secretary shall give, or cause to be given, notice of all meetings of the Board of Directors, and of all standing or special committees of the Foundation. The secretary shall have and shall exercise, under supervision of the Board of Directors, all the other powers and duties commonly incident to this office, and shall have such other powers and shall discharge such other duties as may be assigned from time to time by the chairperson or Board of Directors of the Foundation. The Board of Directors may appoint an assistant secretary, who must be an employee of the College, who shall perform the duties of the secretary in the absence of the secretary and who shall have such other powers and shall discharge such other duties as may be assigned from time to time by the chairperson or Board of Directors of the Foundation.

6. *Treasurer; Assistant Treasurer.* The treasurer, subject to the order of the Board of Directors, shall have the care and custody of the funds and financial assets of the Foundation and of the papers and documents relating to same. The treasurer shall cause the same to be placed for safekeeping in such depositories as may be designated by the Board of Directors, and shall cause the funds of the Foundation to be expended as directed by the Board of Directors, taking proper vouchers for such expenditures. The treasurer shall keep, or cause to be kept a book or books setting forth a true record of the receipts, expenditures, assets, liabilities, losses, and gains of the Foundation, and shall, when and as required by the chairperson of the Foundation, render a statement of the financial condition of the Foundation. The treasurer shall be bonded if required by the Board of Directors. The treasurer of the Foundation shall be a member of the executive committee and the chair of the investment committee of the Foundation. The treasurer shall have and shall exercise, under supervision of the Board of Directors, all the other powers and duties commonly incident to this office, and shall have such other powers and shall discharge such other duties as may be assigned from time to time by the chairperson or Board of Directors of the Foundation. The chief financial officer of the College shall serve as the assistant treasurer of the Foundation and assist the treasurer with the duties set forth above, including serving as acting treasurer if the treasurer is unavailable

7. *Executive Director.* There shall be an Executive Director of the Foundation who shall only be such person who is then serving as the Director of Development (or equivalent position) of the College. The Executive Director of the Foundation is the chief executive officer of the Foundation and shall have general and active management of the business of the Foundation and shall see that all orders and resolutions of the Board of Directors of the Foundation and of the executive committee are carried into effect. The Executive Director of the Foundation shall be an

ex-officio member of the executive committee and of all other standing and special committees. For the purposes of the United States Internal Revenue Code and for all other purposes of the local, state, and national governments, the Executive Director of the Foundation shall be considered to be the manager of the Foundation. The Executive Director of the Foundation shall have such other powers and shall discharge such other duties as may be assigned from time to time by the chairperson or Board of Directors of the Foundation.

8. *Resignations.* Any officer may resign at any time by giving written notice to the Board of Directors or to the chairperson of the Foundation. Any such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the resignation shall be immediately effective on receipt and acceptance of such resignation shall not be necessary to make it effective.

9. *Removal.* Any of the officers designated in Sections 1 or 8 of this Article V may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Foundation will be served thereby, by the vote of a majority of the Directors, provided a quorum is present. The removal of an officer shall be without prejudice to such officer's contract rights, if any.

10. *Vacancies.* Vacancies in any office because of death, resignation, removal, disqualification, or for any other reason shall be filled in a manner consistent with the normal election, appointment or designation of officers. Elections to fill vacancies shall be held as soon as reasonably practicable following the occurrence of the vacancy.

11. *Discharge of Duties; Reliance on Reports.* An officer shall discharge their duties as an Officer, and shall be entitled to rely on reports, etc., in the same manner as specified for a director in Article IV, Section 13.

Article VI - Committees

1. *Standing Committees.* The standing committees of the Foundation shall be: executive committee, nominating/governance committee, alumni committee, planned giving committee and investment committee.

2. *Special Committees.* The chairperson of the Foundation, upon concurrence of the Board of Directors, may from time to time appoint special committees. The chairperson of the Foundation shall appoint the chairperson and all members of any special committees who shall serve at the pleasure of the chairperson of the Foundation and shall have such duties as assigned by the chairperson of the Foundation.

3. *Qualification, Appointment, and Terms of Committees.* Except as otherwise provided in these bylaws, the chairpersons of the standing committees shall select and appoint the members of their respective committees with the concurrence of the Board of Directors, except for the nominating/governance committee, whose members shall be appointed by the chairperson of the Foundation with the concurrence of the Board of Directors and the concurrence of the president of the College. The secretary of the Foundation shall assist as appropriate in the selection and appointment of committee members and shall be responsible for maintaining accurate records of all committee appointments. The terms of the standing committees shall be one year, corresponding to the terms of the committee chairpersons, except for the chairperson of the nominating/governance committee who shall hold office for two (2) years. The terms of any special committees shall be determined by the chairperson of the Foundation. There is no

limit to the number of committees on which one person may serve concurrently or any limit to the number of terms or consecutive terms a person may serve on one or more committees. Each committee shall have no fewer than three (3) members; provided, however, that a committee shall be permitted to continue performance of its duties and to take all necessary actions, notwithstanding a vacancy which gives it fewer than three (3) members, subject to satisfaction of the quorum requirement in Section 11. Except with respect to the executive committee, which shall be made up exclusively of persons who are directors of the Foundation, membership on a committee shall be open to directors and non-directors.

4. *Executive Committee.* The Board of Directors shall appoint an executive committee consisting of the chairperson, the vice chairperson, the treasurer, assistant treasurer, and the secretary of the Foundation, the committee chairpersons and such other elected directors as may be appointed by the Board of Directors. The Executive Director shall serve as a non-voting, ex-officio member of the executive committee. The chairperson of the Foundation shall serve as the chairperson of the executive committee. Except to the extent limited by the MNCA, the Articles of Incorporation, these bylaws or resolutions of the Board of Directors, the executive committee shall exercise the authority of the Board of Directors in the management of the Foundation between meetings of the board. All decisions made by the executive committee must be ratified at the next full board meeting, including any decisions made in response to urgent situations or emergency circumstances as set forth below. The executive committee shall not have the power to change the Articles of Incorporation, amend the bylaws, dissolve or merge the Foundation, elect or remove board members, hire or fire the Executive Director, approve or change the budget or make major structural decisions affecting the Foundation or the College. Subject to the foregoing, the executive committee may convene and act in urgent situations or emergency circumstances, which if not addressed promptly may reasonably result in a detriment to the Foundation or the College. The executive committee shall meet upon the call of the chairperson of the Foundation or upon the call of the Executive Director of the Foundation. The designation of the executive committee and delegation of authority thereto shall not operate to relieve the Board of Directors of any responsibility imposed upon it by these bylaws.

5. *Nominating/Governance Committee.* Responsibilities of the committee shall include interviewing prospective candidates and making recommendations to the Board of Directors for persons to serve on the Foundation board of the directors, board orientation and engagement, recommendation of governance principles and practices, board self-assessments, and the nomination of candidates for the officers and for chairpersons of the standing committees of the Foundation in accordance with these bylaws; *provided, however,* that the vice chairperson of the Foundation shall serve as the chairperson of the nominating/governance committee. The committee shall have such additional responsibilities as may be assigned by the chairperson of the Foundation or the Board of Directors.

6. *Alumni Committee.* Responsibilities of the committee shall include assisting staff in the development of engagement strategies for alumni that facilitate a giving spirit, supporting alumni activities and events, and facilitating network opportunities for alumni. The committee shall have such additional responsibilities as may be assigned by the chairperson of the Foundation or the Board of Directors. The chairperson of the alumni committee shall be a Foundation director and shall be elected by the Board of Directors as set forth in Article V.

7. *Planned Giving Committee.* Responsibilities of the committee shall include assisting staff in the development of strategies that will maximize current and future donor gifts, including strategies related to legacy gifts and the establishment of giving societies. The committee shall have such additional responsibilities as may be assigned by the chairperson of the Foundation or the Board of Directors. The chairperson of the planned giving committee shall be a Foundation director and shall be elected by the Board of Directors as set forth in Article V.
8. *Investment Committee.* Responsibilities of the committee shall include developing the investment/spending policy and recommending changes as necessary, establishing and monitoring the Foundation's investment objectives, supervisory authority over the investment of the assets of the Foundation directly purchased or directly owned by the Foundation, and the proper accounting of all such assets and such additional responsibilities as may be assigned by the chairperson of the Foundation or the Board of Directors. The Treasurer of the Foundation shall serve as the chairperson of the investment committee.
9. *Committee meetings.* Meetings of the standing and special committees of the Foundation may be called by the chairperson of the Foundation or by the chairperson of the respective committee. All committees shall meet as frequently as necessary to fulfill the responsibilities set forth in these bylaws. The secretary of the Foundation shall be responsible for issuing appropriate notification of all committee meetings, for selecting a suitable location and facility for the meeting, and for all other necessary and appropriate meeting arrangements. The secretary of the Foundation shall be responsible for recording all votes of the committee and the minutes of all committee meetings and for maintaining all appropriate committee records.
10. *Quorum.* A quorum for a meeting of a committee shall consist of a majority of the voting members of such committee being present. Committee members may participate in a meeting by telephone or other means of remote communication as provided in Article IV, Section 16. If a quorum cannot be mustered, a meeting may proceed and any action taken shall be valid only if subsequently confirmed by approval, in writing, of no less than two-thirds of the voting members within one year of the meeting.
11. *Proxies.* No committee member shall be permitted to vote by proxy at any meeting for any purpose whatsoever.

Article VII – Indemnification of Directors, Officers, Volunteers, Employees and Agents

1. *Indemnification of Directors and Officers: Claims By Third Parties.* The Foundation shall, to the fullest extent authorized or permitted by the MNCA or other applicable law, as the same presently exists or may hereafter be amended, indemnify a director, officer and nondirector volunteer (the "Indemnitee") who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the Foundation, by reason of the fact that said person is or was a director, officer, nondirector volunteer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, nondirector volunteer or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by said person in connection with the action, suit, or proceeding, if the Indemnitee acted

in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Foundation, and with respect to a criminal action or proceeding, if the Indemnitee had no reasonable cause to believe their conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner which said person reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to a criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful.

2. *Indemnification of Directors and Officers: Claims Brought By or In the Right of the Corporation.* The Foundation shall, to the fullest extent authorized or permitted by the MNCA or other applicable law, as the same presently exists or may hereafter be amended, indemnify a director, officer and nondirector volunteer (the "Indemnitee") who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that said person is or was a director, officer, employee, nondirector volunteer or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, partner, trustee, employee, nondirector volunteer or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the Indemnitee acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation or its shareholders. However, indemnification under this Section shall not be made for a claim, issue, or matter in which the Indemnitee is found liable to the Foundation except to the extent authorized in Section 5 below

3. *Determination of Indemnification.* Except as otherwise provided in Section 564a(5) of the MNCA, unless ordered by the court, the Foundation shall indemnify an Indemnitee under Sections 1 and 2 only if authorized in the specific case based on a determination that indemnification of the Indemnitee is proper in the circumstances because that person has met the applicable standard of conduct set forth in Sections 1 or 2 and based on an evaluation that the expenses and amounts paid in settlement are reasonable. The Foundation shall make a determination and evaluation under this Section in one of the following ways:

- (a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.
- (b) If the board is unable to obtain a quorum under subdivision (a), then by majority vote of a committee that is duly designated by the board and that consists solely of two or more directors who are not at the time parties or threatened to be made parties to the action, suit or proceeding.
- (c) By independent legal counsel in a written opinion, which counsel shall be selected in one of the following ways: (i) by the board or a committee of directors in a manner prescribed in subdivision (a) or (b); or (ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

In the designation of a committee under subsection (b) or in the selection of independent legal counsel under subsection (c)(ii), all directors may participate.

The board shall authorize payment of indemnification in any of the ways permitted by Section 564a(4)(a) of the MNCA.

4. *Advancement of Expenses.* The Foundation shall pay or reimburse the reasonable expenses incurred by an indemnitee who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the indemnitee furnishes the Foundation a written undertaking, executed personally or on their behalf, to repay the advance if it is ultimately determined that said indemnitee did not meet the standard of conduct. The undertaking required by this Section must be an unlimited general obligation of the person but need not be secured. The Foundation shall evaluate the reasonableness of advances under this Section in the manner described in Section 3 above and make an authorization of payment in any of the ways permitted by Section 564a(4) of the MNCA.

5. *Court Approval.* An indemnitee who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person meets the requirements of Section 564c of the MNCA, including that the indemnitee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the indemnitee met the applicable standard of conduct set forth in Section 1 or 2 or was adjudged liable as described in Section 2, however, if the Indemnitee is found liable, said indemnitee's indemnification is limited to reasonable expenses incurred by such person.

6. *Partial Indemnification.* If an indemnitee is entitled to indemnification under Section 1 or 2 for a portion of expenses including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the Foundation shall indemnify the indemnitee for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the indemnitee is entitled to be indemnified.

7. *Indemnification of Employees and Agents.* Any person who is not covered by the foregoing provisions of this Article and who is or was an 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, employee benefit plan or other enterprise, may be indemnified to the fullest extent authorized or permitted by the MNCA or other applicable law, as the same exist or may hereafter be amended, but in the case of any such amendment, only to the extent such amendment permits the Foundation to provide broader indemnification rights than before such amendment, but in any event only to the extent authorized at any time or from time-to-time by the board.

8. *Other Rights of Indemnification.* The indemnification or advancement of expenses provided under Sections 1 to 7 is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles of Incorporation, bylaws, or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in Sections 1 to 8 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, personal representatives, and administrators of the person.

9. *Application to a Resulting or Surviving Corporation or Constituent Corporation.* The definition for “corporation” found in Section 569 of the MNCA, as the same exists or may hereafter be amended, is and shall be, specifically excluded from application to this Article. The indemnification and other obligations of the Foundation set forth in this Article shall be binding upon any resulting or surviving corporation after any merger or consolidation of the Foundation. Notwithstanding anything to the contrary contained herein or in Section 569 of the MNCA, no person shall be entitled to the indemnification and other rights set forth in this Article for acting as a director or officer of another corporation prior to such other corporation entering into a merger or consolidation with the Foundation.

10. *Liability Insurance.* The Foundation shall purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, nondirector volunteer or agent of the Foundation or who is or was serving at the request of the Foundation as a trustee, director, officer, employee, or agent of another foreign or domestic corporation, foreign or domestic business corporation, limited liability company, partnership, joint venture, trust or other enterprise for profit or nonprofit, against any liability asserted against said person or the Foundation and incurred by said person or the Foundation in that capacity, or arising out of their status as such, whether or not the Foundation has the power to indemnify said person against such liability under the provisions of this Article or the MNCA.

11. *Future Amendments.* A right of indemnification or to advancement of expenses under these bylaws is not eliminated or impaired by an amendment to the provision after the occurrence of the act or omission that is the subject of the formal or informal administrative or investigative action, suit, or proceeding for which indemnification or advancement of expenses is sought unless the provision in effect at the time of the act or omission explicitly authorizes that elimination or impairment after the action or omission has occurred.

Article VIII - Miscellaneous Items

1. *Contracts.* Unless a person or persons shall have been otherwise authorized by resolution of the Board of Directors or the executive committee with respect thereto, contracts and other instruments may be entered into and delivered in the name of or on behalf of the Foundation by any two of the following officers: the Executive Director, the treasurer, the assistant treasurer, if any, and the chairperson of the Foundation.

2. *Drafts, notes, etc.* All drafts, notes or orders drawn against the bank accounts of the Foundation shall be signed either by hand or by facsimile by the Executive Director or the treasurer or the assistant treasurer, if any, of the Foundation. No drafts, notes, or orders drawn against said account shall be valid unless so signed.

3. *Seal.* The Board of Directors may adopt a suitable corporate identity for the Foundation, which will align with the branding guidelines of the College and be used per the branding guidelines of the College.

4. *Audit.* The books and financial affairs of the Foundation shall be subject to audit by an independent accountant to be elected annually by the Board of Directors.

5. *Parliamentary procedure.* Roberts Rules of Order, Revised, shall be the authority in all matters of parliamentary procedure, except as otherwise expressly provided herein.

6. *Fiscal year.* The fiscal year of the Foundation shall be from July 1 to June 30.

7. *Liability of Directors, Officers, Nondirector Volunteers.* The liability of directors, officers, and nondirector volunteers of the Foundation shall be limited as provided in the Articles of Incorporation and to the maximum extent otherwise permitted by law.
8. *Associated and related entities.* The Board of Trustees of the College shall have the right to establish, merge, or dissolve the Foundation or any associated and related entities.

Article IX- Statement of Nondiscrimination

The Foundation prohibits discrimination or harassment which violates the law or which constitutes inappropriate or unprofessional limitation of the Foundation activities or transactions on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, protected disability, veteran status, height, weight, or marital status.

Article X - Amendments

These bylaws may be amended, added to, altered or repealed in whole or in part by the vote of not less than a majority of the members of the entire Board of Directors then in office at any regular or special meeting of the board called for such purpose or by an action by unanimous written consent. Bylaw amendments must be ratified by the College Board of Trustees, before or after approval by the Foundation Board of Directors, and shall have no effect until so ratified. The notice of the meeting at which the amendment is to be voted upon shall contain a copy of the proposed amendment or describe the substance of the proposed amendment.

The Articles of Incorporation may be altered or amended as follows: (a) by the affirmative vote of a majority of all directors present at a meeting provided a quorum exists and that notice of the meeting has been given to all directors at least twenty (20) days before the meeting; (b) by the affirmative vote of a majority of all directors then in office who are present at a meeting provided a quorum exists and that notice of the meeting has been given to all directors at least ten (10) days before the meeting; or (c) by an action by unanimous written consent. The notice of the meeting at which the amendment is to be voted upon shall contain a copy of the proposed amendment or describe the substance of the proposed amendment. Amendments to the Articles of Incorporation must be ratified by the College Board of Trustees, before or after approval by the Foundation Board of Directors, and shall have no effect until so ratified.

OTHER ITEMS

Trustee Miller read an email sent by a community member regarding the “Forgotten Fighters of the Kalamazoo Boxing Academy” exhibit coming to the Kalamazoo Valley Museum in 2022.

FUTURE AGENDA ITEMS AND EVALUATION OF MEETING AND MATERIALS

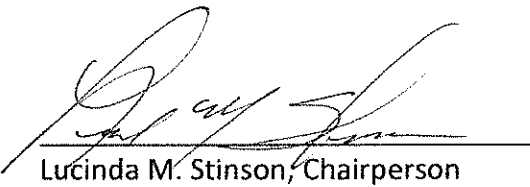
No future items were discussed

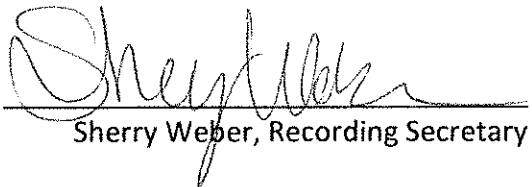
ADJOURNMENT

It was **MOVED** by Trustee Miller, **SECONDED** by Trustee Buck, and **CARRIED** to adjourn the meeting.

The Chairperson declared the meeting adjourned at 8:55 a.m.


Susan L. Miller, Secretary


Lucinda M. Stinson, Chairperson


Sherry Weber, Recording Secretary