

**AMENDED AND RESTATED BYLAWS  
OF  
ROTARY DISTRICT 5000 FOUNDATION**

**DATED JUNE 27, 2020**

**ARTICLE 1  
NAME; PURPOSES; NONPROFIT CHARACTER**

Section 1.1 Name. The name of the corporation is Rotary District 5000 Foundation; hereinafter referred to as the Foundation.

Section 1.2 Purposes. The purposes of the Foundation shall be as specifically set forth in Article IV of the articles of incorporation for the Foundation, and shall be operated exclusively for charitable, religious, educational, scientific and literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 ("IRC"), as the same is or may be amended from time to time for the benefit of its Members.

Section 1.3 Nonprofit Character. The Foundation shall be a nonprofit corporation. The Foundation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income or earnings which may be derived from its operations, in pursuance of the purposes of the Foundation, shall be distributed to or inure to the benefit of any Member, director or officer of the Foundation, or any private individual, but shall be used to promote the purposes of the Foundation.

**ARTICLE 2  
PRINCIPAL OFFICE; PLACE OF MEETINGS; SEAL**

Section 2.1 Principal Office. The principal office of the Foundation shall be maintained at such place within the State of Hawai'i, and the Foundation may have such other offices within the State of Hawai'i, as the Board of Directors, hereinafter referred to as the Board, shall determine from time to time.

Section 2.2 Place of Meetings. All meetings of the Members and of the Board of Directors shall be held at the principal office of the Foundation unless some other place is stated in the meeting notice.

Section 2.3 Seal. The Foundation may, but shall not be required to, have a corporate seal as the Board of Directors shall determine. The seal, if any, shall be under the control of the Board of Directors, and the responsibility for its custody shall be with the secretary of the Foundation.

**ARTICLE 3  
MEMBERSHIP**

Section 3.1 Members. District 5000 and every Rotary Club, in good standing, within District 5000 shall be eligible for membership. Participation in the Foundation's local, international and humanitarian activities may be undertaken by each Member as it chooses but must be in furtherance of one or more of the tax-exempt purposes of the Foundation. To become a Member, an eligible entity shall deliver to the Foundation secretary a resolution from the entity's Board of Directors, authorizing the entity to be a Member of the Foundation

and agreeing to abide by the articles of incorporation and bylaws of the Foundation. The rights, privileges and obligations of membership shall be exercised by the District Governor, as to District 5000, and the club president, as to each Rotary Club, during their respective terms of office.

Section 3.2 Annual Meeting. The annual meeting of the Members shall typically be held at the location and time of the annual district conference for District 5000, or such other date as the Board shall designate. At the annual meeting, the annual report of the Foundation's activities shall be presented, along with the annual financial statements for the immediately preceding fiscal year.

Section 3.3 Regular Meetings. The Board may establish regular membership meetings to be held in such places and at such times as the Board may determine. The secretary shall provide ten days notice as to date, time, and location of regular meetings.

Section 3.4 Special Meetings. Special meetings of the Members may be held at any time upon the call of the Foundation president or any two (2) directors, or upon the call of one-fourth (25%) of all the Members. Upon receipt of such call or written request, the secretary shall send out notices of the meeting, with ten day notice, as to date, time, and location to all Members in the same manner as for annual meetings of the Members.

Section 3.5 Notice of Meetings. Subject to Section 3.3, notice setting forth the time and place of the annual and any special meetings and the general nature of the business to be considered thereat shall be given by the secretary, or by the person or one of the persons calling the meeting, to each Member. Such notice shall be given to each such Member by advising him of the meeting by electronic mail, regular mail or by personally delivering written notice thereof to him, in each case not less than forty-eight (48) hours prior to the time set for the meeting, or by mailing written notice thereof, postage prepaid, addressed to him at his residence or usual place of business at least ten (10) nor more than sixty (60) calendar days prior to the time set for the meeting.

Section 3.6 Waiver of Notice.

(a) Any Member may waive notice of any meeting of Members in writing signed by himself or his duly authorized proxy or attorney-in-fact, either prior to, at or after the meeting.

(b) The presence or representation at any meeting of any Member shall be the equivalent of the waiver of the giving of notice of such meeting to such Member, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting.

Section 3.7 Quorum. At any meeting of the Members of which proper notice has been given, the presence of one-third (1/3) of Members, whose president is present in person or by proxy shall constitute a quorum to transact business, and the concurring vote of a majority of the Members constituting a quorum shall be valid and binding upon the Foundation, except as otherwise provided by law, these bylaws or the articles of incorporation.

Section 3.8 Voting; Proxies. Each Member is entitled to one (1) vote, either in person or by proxy, on each matter presented to the Members for action. The vote of each

Member shall be exercised by the president or proxy. The manner in which the vote may be cast shall be determined by the Board, and may be by mail vote, electronic mail vote, by ballot or voice vote. The authority given to a proxy shall be in writing and signed by the club president and shall be filed with the secretary. No proxy shall be valid after eleven (11) months from the date of such proxy, unless otherwise provided in such proxy.

Section 3.9 Adjournment. Any meeting of the Members may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting, unless a new record date is or must be fixed under Hawaii Revised Statutes § 414D-107, in which event notice of the adjourned meeting shall be given to the Members of record as of the new record date. Such adjournment may be to such time and to such place as shall be determined by a majority of the Members present. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted by a quorum at the original meeting as originally called.

Section 3.10 Electronic Meetings. Subject to the notice requirements of these bylaws, any meeting of the Members may be held by means of electronic communications equipment so long as all Members participating in the meeting can simultaneously hear one another. Participation by such means shall constitute presence in person at a meeting. Email does not constitute a meeting.

Section 3.11 Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by eighty percent (80%) of the Members with respect to the subject matter thereof and filed with the records of the meetings of the Members. Such consent shall have the same effect as a vote of the Members at a meeting.

Section 3.12 Admission. District 5000 and any District 5000 Rotary Club eligible for membership shall be admitted to membership by adopting a resolution authorizing the entity to be a Member of the Foundation; agreeing to abide by the articles of incorporation and bylaws of the Foundation, and delivering a copy of such resolution to the secretary.

Section 3.13 Removal. The Board may immediately suspend or revoke any Member's membership in the Foundation because of any act or omission by the Member that jeopardizes the tax-exempt status of the Foundation under IRC § 501(c)(3). Any Member may also be removed as a Member of the Foundation by the affirmative vote of two-thirds (2/3) of the Members at a special meeting of the Members (which vote shall not include the Member whose removal is the subject of such vote). Not less than thirty (30) calendar days prior to the date on which the vote for removal shall be held, the Member who is proposed to be removed shall be sent written notice, by hand delivery or first class mail, postage prepaid, of its proposed removal and the reason(s) therefor. The Member may provide a written response to the secretary of the Foundation no later than seven (7) calendar days prior to the date on which the vote is scheduled to be held, and its response shall be provided to all the Members prior to the vote for removal.

Section 3.14 Withdrawal. Any Member may voluntarily withdraw from the Foundation by delivering ten days advance written notice to the secretary.

Section 3.15 Disposition of Funds. Funds held by the Foundation for the benefit of a Member are the property of the Foundation. When a Member is removed or withdraws

from the Foundation, funds shall be promptly returned to the Member; so long as returning said funds does not conflict with law or create an undue burden on the Foundation. If a Member Club terminates membership in Rotary International, funds held shall be donated to The Rotary Foundation Endowment Fund account/Share for District 5000.

Section 3.16 Conflict of Interest.

(a) Conflict of Interest Defined. A conflict of interest may exist when any Member has a financial or other personal interest (including a conflict of fiduciary interest due to such person's status as an officer or director of another organization) in a transaction, contract or other matter related to funds held or disbursed by the Foundation on behalf of the Member.

(b) Disclosure. If there is a conflict of interest or potential conflict of interest, the person involved shall provide prompt, full and frank disclosure of such interest to the Foundation prior to any action on such contract, transaction, or matter.

Section 3.17 Committees. Any Member may serve on a committee of the Foundation or the Board so long as such committee is not exercising the authority of the Board.

Section 3.18 Indemnification by Members. When utilizing Foundation assets Members will indemnify, defend and hold harmless the Foundation, including its officers, directors and representatives, from and against any actual or threatened liability, loss, damage, costs (including reasonable attorney's fees), relating to or arising from the acts or omissions of such indemnifying Member, including, without limitation, any acts and omissions that adversely affect the tax-exempt status of the Foundation or proximately cause any other damage or expense to the Foundation.

## **ARTICLE 4 BOARD OF DIRECTORS**

Section 4.1 Powers. The Board shall manage the property and business of the Foundation and shall have and may exercise all of the powers of the Foundation except such as are reserved to or may be conferred from time to time by law, the articles of incorporation and any amendments thereto, or the bylaws upon the Members of the Foundation. The Board shall consist of four officers (president, vice-president, secretary, and treasurer) and five directors, one representing each county and one at large, elected from the membership.

Section 4.2 Election. The president of the Foundation shall cause to be held elections to the Board at the annual meeting of the Members, typically held in conjunction with the District 5000 Conference. The vice-president shall submit a slate of candidates, proposed by the Nominating Committee, to the Members at least thirty days prior to the election. Each Member of the Board must be a Rotarian in good standing and be from Member Clubs of the Foundation. It is recommended, but not required, that Members of the Board shall have served as president in his or her respective Rotary Club. Nominations shall also be open to the floor at the time of elections. Floor nominees must be present and must accept the nomination. Election to the Board shall be by voice vote in the event the candidate is unopposed and by written ballot should there be more than one candidate. A candidate shall be elected by receiving the majority of the votes cast

or by voice acclimation.

Section 4.3 Term.

(a) (a) Officers and Directors. Each officer and director shall serve for a term of one year, beginning July 1 and ending on June 30 of the following year.

(b) Term Limits. No officer or director shall serve more than three consecutive terms in a single position on the Board.

Section 4.4 Annual Meeting. In addition to the annual membership meeting, the Board shall meet, at least annually, with minutes having been duly recorded.

Section 4.5 Regular Meetings. The Board may establish regular meetings to be held in such places and at such times as it may from time to time by vote determine, and no further notice thereof shall be required.

Section 4.6 Special Meetings. Special meetings of the Board may be called at any time by the president or by any three (3) directors.

Section 4.7 Notice of Meetings. Except as otherwise expressly provided, reasonable notice of any meeting of the Board shall be given to each director (other than the person or persons calling the meeting and other than the person giving notice of the meeting) by the secretary, or by the person or one of the persons calling the meeting, by advising the director of the meeting by word of mouth, by telephone, by electronic mail, or by leaving written notice thereof with the director or at the director's residence or usual place of business. Such written notice shall be hand-delivered or mailed by first class mail, postage prepaid, not less than seven (7) calendar days prior to the date of the meeting. Nonreceipt by a director of any written notice of a meeting mailed to such director shall not invalidate any business done at the meeting, provided a quorum is present.

Section 4.8 Waiver of Notice.

(a) Any director may, prior to, at the meeting, or subsequent thereto, waive notice of any meeting in writing, signed by such director.

(b) The presence at any meeting of any director shall be the equivalent of a waiver of the requirement of the giving of notice of said meeting to such director, unless the director, at the beginning of the meeting or prior to the vote on a matter not properly noticed, objects to the lack of notice and does not thereafter vote or assent to the objected action.

Section 4.9 Quorum. For the Board to conduct official business on behalf of the Foundation there shall be required a quorum of not less than fifty percent; provided due notice has been acknowledged, in writing, that a Board meeting is scheduled.

Section 4.10 Adjournment. Any meeting of the Board may be adjourned from time to time, whether a quorum be present or not, without notice other than the announcement at the meeting. Such adjournment may be to such time and to such place as shall be determined by the majority of the Board present. At any such adjourned meeting at which a

quorum shall be present, any business may be transacted which might have been transacted by a quorum at the original meeting as originally called.

Section 4.11 Electronic Meetings. Subject to the notice requirements of these bylaws, any meeting of the Board may be held by means of electronic communications equipment so long as all directors participating in the meeting can simultaneously hear one another. Participation by such means shall constitute presence in person at a meeting. Email is not considered to be an electronic meeting.

Section 4.12 Action by Directors Without a Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors with respect to the subject matter thereof and filed with the records of the meetings of the Board. Such consent shall have the same effect as a unanimous vote of the Board. The board may take action via email.

Section 4.13 Removal; Withdrawal; Admission. Any director may be removed as a director of the Foundation, with or without cause, by the affirmative vote of all directors at the time of such vote (which shall not include any director whose removal is the subject of such vote). Any director may withdraw from the Foundation at any time upon giving prior written notice to the secretary. Replacement directors may be elected or appointed as set forth in these bylaws.

Section 4.14 Permanent Vacancies. If any permanent vacancy shall occur in the Board through death, resignation, disqualification, removal or other cause other than temporary absence, illness or disability, the remaining directors, by the affirmative vote of a majority of all remaining members of the Board, may elect a successor director to hold office for the unexpired portion of the term of the director whose place had been vacant.

Section 4.15 Temporary Vacancies, Substitute Directors. If any temporary vacancy shall occur in the Board through the sickness or disability of any director, the remaining officers and directors, whether constituting a majority or a minority of the whole Board, may by the affirmative vote of a majority of such remaining directors appoint some person as a substitute director, who shall be a director during such absence, sickness or disability and until such director shall return to duty or the office of such director shall become permanently vacant.

Section 4.16 Proxies. Voting by proxy shall not be permitted at any meeting of the Board of Directors or of any committees, boards or bodies created by the Board.

Section 4.17 Nominating, Audit, Education and Other Committees.

(a) Nominating. Annually, the vice-president shall convene a committee, representative of each county, for the purpose of developing a slate of proposed Foundation officers and directors nominees for the following year. The slate of nominees shall be presented to the Members at least thirty (30) days prior to the annual meeting.

(b) Audit Committee The vice-president shall organize and chair the standing Audit Committee. The Audit Committee shall be composed of three Rotarians from Member Clubs with the necessary experience to evaluate Member compliance with accepted fundraising practices and use of funds applicable to member based non-profit organizations.

Members of the Audit Committee need not be Board members. Additionally, the audit committee may assist the treasurer with an in-house compilation or review of financial records.

(c) Education Committee. The effective use of the District 5000 Foundation depends on Member Clubs understanding and utilizing the tax advantaged opportunities of a 501(c)(3) structure without misrepresenting the deductibility of donations. It is important for Members to understand the use and limitations of Foundation funds. There is also an opportunity for non-Member District 5000 Clubs to become Members and have the Foundation perform the necessary administration inherent in managing non-profit operations. Therefore, the vice-president shall develop a Foundation Education Committee and periodically offer training to Members on effective use of the Foundation based on lessons learned by the Audit Committee and to non-Member D5000 Clubs on opportunities available through the Foundation.

(d) Other Committees. The Board, by resolution adopted by a majority of the Board present, may designate and appoint an executive committee and any other committees, each of which, to the extent provided in the resolution, the articles of incorporation or these bylaws, shall have and may exercise all the authority of the Board; except that no such committee shall have the authority of the Board in reference to:

(i) Authorizing distribution of funds;

(ii) Approving or recommending to the directors the dissolution, merger, or the sale, pledge or transfer of all or substantially all of the property and assets of the Foundation;

(iii) Electing, appointing or removing any Member of any such committee or any director or officer of the Foundation;

(iv) Adopting, amending, altering or repealing the articles of incorporation or bylaws;

(e) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board or any individual director of any responsibility imposed upon the Board or the director by law.

Section 4.18 Compensation. The Board shall serve without compensation. Subject to the approval of the Board, reasonable travel and other expenses incurred on behalf of the Foundation may be paid or reimbursed and shall not be deemed compensation.

Section 4.19 Gifts and Contributions. The Board may accept on behalf of the Members of the Foundation any contribution, gift, bequest or devise for the general benefit of the Foundation, or for any special purpose, so long as acceptance does not conflict with any law, regulation or these bylaws. Board members may not accept any gratuity, personal gift, honorarium, or contribution that would call into question the integrity, fairness or openness of the Foundation, its Members or its Board or bring discredit to Rotary International.

Section 4.20 Procedure. The Board shall fix its own rules of procedure which shall not be inconsistent with these bylaws.

Section 4.21 Standards of Conduct. Officers and Directors shall discharge their duties such that such behavior reflects positively on the Foundation by acting:

- (a) In good faith;
- (b) With the care an ordinarily prudent individual in a like position would exercise under similar circumstances; and
- (c) In a manner the director (or officer) reasonably believes to be in the best interest of the Foundation.

Section 4.22 Conflict of Interest.

(a) A conflict of interest may exist when any Board Member or Board Committee member has a financial or other personal interest (including a conflicting fiduciary interest due to such person's status as an officer or director of another organization) in a transaction, contract or other matter that is presented to the Board for authorization, approval or ratification.

(b) If there is a conflict of interest, the person involved shall provide prompt, full and frank disclosure of such interest to the Board or Board Committee prior to any action on such contract, transaction or matter.

Section 4.23 Advisory Board. The Board may appoint an advisory board as it may deem appropriate, consisting of directors or persons who are not directors, but such advisory board shall not be deemed a committee of the Board and shall not exercise any powers of the Board. The Board shall select a chairman and such other officers of the advisory board as it may determine. Notice of, and procedures for, meetings of any advisory board shall be as prescribed by the chairman of such advisory board, and meetings of any advisory board may be called by the president of the Foundation, the Board or the chairman of the advisory board.

Section 4.24 Employees and Contractors. The Board shall have the authority to hire persons to provide clerical, professional, and other services to operate administer and manage the Foundation's assets, resources and membership, and to fix the compensation, if any, for such persons.

## **ARTICLE 5 OFFICERS AND MANAGEMENT**

Section 5.1 President. The president shall be the chief executive officer of the Foundation and shall preside at meetings of the Board. Subject to the direction and control of the Board, the president shall be in personal charge of the principal office of the Foundation and have the general management, supervision and control of all of the property, business and affairs of the Foundation and exercise such other powers as the Board may from time to time confer upon the president. The president, in cooperation with the treasurer, shall develop and work from an operating budget. The president shall keep the Board fully advised as to all of the Foundation's business.

Section 5.2 Vice-President. The vice-president shall, in such order as the Board shall determine, perform all of the duties and exercise all of the powers of the president



provided by these bylaws or otherwise during the absence or disability of the president or whenever the office of president shall be vacant, and shall perform all other duties assigned to such person or persons by the Board or the president.

Section 5.3 Secretary. The secretary and/or assistant to the secretary shall attend all meetings of the Board and shall record the proceedings thereof in the minutes book or books of the Foundation. The secretary shall give notice, in conformity with these bylaws, of meetings, where required, of the Board. The secretary shall maintain a current list of the membership. The secretary shall maintain conflict of interest documents. In the absence of the president and the vice-president, the secretary shall have power to call such meetings and shall preside thereat until a president pro tempore shall be chosen. The secretary shall perform all other duties incident to the secretary's position or which may be assigned to the secretary by the Board or the president.

Section 5.4 Treasurer. The treasurer shall have custody of all funds, notes, bonds and other evidence of property of the Foundation. The treasurer shall deposit or cause to be deposited in the name of the Foundation all monies or other valuable effects in such banks, trust companies or other depositories designated by the Board. The treasurer shall make such disbursements as the regular course of business of the Foundation may require or the Board may order. The treasurer shall assist the president in the development and management of the Foundation operating budget. The treasurer, together with the president, shall ensure that the results of the annual financial compilation, review or audit is distributed in a timely manner to the Members. The treasurer shall perform all other duties incident to the treasurer's office or which may be assigned to the treasurer by the president or the Board.

Section 5.5 Absence of Officers. In the absence or disability of the president and vice-president, the duties of the president (other than the calling of meetings of the Board) shall be performed by such persons as may be designated for such purpose by the Board. In the absence or disability of the secretary, or of the treasurer, the duties of the secretary or of the treasurer, as the case may be, shall be performed by such person or persons as may be designated for such purpose by the Board.

Section 5.6 Surety Bonds. The Board may require an officer or agent of the Foundation to execute to the Foundation a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of such individual's duties and for the restoration to the Foundation of all books, papers, vouchers, money and other property of whatever kind in such individual's possession or under such individual's control belonging to the Foundation.

Section 5.7 Compensation. The officers and Board shall serve without direct or indirect compensation.

## **ARTICLE 6 REMOVALS**

The Members may at any time depose or remove from office any director, officer, subordinate officer, agent, or employee, whenever, in their judgment, the best interests of the Foundation will be served thereby. The number of votes cast to remove a director must be sufficient to elect the director at a meeting to elect directors. The Board may at any time remove from office or discharge from employment any officer, subordinate officer, agent or

employee appointed by it or by any person under authority delegated by it, whenever, in their judgment, the best interests of the Foundation will be served thereby.

## **ARTICLE 7 FOUNDATION FINANCES**

Section 7.1 Annual Statement of Foundation Finances. Subject to compliance with applicable law, the Board shall cause a complete financial compilation, review or audit and filing of appropriate documents associated with Foundation fiscal year operations and management annually or more often if required by law or the Board, and shall thereafter make appropriate reports to all members of the Board. The Board may assess Members a fee to cover the cost of compliance with financial regulations and best practices and may be amended as to amount and method of calculation from time to time.

Section 7.2 Financial, Grant and Operational Audits. Every program or project funded through the Foundation shall be in furtherance of one or more of the tax-exempt purposes of the Foundation, and funds shall not be used for any purpose that will jeopardize the tax-exempt status of the Foundation under IRC § 501(c)(3). From time to time, the Board may cause random audits of the books and records of the Members, by the Audit Committee, to enhance operations and verify compliance.

## **ARTICLE 8 DONATION POLICY**

Section 8.1 Donations. A donation is a voluntary contribution or gift, whether in cash or in kind. The Foundation will not accept contributions that (a) violate the terms of its articles of incorporation; (b) would jeopardize the Foundation's status as an exempt organization under state or federal law; (c) are too difficult or expensive to administer in the discretion of the Foundation; (d) are for purposes that do not further the Foundation's objectives; or (e) could damage the reputation of the Foundation. Without limiting the foregoing, the Foundation reserves the right to refuse any non-cash or non-standard contribution.

Section 8.2 Acceptance Policy. The Foundation may accept any designated contribution, grant, bequest or devise consistent with its general tax-exempt purposes, as set forth in the articles of incorporation. As so limited, donor-designated contributions will be accepted for special funds, purposes or uses, and such designations generally will be honored. The Foundation, however, reserves all right, title and interest in and to and control of such contributions, as well as full discretion as to the ultimate expenditure or distribution thereof in connection with any special fund, purpose, or use. Further, the Foundation shall acquire and retain control over all donated funds (including designated contributions) to assure that such funds will be used to carry out the Foundation's tax-exempt purposes.

Section 8.3 Refund Policy. The Foundation may, at the sole discretion of the Board, refund all or portions of donations accepted in accordance with Section 8.2 provided disclosure of the policy, as stated below, is provided in all solicitations. Responsibility for failure to disclose this policy notice to donors lies solely on the solicitor.

“Accepted donations are considered contributions to the Rotary District 5000 Foundation, a 501(c)(3) corporation, on behalf of The Rotary Club of \_\_\_\_\_ . Refunds may be

made as long as written notice is delivered to the solicitor within fifteen (15) calendar days of the date of the contribution”.

## **ARTICLE 9 EXECUTION OF INSTRUMENTS**

Section 9.1 Proper Officers. Except as hereinafter provided or as required by law, all checks, drafts, notes, bonds, acceptances, deeds, leases, contracts, bills of exchange, orders for the payment of money, licenses, endorsements, powers of attorney, proxies, waivers, consents, returns, reports, applications, notices, mortgages and other instruments or writings of any nature, which require execution on behalf of the Foundation, shall be signed by any two (2) of the following: (a) the president, (b) the vice-president, (c) the treasurer or (d) the secretary. The Board may from time to time authorize any such documents, instruments, or writings to be signed by such officers, agents, or employees of the Foundation, or any one of them, in such manner as the Board may determine.

Section 9.2 Facsimile Signatures. The Board may from time to time by resolution, provide for the execution of any corporate instrument or document, including but not limited to checks, warrants, letters of credit, drafts and other orders for the payment of money, by a mechanical device or machine or by the use of facsimile signatures under such terms and conditions as shall be set forth in any such resolution.

Section 9.3 Funds. All funds of the Foundation are to be deposited from time to time to the credit of the Foundation in such banks, trust companies, or other depositories that are federally insured, as the Board may select.

## **ARTICLE 10 CORPORATE BOOKS AND RECORDS; INSPECTION**

Section 10.1 Books and Records. The Foundation must keep correct and complete books and records of the Foundation and minutes of the meetings of its Members, Board and any committee having any of the authority of the Board, and shall keep at its registered office or principal office in the State of Hawai'i a record of the names and addresses of its Members. All books and records of the Foundation may be inspected, upon written demand, by any Member or Member's agent or attorney for any proper purpose at any reasonable time. Demand of inspection other than at a meeting shall be made in writing to the president, the secretary or any other officer designated by the Board. Records shall be maintained for a period of not less than five (5) years.

Section 10.2 Inspection of Bylaws. The Foundation must keep in its principal office for the transaction of business a copy of the bylaws of the Foundation as amended or otherwise altered to date, to be open to inspection by the Members at all reasonable times during office hours.

## **ARTICLE 11 LIMITATION ON LIABILITY**

No director or officer of this Foundation shall be personally responsible to the Foundation for civil claims arising from acts or omissions made in the performance of such individual's duties as a director or officer, unless the acts or omissions are the result of such individual's intentional misconduct.

## **ARTICLE 12 INDEMNIFICATION**

### Section 12.1 Indemnification.

(a) 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 civil, criminal, administrative or investigative action, suit or proceeding (other than an action by or in the right of the Foundation), by reason of the fact that such person is or was a director, officer, employee or agent of the Foundation or is or was serving in such capacity at the request of the Foundation in any other Foundation, partnership, joint venture, trust or other enterprise, against expenses, attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The terminating 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 such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Foundation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) 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 by or in the right of the Foundation by reason of the fact that such person is or was a director, officer, employee or agent of the Foundation or is or was serving in such capacity at the request of the Foundation in any other Foundation, partnership, joint venture, trust or other enterprise against expenses and attorneys' fees actually and reasonably incurred by such person in the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Foundation; provided that no indemnification shall be made in respect of any claim, issue, or matter as to which (i) a person serving as a director or officer of the Foundation without remuneration or expectation thereof has been adjudged to be liable for gross negligence, or (ii) any other director, officer, employee or agent of the Foundation has been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Foundation, unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability described in clause (i) or (ii) above, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses and attorneys' fees which such court deems proper.

(c) To the extent that a person seeking indemnification under Section 12.1(a) or Section 12.1(b) above has been successful on the merits or otherwise in defense of any action, suit or proceeding, or any claim, issue or matter therein, the Foundation shall indemnify such person against expenses and attorneys' fees actually and reasonably incurred in connection therewith.

(d) The Foundation shall make indemnification payments to or on behalf of the person seeking them only if authorized in the specific case upon a determination that indemnification of such person is proper because such person meets the applicable

standards of conduct set forth in Section 12.1(a) or Section 12.1(b) above. Such determination may be made (i) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Foundation, or (iii) by the court in which such action, suit or proceeding was pending upon application made by the Foundation or the person seeking indemnification or the attorney or other person rendering services in connection with the defense, whether or not such application is opposed by the Foundation.

(e) The Board shall authorize payment in advance of final disposition of an action, suit or proceeding for the expenses and attorneys' fees incurred by a person seeking indemnification under Section 12.1(a) or Section 12.1(b) above, provided that such person delivers a written undertaking to repay such amount unless it is ultimately determined that such person is entitled to be indemnified under this Section 12.1.

(f) The indemnification provided by this Section 12.1 shall not be deemed exclusive of any other rights to which those seeking indemnification are entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who ceases to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, personal representatives and administrators.

(g) The Foundation may purchase and maintain insurance on behalf of any person described in Section 12.1(a) or Section 12.1(b) above against any liability asserted against or incurred by such person in any such capacity or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify the person against such liability under this Section 12.1.

(h) This Section 12.1 shall be effective with respect to any person who is a director, officer, employee or agent of the Foundation or is serving in such capacity at the request of the Foundation in any other corporation, partnership, joint venture, trust, or other enterprise, at any time on or after the effective date of the articles of incorporation with respect to any action, suit or proceeding pending on or after that date against such person based upon his or her acting in such capacity before or after that date.

Section 12.2 Advances of Costs and Expenses. The Foundation may in its discretion pay for reasonable expenses incurred by a director, officer, employee, fiduciary, or agent (in defending a civil or criminal action, suit or proceeding) who is party to a proceeding in advance of final disposition of such proceeding if:

(a) the individual furnishes the Foundation a written affirmation of the individual's good faith belief that the individual has met the applicable standard of conduct described above in Section 4.21.

(b) the individual furnishes the Foundation a written undertaking, executed personally or on the individual's behalf, to repay the advance, if it is ultimately determined that the individual did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification.

Section 12.3 Insurance. By action of the Board, notwithstanding any interest of the directors in such action, the Foundation may, subject to Section 12.1(g), purchase and maintain, in such amounts as the Board may deem appropriate, on behalf of any individual indemnified hereunder against any liability asserted against such individual and incurred by such individual in such individual's capacity of or arising out of such individual's status as an agent of the Foundation, whether or not the Foundation would have the power to indemnify such individual against such liability under applicable provisions of law. The Foundation may also purchase and maintain insurance, in such amounts as the Board may deem appropriate, to insure the Foundation against any liability, including without limitation, any liability for the indemnifications as provided in this Article 12.

Section 12.4 Right to Impose Conditions on Indemnifications. The Foundation shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as the Board may deem appropriate in each specific case, including but not limited to any one or more of the following: (a) that any counsel representing the individual to be indemnified in connection with the defense or settlement of any action shall be counsel that is mutually agreeable to the individual to be indemnified and to the Foundation; (b) that the Foundation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the individual to be indemnified; and (c) that the Foundation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified individual's right of recovery, and that the individual to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Foundation.

Section 12.5 Limit on Indemnification. Notwithstanding any other provision of these bylaws, and except as otherwise provided by law, the Foundation shall neither indemnify any individual nor purchase any insurance in any manner or to any extent that would jeopardize or be inconsistent with qualification of the Foundation as an organization described in IRC § 501(c)(3).

## ARTICLE 13 LIMITATIONS

Section 13.1 Prohibition Against Sharing in Corporate Earnings. No part of the net earnings of the Foundation shall inure to the benefit of, or be distributed to, any director or officer of the Foundation or any other private person, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles of incorporation.

Section 13.2 Exempt Activities. Notwithstanding any other provision of these bylaws, no Member, director, officer, or representative of this Foundation shall take any action or carry on any activity by or on behalf of the Foundation not permitted to be taken or carried on by an organization exempt under IRC § 501(c)(3).

Section 13.3 Political Activities. Except as otherwise allowed by law, the Foundation shall not participate or intervene in, nor shall any of the funds or assets of the Foundation be applied on behalf of, any political campaign in support of or in opposition to any candidate for public office.

## **ARTICLE 14 AMENDMENTS**

The Board or any Member, excluding District 5000, may propose any additions, deletions, or changes to the bylaws of the Foundation. Proposals by the Board or any Member, excluding District 5000, shall be submitted in writing to the secretary of the Foundation, along with justification for the proposed amendment. All proposed amendments must be consistent with the tax-exempt status of the Foundation. The Board shall review the proposed amendment(s) and, by a majority vote, shall determine whether to recommend or reject the proposed amendment(s). The Foundation secretary shall then circulate the proposed amendment(s) to all Member clubs, together with the Board's recommendation on whether the proposed amendment(s) should be accepted or rejected. By a majority vote of the Member clubs of the Foundation, the proposed amendment(s) will be approved or rejected. In the event of a tie, the recommendation of the Board shall prevail. If an amendment passes, such amendment shall become effective immediately. The method for voting for amendments shall be determined by the Board from time to time, and may be (a) a vote conducted by regular mail, (b) a vote conducted by electronic mail or (c) a vote by written ballot or voice vote conducted at the annual meeting.

## **ARTICLE 15 MISCELLANEOUS**

Section 15.1 Severability. The invalidity of any provision of these bylaws shall not affect the other provisions thereof.

Section 15.2 Loans to Directors and Officers Prohibited. No loans shall be made by the Foundation to any of its directors or officers.

Section 15.3 Conveyances and Encumbrances. Property of the Foundation may be assigned, conveyed or encumbered by such officers of the Foundation as may be authorized to do so by the Board, and such authorized individuals shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Foundation shall be authorized only in the manner prescribed by applicable statute.

Section 15.4 Fiscal Year. The fiscal year of the Foundation shall begin on July 1st and end on June 30th of the following year.

## **ARTICLE 16 DEFINITIONS**

The word "**person**" or any pronoun used in place thereof, where the context so requires or admits, includes, and means individuals, firms, corporations, partnerships, and associations. The singular includes and means the plural, or *vice versa*. Masculine, feminine, and neuter genders include or interchange each of the other genders as the context implies or requires.

"**District 5000**" means the group of Rotary clubs in the geographical area consisting of the State of Hawai'i, which group is identified by Rotary International as District 5000, as amended from time to time.

**“Member”** means District 5000 and every Rotary Club within District 5000 that is a current Member of the Foundation.

**“Rotarian”** means an active member of a District 5000 Rotary Club.

**“Rotary Club”** means a Rotary club in District 5000.

\* \* \* \* \*



## CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify that:

1. I am the Secretary of Rotary District 5000 Foundation (“Foundation”).
2. The attached bylaws are the amended and restated bylaws of the Foundation, which were duly adopted effective as of June 27, 2020

DATED: Honolulu, Hawaii, June 27, 2020

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Mary Ann Berry  
Secretary