

IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the Incorporation

of

McKinley High School Foundation

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
(Section 414D-184, Hawaii Revised Statutes)

The undersigned, a duly authorized officer of the corporation submitting these Amended and Restated Articles of Incorporation, certifies as follows:

1. The name of the corporation is McKinley High School Foundation.
2. The Amended and Restated Articles of Incorporation adopted are attached.
3. The Amended and Restated Articles of Incorporation were adopted on \_\_\_\_\_, 2004, by a sufficient vote of the Board of Directors because member approval was not required.
4. The written approval of a specified person or persons is not required.
5. The attached Amended and Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements and that the same are true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Title: \_\_\_\_\_

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF MCKINLEY HIGH SCHOOL FOUNDATION**

**ARTICLE I  
NAME OF CORPORATION**

The name of the corporation shall be:

"McKinley High School Foundation."

**ARTICLE II  
LOCATION OF CORPORATION**

The mailing address of the principal office of the corporation is 1039 South King Street, Honolulu, Hawaii 96814, or at such other address as the corporation may specify from time to time.

**ARTICLE III  
OBJECTS AND PURPOSES**

The objects and purposes of this organization shall be:

**Section 1. Purposes.** The corporation is organized exclusively for the following purposes:

(a) To promote and foster the development of McKinley High School; to grant scholarships, loans and other assistance to students and faculty; to provide funds for school equipment and activities which contribute to improving the learning experience, such as, but not limited to, innovative study projects, field trips and workshops, and the granting of achievement awards; and to encourage scholarship and good citizenship among members of the McKinley High School community; and

(b) To transact any or all lawful activities for which nonprofit corporations may be incorporated under Hawaii law.

**Section 2. Limitations.** The corporation shall be operated exclusively within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") (or any future corresponding provision), and the regulations thereunder, as amended. Such activities shall be conducted in accordance with Section 501(c)(3) and the regulations thereunder as they now exist or as they may hereafter be amended.

**ARTICLE IV  
DURATION**

The corporation shall have perpetual succession.

**ARTICLE V**  
***DIRECTORS AND OFFICERS***

**Section 1. Initial Directors.** The number of directors constituting the initial Board of Directors is five (5). The following are the names and residence addresses of the initial officers and directors:

**DIRECTORS**

RICHARD H. KOSAKI President	2549 Malama Place Honolulu, Hawaii 96822
STANLEY T. SEKI First Vice President	98-974 Kahapili Street Aiea, Hawaii 96701
JANN YUEN Second Vice President	45-167 Kumakua Place, #74 Kaneohe, Hawaii 96744
SUSAN ISA Secretary	98-1944 Wilou Street Aiea, Hawaii 96701
HAROLD S. Y. YEE Treasurer	1091 Iiwi Street Honolulu, Hawaii 96816

**Section 2. Limitation of Liability of Directors.** Without limiting any other protections to which the directors may be entitled, the directors of the corporation shall not be personally liable to the corporation or members of the corporation, if any, for monetary damages for the breach of any of the director's duties to the corporation, unless such elimination of personal liability is prohibited by law. This limitation on liability applies to events occurring at the time a person serves as a director of the corporation whether or not such person is a director at the time of any proceeding in which liability is asserted. Any amendment, modification or repeal of this Section 2 shall not adversely affect any right or protection of a director of the corporation with respect to any act or omission of such director occurring prior to such amendment, modification or repeal.

**ARTICLE VI**  
***NO MEMBERS***

The corporation shall have no members.

**ARTICLE VII**  
**BYLAWS**

The Bylaws shall be adopted, amended or repealed by the Board of Directors.

**ARTICLE VIII**  
**NONPROFIT CORPORATION**

**Section 1. Restrictions.** The corporation is a nonprofit corporation and shall not authorize or issue any shares of stock. No dividend shall be paid and no part of the income or profit of the corporation shall be distributed to the directors or officers of the corporation. No loans shall be made by the corporation to its directors or officers. The corporation may, however, pay compensation in a reasonable amount to its members, directors, or officers for services rendered. Except as permitted by this Article, no part of the assets or earnings of the corporation shall inure to the benefit of any individual. The corporation shall not participate in or intervene (including publication or distribution of statements) in any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of the corporation's articles of incorporation, the corporation shall not carry on any activities not permitted (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code (or any future corresponding provision); or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code (or any future corresponding provision).

**Section 2. Private Foundation Requirements.** In any taxable year in which the corporation is considered a private foundation as described in Section 509(a) of the Code (or any future corresponding provision), the corporation (1) shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code (or any future corresponding provision); (2) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code (or any future corresponding provision); (3) shall not retain any excess business holdings as defined in Section 4943(c) of the Code (or any future corresponding provision); (4) shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code (or any future corresponding provision); and (5) shall not make any taxable expenditures as defined in Section 4945(d) of the Code (or any future corresponding provision).

**Section 3. Corporate Dissolution; Distribution of Assets.** If the corporation shall be dissolved, all assets of the corporation, after payment of liabilities, shall be distributed to one or more public agencies, organizations, corporations, trusts or foundations organized and operated exclusively for charitable, religious, eleemosynary, benevolent, scientific, educational, literary or similar purposes, no part of whose assets, income or earnings may be used for dividends or otherwise withdrawn or distributed to or inure to the benefit of any private shareholder or individual and the activities of which do not include participation or intervention in any political campaign on behalf of any candidate for public office. In no event shall any distribution be made to any organization unless it qualifies as a tax-exempt organization under Section 501(c)(3) of the Code (or any future corresponding provision).

**ARTICLE IX**  
**CORPORATE POWERS**

**Section 1. In General.** The corporation shall have all powers, rights, privileges and immunities, and shall be subject to all of the liabilities conferred or imposed by law upon such corporations, and shall be subject to and have all the benefits of all general laws with respect to corporations.

**Section 2. Indemnification, Generally.** The corporation shall have, in addition to the general powers conferred upon it under the statutes of the State of Hawaii, the following powers subject to the limitations described in Article IX, Sections 3 and 4:

(a) To indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) if that person is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, or that the person had reasonable cause to believe that the person's conduct was unlawful; and

(b) To indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor because that person is or was a director, officer, employee or other agent of the corporation, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

**Section 3. No Private Inurement.** No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, members, if any, or other

private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to the corporation.

**Section 4. Amendment.** The Articles of Incorporation set forth herein shall be subject to amendment from time to time as provided by law and these Articles of Incorporation, except that no amendment shall be made which would change the objects and purposes of the corporation to include subjects and purposes which would permit any transaction or activity not permitted to be conducted or carried on by an organization exempt for taxation under Section 501(c)(3) of the Code (or any future corresponding provision).

**Section 5. Indemnification of Directors, Officers, Employees and Agents.** The corporation shall indemnify, and advance funds to pay for or reimburse expenses to, its directors, officers, employees and agents to the fullest extent permitted by law. Any amendment, modification or repeal of the foregoing sentence shall not deprive any person of rights hereunder arising out of alleged or actual occurrences, acts or failures to act occurring prior to notice to such person of such amendment, modification or repeal.

**SECOND AMENDED AND RESTATED  
BYLAWS  
OF  
McKINLEY HIGH SCHOOL FOUNDATION**

**ARTICLE 1**

**NAME, OFFICES, AGENT AND PURPOSES**

**Section 1.1 Name; Registered Office and Registered Agent.** The nonprofit corporation shall be known as the McKinley High School Foundation (hereinafter, the "Foundation"). The Foundation shall continuously maintain in the State of Hawaii a registered office and a registered agent whose business office is identical with the registered office. The registered agent may be an individual who resides in the State of Hawaii, or a Hawaii or foreign entity authorized to transact business or conduct affairs in the State of Hawaii. The Foundation may change its registered office, its registered agent or both.

**Section 1.2 Principal and Other Offices.** The principal office of the Foundation, being the office designated from time to time in the annual report where the principal executive offices of the Foundation are located, and other offices of the Foundation, if any, may be located at any place in or out of the State of Hawaii as the board of directors may designate or as the purposes of the Foundation may require.

**ARTICLE 2**

**DIRECTORS**

**Section 2.1 Authority of Board of Directors.** All corporate powers of the Foundation shall be exercised by or under the authority of its board of directors including the management of the Foundation's affairs, subject to any limitation set forth herein.

**Section 2.2 Qualifications and Number of Directors.** All directors shall be individuals. However, a director need not be a resident of Hawaii. The initial number of directors of the Foundation shall be as set forth in the Articles of Incorporation. The number of directors may be increased or decreased from time to time by the board of directors. The number of directors of the Foundation shall not be less than six (6) and no more than thirty-six (36). No reduction of the number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**Section 2.3 Nomination and Election.** Directors shall be nominated by the Nominating Committee as hereinafter provided in Section 2.14.3. Additional nominations may be made in writing by any director, seconded by five (5) directors, and filed with the chairman of the Nominating Committee not later than ten (10) days preceding the annual meeting or the regular or special meeting of the board of directors held for that purpose. No nominations shall be made from the floor. The directors shall be elected at each annual meeting of the directors by a majority vote of the directors in attendance at the annual meeting or at any regular or special meeting of the board of directors held for that purpose.



**Section 2.4 Term of Office.** The term of each director shall be three (3) years. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected or until there is a decrease in the number of directors. A decrease in the number of directors or term of office does not shorten an incumbent director's term. The term of a director filling a vacancy in the office of a director expires at the end of the unexpired term that the director is filling. Notwithstanding the foregoing provisions of this section, at the 2004 annual meeting of the board of directors, all of the directors of the Foundation were elected, some for one-year terms, some for two-year terms and the remainder for three-year terms.

**Section 2.5 Resignation of Directors.** A director may resign at any time by delivering written notice to the board of directors, the chair of the board, the President, or any Secretary. Unless the notice specifies a later effective date, the resignation is effective at the earliest of the following: when the notice is received; five (5) days after its deposit with the U.S. Postal Service as evidenced by the postmark, provided the notice is correctly addressed with first class postage; on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested and the receipt is signed by or on behalf of the addressee; or thirty (30) days after its deposit with the U.S. Postal Service as evidenced by the postmark, if correctly addressed but with other than first class, registered, or certified postage. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

**Section 2.6 Removal of Directors.** A director may be removed without cause by the affirmative vote of a majority of the directors.

**Section 2.7 Vacancy on Board of Directors.** If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the board of directors may fill the vacancy by the affirmative vote of the remaining directors, though less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**Section 2.8 Compensation of Directors.** Directors shall serve without remuneration. The board of directors may provide for reimbursement of all or part of a director's reasonable expenses of attending meetings of the board of directors or committees.

**Section 2.9 Meetings of the Board of Directors.** A regular annual meeting of the board of directors shall be held at such times and places as the board of directors may provide by resolution. The regular annual meeting shall be for the purpose of electing directors, appointing officers and transacting such other business as may come before the meeting. The board of directors may hold other regular meetings or special meetings in or out of the State of Hawaii, which may be called by or at the request of the President, the First Vice-President or the Second Vice-President, or any two (2) directors. The person or persons authorized to call special meetings of the board of directors may fix the place for holding any special meeting of the board of directors called by them. No notice other than this Section 2.9 and the resolution is needed for the regular annual meeting or any other regular meeting. Notice of each special meeting shall be

given in accordance with Section 2.11. The board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Section 2.10 Action Without a Meeting.** Action required or permitted to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board of directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken. Action taken by unanimous written consent of the directors is effective when the last director signs the consent, unless the consent specifies a different effective date. An unanimous written consent as described above has the effect of a meeting vote and may be described as such in any document.

**Section 2.11 Call and Notice of Meetings.** Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting. Special meetings of the board of directors must be preceded by at least three (3) days' notice of the date, time, and place of the meeting by mail, telephone, or facsimile. The Corresponding Secretary shall give notice of special meetings of the board of directors (for which notice is required) in writing by mailing the same not less than three (3) days before the meeting or by giving notice personally, by telephone or by telegraph not less than one (1) day before the meeting, or as otherwise prescribed by the board of directors. The failure by the Corresponding Secretary to give such notice or by any director to receive such notice shall not invalidate the proceedings of any meeting at which a quorum of the directors is present. The notice need not describe the purpose of the special meeting. Any board action to remove a director; approve a sale, pledge or transfer of all or substantially all of the assets of the Foundation; or approve a plan of merger, conversion, or dissolution shall not be valid, unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a board of directors' meeting, unless notice is waived pursuant to section 2.12.

**Section 2.12 Waiver of Notice.** A director may waive any required notice before or after the date and time stated in the notice. The waiver shall be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records; except that a director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or prior to the vote on a matter not noticed in conformity with the law or the Bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

**Section 2.13 Quorum and Voting.** A quorum of directors consists of at least (a) one-third (1/3) of the number of directors in office or (b) two (2) directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by law, the Articles of Incorporation, or the Bylaws. In the absence of a quorum, the presiding officer or a majority of the directors present may adjourn the meeting from time to time without further notice until a quorum is present.

**Section 2.14.1 Committees of the Board of Directors.** The board of directors may create one (1) or more committees and appoint members of the board of directors to serve on them. Each committee must have two (2) or more members, who serve at the pleasure of the board of directors. The creation of a committee and appointment of members to it must be approved by the greater of: (a) a majority of all the directors in office when the action is taken, or (b) the number of directors required to take action under Section 2.13 of the Bylaws. Sections 2.9 to 2.13 of the Bylaws which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well. To the extent specified by the board of directors, each committee may exercise the authority of the board of directors, provided, however, a committee may not:

- (a) Authorize distributions;
- (b) Approve dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Foundation's assets;
- (c) Elect, appoint, or remove directors or fill vacancies on the board of directors or on any of its committees; or
- (d) Adopt, amend, or repeal the Articles of Incorporation or the Bylaws.

**Section 2.14.2 Executive Committee.** The board of directors may appoint an Executive Committee consisting of the President and other members of the board of directors who shall possess and may exercise such powers as may be delegated to it by the board of directors. A majority of the Executive Committee shall constitute a quorum for the transaction of business. Acts of the majority of the members present at such meetings at which a quorum is present shall be acts of the Executive Committee. The Executive Committee shall have, to the extent not specifically restricted by law or by the Bylaws, all of the powers and authority of the board of directors in the management of the property, business and affairs of the Foundation during intervals between meetings of the board of directors. The Executive Committee shall keep regular minutes of its proceedings and report them to the board of directors in a timely manner or whenever requested by the board of directors.

**Section 2.14.3 Nominating Committee.** There shall be a Nominating Committee appointed annually by the President consisting of five (5) members. The President shall designate the chair of the committee. It shall be the duty of the Nominating Committee pursuant to Section 2.3 to prepare a slate of nominees to be elected as directors for the succeeding year, including nominees to fill vacancies on the board of directors. A report containing the committee's slate shall be mailed to all members no later than two (2) weeks preceding the annual meeting of the Foundation.

**Section 2.15 Conflict of Interest Transactions.** (a) A conflict of interest transaction is a transaction with the Foundation in which a director of the Foundation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in this section. A transaction in which a director has a conflict of interest may be approved if the material facts of the transaction and the director's interest were disclosed or known to the board

of directors or a committee of the board of directors and the transaction was authorized, approved, or ratified by the board of directors or committee of the board of directors.

(b) A director of the Foundation has an indirect interest in a transaction if: (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction. A conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors either on the board or on any committee, who have no direct or indirect interest in the transaction; provided that a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under this section; provided the transaction is otherwise approved as provided in this section.

### ARTICLE 3

#### OFFICERS

**Section 3.1 Required Officers.** The Foundation shall have the officers as shall be appointed from time to time by the board of directors. The same individual may simultaneously hold more than one office in the Foundation. One of the officers shall have responsibility for preparation and custody of minutes of the directors' meetings and for authenticating records of the Foundation. Each officer shall have the authority and shall perform the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers. The officers may include one or more of the following:

**Section 3.1.1 President.** The President shall preside at all meetings of the board of directors. Unless otherwise determined by the board of directors, the President shall have general charge and supervision of the Foundation. The President shall perform such other duties as are incident to the office or are required by the board of directors.

**Section 3.1.2 Vice-Presidents.** In the absence or disability or refusal to act by the President, the First Vice-President or Second Vice-President shall, in that order perform all of the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The First Vice-President or Second Vice-President shall have such powers and perform such other duties as from time to time may be prescribed by the President, the board of directors or the Bylaws.

**Section 3.1.3 Treasurer and Assistant Treasurers.** The Treasurer shall be the chief financial officer of the Foundation and shall exercise general supervision over the receipt, custody and disbursement of the Foundation's funds. The Treasurer shall perform the duties set forth in Section 4.2 and all other duties assigned by the board of directors. The Assistant Treasurer or Assistant Treasurers, if elected, shall, in the order designated by the President or the board of directors, perform all the duties and exercise all the powers of the Treasurer during the

absence or disability of the Treasurer or whenever the office is vacant and shall perform all the duties assigned by the President or the board of directors.

**Section 3.1.4 Recording and Corresponding, and Assistant Secretaries.** The Recording Secretary shall keep the minutes of all meetings of the board of directors. The Recording Secretary shall keep or cause to be kept a register showing the names of the directors and officers with their addresses. The Corresponding Secretary shall give notice in conformity with the Bylaws of all meetings of the board of directors. The Corresponding Secretary shall also perform all other duties assigned by the board of directors. The Recording and Corresponding Secretaries and any Assistant Secretaries shall, in the order designated by the President or the board of directors, perform all the duties and exercise all the powers of the Recording and Corresponding Secretaries during the absence or disability of either or whenever either office is vacant, and shall perform all the duties assigned by the President or the board of directors.

**Section 3.2 Resignation of Officers.** An officer may resign at any time by delivering notice to the Foundation. Unless a written notice specifies a future effective date, the written notice is effective at the earliest of the following: when the notice is received; five (5) days after its deposit with the U.S. Postal Service as evidenced by the postmark, provided the notice is correctly addressed with first class postage; on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested and the receipt is signed by or on behalf of the addressee; or thirty (30) days after its deposit with the U.S. Postal Service as evidenced by the postmark, if correctly addressed but with other than first class, registered or certified postage. Unless an oral notice specifies a future effective date, an oral notice is effective when communicated if communicated in a comprehensible manner. If a resignation is made effective at a future date and the Foundation accepts the future effective date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

**Section 3.3 Election, Term and Removal of Officers.** All officers shall be elected by the board of directors and shall serve until their successors are elected. Commencing with the election of officers in 2004, the term of each officer shall be two (2) years. Despite the expiration of an officer's term, the officer continues to serve until the officer's successor is elected or until there is a decrease in the number of officers. Any two or more offices may be held by the same person, provided that the Foundation shall not have fewer than two persons as officers. All officers shall be subject to removal at any time by the board of directors whenever in the judgment of the board of directors the best interests of the Foundation will be served thereby. The board of directors may, in its discretion, elect acting or temporary officers, elect officers to fill vacancies occurring for any reason whatsoever, and limit or enlarge the duties and powers of any officer elected by it. Officers need not be directors of the Foundation. The board of directors may remove any officer at any time with or without cause.

## ARTICLE 4

### MISCELLANEOUS PROVISIONS

**Section 4.1 Corporate Records.** The Foundation shall keep as permanent records minutes of all meetings of the board of directors, a record of all actions taken by the directors without a meeting, and a record of all actions taken by committees of the board of directors. The Foundation shall maintain appropriate accounting records. The Foundation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. The Foundation shall keep a copy of the following records at its principal office:

- (a) Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (b) Bylaws or restated Bylaws and all amendments to them currently in effect;
- (c) A list of the names and business or home addresses of its current directors and officers;
- (d) The most recent annual report delivered to the Hawaii Department of Commerce and Consumer Affairs;
- (e) A copy of the Foundation's application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code filed with the Internal Revenue Service with all supporting documents and any letter issued by the Internal Revenue Service in response; and
- (f) A copy of the Foundation's three (3) most recent annual tax returns.

**Section 4.2 Financial Management.** The board of directors shall not adopt a budget, make any appropriations, or authorize expenditures which, in the aggregate in any fiscal year, will exceed the estimated net funds available for such year. The Treasurer shall not pay out any money not included in the approved budget or otherwise authorized by the board of directors. Every expenditure of money shall be evidenced by a voucher or other instrument. The books and records of the Foundation shall be audited by a certified public accountant employed by the board of directors, provided that such an audit shall be conducted at least every three (3) years. No director or officer may be eligible to serve as auditor. Each such audit shall be filed with the board of directors and the Treasurer. The Treasurer is authorized to receive all forms of gifts to the Foundation. The Treasurer shall deposit all monies of the Foundation in the name of the Foundation in the original form received by him or her, in one or more federally insured depositories approved by the board of directors. The Treasurer may invest any funds of the Foundation, and may sell, change, or transfer any thereof, and the rights and privileges that may accrue therefrom.

**Section 4.3 Seal.** The Foundation may have a seal of such form as the board of directors may from time to time determine.

## ARTICLE 5

### INDEMNIFICATION

**Section 5.1 No Liability.** No director or officer of the Foundation who serves without remuneration or expectation of remuneration shall be liable for damage, injury, or loss caused by or resulting from the person's performance of, or failure to perform, duties of any position to which the person was appointed, unless the person was grossly negligent in the performance of, or failure to perform, such duties. No director, officer, employee or other agent of the Foundation and no person serving at the request of the Foundation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise and no heir, devisee, or personal representative of any such person shall be liable to the Foundation for any loss or damage suffered by it on account of an action or omission by such person as a director, officer, employee or other agent if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Foundation.

**Section 5.2 Indemnification Generally.** The Foundation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Foundation) by reason of the fact that the person is or was a director, officer, employee or other agent of the Foundation or of any division of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Foundation or, with respect to any criminal action or proceeding, create a presumption that the person had reasonable cause to believe that the person's conduct was unlawful.

**Section 5.3 Suits by or in the Right of the Foundation.** The Foundation shall indemnify each person who was or is a party or is threatened to be made a party to any 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 the person is or was a director, officer, employee or other agent of the Foundation or of any division of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation and except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the

Foundation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

**Section 5.4 Effect of Success in Defense.** To the extent that a person who is or was a director, officer, employee or other agent of the Foundation, or a person serving at the request of the Foundation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 5.1 and 5.2, or in defense of any claim, issue or matter therein, the person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection therewith.

**Section 5.5 Authorization for Indemnification.** Any indemnification under Sections 5.2 and 5.3 (unless ordered by a court) shall be made by the Foundation only if authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 5.2 or 5.3. The determination may be made:

- (a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;
- (b) If a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Foundation;
- (c) If a quorum of disinterested directors so directs, by a vote of a majority of the members who vote; or
- (d) By the court in which the proceeding is or was pending upon application made by the Foundation or the agent, attorney, or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the Foundation.

**Section 5.6 Advances.** Expenses incurred in defending any action, suit or proceeding may be paid by the Foundation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the person to repay the amount unless it shall ultimately be determined that the person is entitled to be indemnified by the Foundation as authorized in this Article 5.

**Section 5.7 Indemnification not Exclusive.** The indemnification provided by this Article 5 shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such person.

**Section 5.8 Insurance.** The Foundation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or other



agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the Foundation would have the power to indemnify the person against such liability under the provisions of this Article 5. Insurance may be procured from any insurance company designated by the board of directors, including any insurance company in which the Foundation shall have any equity or other interest, through stock ownership or otherwise.

## ARTICLE 6

### EMERGENCY BYLAWS

**Section 6.1 Emergency Bylaws.** The provisions of this Article 6 shall be effective only in an emergency where a quorum of directors cannot readily be assembled because of some catastrophic event. All provisions of the other Sections of the Bylaws consistent with this Section remain effective during the emergency.

**Section 6.2 Notice of Emergency Board Meeting.** Any one member of the board of directors or any one of the officers may call a meeting of the board of directors. Notice of such meeting need be given only to those directors whom it is practicable to reach, and may be given in any practical manner, including by publication and radio. Such notice shall be given at least six hours before commencement of the meeting.

**Section 6.3 Temporary Directors and Quorum.** One or more officers present at a meeting of the board of directors shall be deemed to be directors for the meeting, in order of rank, and within the same rank, in order of seniority, as necessary to achieve a quorum. In the event that less than a quorum (as determined by Section 2.13 of the Bylaws) of the directors are present (including any officers who are to serve as directors for the meeting), those directors present (including the officers serving as directors) shall constitute a quorum.

**Section 6.4 Permitted Actions.** The board of directors as constituted in Section 6.3 and after notice as set forth in Section 6.2 may:

- (a) Prescribe emergency powers to any officer;
- (b) Delegate to any officer or director, any of the powers of the board of directors;
- (c) Designate lines of succession of officers and agents, in the event that any of them are unable to discharge their duties;
- (d) Relocate the principal place of business, or designate successive or simultaneous principal places of business; and
- (e) Take any other action, convenient, helpful, or necessary to carry on the purposes of the Foundation.

## ARTICLE 7

### AMENDMENT OF ARTICLES AND BYLAWS

**Section 7.1 Amendment of Articles of Incorporation.** The board of directors may amend its Articles of Incorporation at any time to add or change a provision that is required or permitted in the Articles or to delete a provision not required in the Articles by a vote of a majority of the directors in office.

**Section 7.2 Amendment of the Bylaws.** The board of directors may alter, amend, repeal, or adopt new Bylaws, provided that notice of each proposed change in the Bylaws has been given at least fourteen (14) days in advance of the meeting during which the vote on the amendment is to be taken. Notice of proposed amendments may be given in the minutes of the board meetings, which are regularly distributed to the board members.

**CERTIFICATE**

The undersigned Corresponding Secretary of McKinley High School Foundation, a Hawaii nonprofit corporation (the "Foundation"), hereby certifies that the foregoing Second Amended and Restated Bylaws were duly adopted by the board of directors of the Foundation at the annual meeting of the board of directors duly called and held on \_\_\_\_\_, 2004; that such Bylaws became the amended and restated bylaws of the Foundation effective \_\_\_\_\_, 2004, and that the same remain in full force and effect.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF  
McKINLEY HIGH SCHOOL FOUNDATION  
(Adopted as of June 8, 2004)**

Re: Election of Directors

WHEREAS, the directors of McKinley High School Foundation, a Hawaii nonprofit corporation (the "Corporation"), desire to elect the entire board of directors, as set forth in the attached Exhibit A, to facilitate the transition to a board with staggered terms of directors; and

WHEREAS, the Corporation has no members;

NOW, THEREFORE, BE IT

RESOLVED, that the individuals identified in the attached Exhibit A be, and hereby are, elected as all the directors of the Corporation, their predecessors being hereby removed, to serve, each for the term set forth by such individual's name, pursuant to the Bylaws of the Corporation, as amended from time to time.