

THIS INSTRUMENT WAS PREPARED BY:  
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STATE OF ALABAMA )

JEFFERSON COUNTY )

**ARTICLES OF AMENDMENT TO  
ARTICLES OF INCORPORATION  
OF  
KIWANIS CLUB OF HOMEWOOD-MOUNTAIN BROOK FOUNDATION**

Pursuant to the Code of Alabama, Sections 10-3A-81 and 10-3A-82, the undersigned corporation, Kiwanis Club of Homewood-Mountain Brook Foundation, a nonprofit corporation organized and existing under the laws of the State of Alabama, hereby submits the following:

1. **Name.** The name of the corporation is Kiwanis Club of Homewood-Mountain Brook Foundation (the "Corporation").
2. **History.** The Articles of Incorporation of Kiwanis Club of Shades Valley Foundation were filed on December 17, 1986. On June 3, 1997, an Amendment to the Articles of Incorporation was filed to change the name of the Corporation to Kiwanis Club of Homewood-Mountain Brook Foundation. On May 5, 1998, an Amendment to the Articles of Incorporation was filed to add a dissolution statement and to clarify the Corporation's purpose.
3. **Amendment.** The Articles of Incorporation shall now be further amended as follows:

**Articles First through Twelfth shall be deleted in their entirety and the following shall be substituted in lieu thereof:**

**First:** The name of the Corporation shall be Kiwanis Club of Homewood-Mountain Brook Foundation.

**Second:** The address of the registered office of the Corporation, which shall also constitute its principal office, is 400 Shades Creek Parkway, Birmingham, Alabama 35209 (Jefferson County). The initial registered agent of the Corporation at such address shall be John C. Rives.

**Third:** The Corporation shall have perpetual existence. Upon the dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed exclusively to charitable, religious, scientific, literary or educational organizations which would then qualify under the provisions of § 501(c)(3) of the Internal Revenue Code as it now exists or as it may hereafter be amended ("Code") and the Treasury Regulations as they now exist or may hereafter be amended (the "Regulations").

**Fourth:**

(a) The purposes for which the Corporation is formed are to assist needy persons, particularly young people; to assist worthy youth in attaining vocational excellence, and to aid handicapped persons in regaining happy, useful lives through the expending of funds directly for such purposes or by the furnishing of funds to other organizations organized for charitable, scientific research, or educational purposes, or the prevention of cruelty to children, all within the purview of § 501(c)(3) of the Internal Revenue Code and the Regulations thereunder.

(b) Notwithstanding any other provision of these Articles, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under § 501(c)(3) of the Code and its Regulations, or by an organization to which contributions are deductible under § 170(c)(2) of the Code and Regulations.

(c) Upon the dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed as set forth in Article Eleventh below.

**Fifth:** This Corporation is organized pursuant to the Alabama Nonprofit Corporation Act.

**Sixth:** The number of Directors of this Corporation shall initially be eight (8).

**Seventh:** The sole Member of the Corporation shall be the Kiwanis Club of Homewood-Mountain Brook.

**Eighth:** The names and addresses of those chosen to serve as Directors until the election and qualification of their successors are:

<u>Name</u>	<u>Address</u>
John C. Rives	400 Shades Creek Parkway Suite 200 Birmingham, AL 35209
Susie Kelley	210 Bearden Road Pelham, AL 35124
Larry B. Pirkle	2500 Acton Road Birmingham, AL 35243
Tim Chandler	3713 Locksley Drive Birmingham, AL 35223
Phillip Edens	1126 Karl Daly Tree Birmingham, AL 35210
Eugene Rodgers	1616 Oxmoor Road Birmingham, AL 35209
Tom Donaldson	9 Woodmont Circle Homewood, AL 35209
Cindy Lambert	3705 Richelieu Drive Birmingham, AL 35216

**Ninth:** The property, voting, and other rights and privileges of the Member, and the Member's liability for dues or assessments and the method of collection thereof, shall be set forth in the Bylaws.

**Tenth:** The Corporation does not contemplate the distribution of gains, profits or dividends to the Member thereof, and is organized for non-profit purposes; no part of any net earnings or assets thereof shall inure to the benefit of the Member or any other individual. No part of the net earnings of the Corporation shall inure to the benefit of any director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its purposes), and no director, officer of the Corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the

Corporation. No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. Under no circumstances shall the Corporation make loans to officers and directors.

**Eleventh:**

(a) In the event of the dissolution of this Corporation, after paying or adequately providing for the debts or obligations of this Corporation, the Directors, or persons in charge of liquidation, shall grant, convey, assign and transfer the remaining assets of this Corporation unto:

(i) A state, a territory, a possession of the United States, or any political subdivision of any of the foregoing; or to the United States or the District of Columbia, to be used exclusively for public purposes; or

(ii) A corporation, trust, community chest, fund or foundation:

(1) Created or organized in the United States or in any possession thereof, or under the law of the United States, any state or territory, the District of Columbia, or any possession of the United States;

(2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(b) The assets transferred to any organization listed above shall be used within the United States, or any of its possessions, exclusively for the purposes specified in subparagraph (2) above.

(c) No such organization listed in section (a) (ii) above shall qualify for distribution unless such organization shall be an organization, association, fund or foundation organized and operated exclusively for charitable, religious, scientific or educational purposes which is a tax-exempt, nonprofit corporation under the United States Internal Revenue Code, and which is recognized as such by the United States Bureau of Internal Revenue.

(d) If the Corporation holds any assets in trust at the time of dissolution thereof, such assets shall be disposed of in such manner as may be directed by decree of the Superior Court in the county in which the dissolved Corporation had its principal office, upon petition therefore by the Attorney General, or any person concerned in the liquidation.

**Twelfth:** (a) The Corporation and its Member will at all times abide and be governed and controlled by the Bylaws and Policies of Kiwanis International now in force or hereafter from time to time adopted, insofar as any provision of such Bylaws may be applicable; (b) the Corporation will comply with all such conditions and requirements as Kiwanis International may prescribe; (c) whenever requested by the Board of Trustees of Kiwanis International, the Corporation shall dissolve or change its form of organization, as may from time to time be requested by said Board; and (d) no amendments to the Articles of

Incorporation or corporate Bylaws or change in the purpose of the Corporation shall be made without the consent of Kiwanis International.

**The following Articles Thirteenth through Sixteenth shall be added to the Articles of Incorporation:**

**Thirteenth:** As a means of accomplishing the foregoing purposes, the Corporation shall have the following powers, in addition to the general powers provided by statute:

(a) To accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase, exchange, lease, transfer, judicial order or decree, or otherwise, for any of its objects and purposes, any property, both real and personal, of whatever kind, nature or description and wherever situated.

(b) To sell, exchange, convey, mortgage, lease, transfer, or otherwise dispose of, any such property, both real and personal, as the objects and purposes of the Corporation may require, subject to such limitations as may be prescribed by law.

(c) To borrow money, and from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the Corporation for monies borrowed or in payment for property acquired or for any of the other purposes of the Corporation, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights or privileges of the Corporation, wherever situated, whether now owned or hereafter to be acquired.

(d) To invest and reinvest its funds in such stock, common or preferred, bonds, debentures, mortgages, or in such other securities and property as its Board of Directors shall deem advisable, subject to the limitations and conditions contained in any bequest, devise, grant, or gift, provided such limitations and conditions are not in conflict with the provisions of § 501 of the Code and Regulations.

(e) The Corporation shall have the power to make payments for the purposes of the Corporation herein referred to out of either the principal or the income of the Corporation, and to accumulate income from the property in its possession as such, provided that such accumulations are not unreasonable in amount, duration, use or investment, to such an extent that such accumulations result in a denial to the Corporation of exemption under § 501(c)(3) of the Code and its Regulations, or a denial to the Corporation of the benefits of exemption from the payment of income taxes as provided under any applicable laws and statutes of the United States, whether now in effect or hereafter adopted.

(f) In general, and subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to the further limitation and condition that, notwithstanding any other provisions of these Articles, only such powers shall be exercised as are in furtherance of the tax-exempt purposes of the Corporation and as may be exercised by an organization exempt under § 501(c)(3) of the Code and its Regulations and by an organization to which contributions are deductible under § 170(c)(2) of such Code and Regulations as they now exist or as they may hereafter be amended.

**Fourteenth:**

(a) The Corporate powers shall be exercised by the Board of Directors, except as otherwise provided by statute, by the Articles of Incorporation, or by Bylaws hereafter adopted, and any

amendments to the foregoing. The number of directors of the Corporation shall never be less than three (3) and shall be elected for such term and in such manner as the Bylaws shall prescribe. Any member of the Board of Directors may be removed at any time and without assigning any cause therefor as provided in the Bylaws, and written notification of such removal to such director so removed, who shall, forthwith upon receipt of such notice, be considered as removed from the Board of Directors.

(b) Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if, prior to such action, a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board or committee. Any such written consent shall have the same force and effect as a resolution, duly resolved at a meeting of the Board or of such committee.

(c) In furtherance, and not in limitation, of the powers conferred by statute, the Board of Directors is expressly authorized to make and alter the Bylaws of this Corporation.

(d) The Corporation may, in its Bylaws, confer powers upon its Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon it by statute.

**Fifteenth:** Subject to Article Twelfth above, the Corporation reserves the right from time to time to amend, alter or repeal each and every provision contained in these Articles of Incorporation or to add one or more additional provisions, in the manner now or hereafter prescribed or permitted by the Alabama Nonprofit Corporation Act; provided, however, that the sole power to amend these Articles of Incorporation shall rest in the Member of the Corporation.

**Sixteenth:** This instrument may be executed in any number of counterparts and all of such counterparts shall for all purposes constitute one instrument, notwithstanding that all parties are not signatories to the same counterpart, and further, the pages of the counterparts on which appear the signatures of the incorporators may be detached from the respective counterparts of the instrument and attached all to one counterpart which shall represent the one final instrument.

4. **Vote of Board of Directors.** The foregoing amendments were adopted by a vote of the directors present at a meeting of the Board of Directors duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010. The amendments received the vote of a majority of the Directors in office.
5. **Vote of Members.** The foregoing amendments were adopted by the Members of the Corporation present or represented by proxy at a meeting of the Members duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.
6. **Filing.** The within Articles are being filed in the Office of the Judge of Probate of Jefferson County, Alabama, for the purpose of effecting such amendment in accordance with the requirements of Code of Alabama 1975, Section 10-3A-83.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the undersigned corporation, by its duly authorized officers and with full authority, has executed these Articles of Amendment to Articles of Incorporation as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Kiwanis Club of Homewood-Mountain Brook  
Foundation

By: \_\_\_\_\_  
John C. Rives  
Its President

ATTEST:

\_\_\_\_\_  
William Hanks, Jr.  
Its Secretary

STATE OF ALABAMA )

JEFFERSON COUNTY )

**VERIFICATION**

I, William Hanks, Jr., being duly sworn, depose and say that I am the Secretary of Kiwanis Club of Homewood-Mountain Brook Foundation, a nonprofit corporation, and that the foregoing Articles of Amendment to Articles of Incorporation are true and accurate descriptions of actions of the Corporation.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
William Hanks, Jr.

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William Hanks, Jr., whose name is signed as Affiant to the foregoing verification, and who is known to me, acknowledged before me on this day that, being informed of the contents of said verification, he executed the same voluntarily on the day the same bears date.

Subscribed and sworn to before me on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**AMENDED AND RESTATED  
BYLAWS  
OF  
KIWANIS CLUB OF HOMEWOOD-MOUNTAIN BROOK FOUNDATION**

ARTICLE I  
MEMBER

Kiwanis Club of Homewood-Mountain Brook shall be the sole Member of the Corporation.

ARTICLE II  
MEETINGS OF MEMBER

Section 1. Place and Time for Annual Meeting.

(a) The annual meeting of the Member for the transaction of such business as may be necessary or advisable shall be held at such location, either within or outside of the State of Alabama, as decided upon by the Member. The meeting shall be held during the month in which the Corporation's fiscal year ends or at such time as the Member shall provide by resolution. The annual meeting shall be held for the purpose of electing directors and for the transaction of such other business as may come before the meeting. Failure to elect directors at the annual meeting shall not cause a dissolution of the Corporation, but the directors thereof shall continue to hold office until their successors are elected and qualified. A special meeting for the purpose of holding such election shall be called as soon thereafter as convenient.

(b) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes of the meeting, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, to the Member. If mailed, such notice shall be deemed to have been given when deposited in the United States mail, addressed to the Member at its address as it appears on the membership records of the Corporation, with postage thereon prepaid. Notice may be waived in writing and signed by the Member, where not otherwise provided by law.

Section 2. Special Meeting. Special meetings of the Member, for any purpose unless otherwise prescribed by statute, may be held at any time on the call of the President, by order of the Board of Directors, or on the written request of the Member. Notice of the time, place, and purpose of such meetings shall be given in accordance with ARTICLE II, Section 1(b) above.

Section 3. Quorum. The presence of a duly authorized officer of the Member shall constitute a quorum at a meeting of the Member. No business may be transacted without a quorum. Any business may be transacted at any meeting of the Member at which a quorum is present. If a quorum is present, the affirmative vote of the duly authorized officer of the Member shall be the act of the Member.

Section 4. Adjourned Meeting. Any meeting may be adjourned from time to time until its business is completed.

Section 5. Voting. The Member, through its duly authorized officer, shall be entitled to vote on each matter submitted to a vote at a meeting of Member, except to the extent that the voting rights of the Member are limited or denied by statute, by the Articles of Incorporation of the Corporation or any amendments thereto.

Section 6. Action Without A Meeting. Any action required or permitted to be taken at any meeting of the Member may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed the duly authorized officer of the Member. Such consent shall have the same effect as the vote of Member.

### ARTICLE III OFFICERS

Section 1. Number. The officers shall consist of the President, Immediate Past President, President-Elect, Vice President, Secretary, and Treasurer; such officer positions shall be represented and held by the corresponding officer positions of Kiwanis Club of Homewood-Mountain Brook. Any two (2) offices may be held by the same person, except the offices of President and Secretary.

Section 2. Term. The term of office of all officers shall be as set forth in the Articles of Incorporation and Bylaws of Kiwanis Club of Homewood-Mountain Brook. Any change in the officers of Kiwanis Club of Homewood-Mountain Brook shall, by operation of these Bylaws, result in a change in the officers of the Corporation.

Section 3. Vacancies and Removal. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting.

### ARTICLE IV DUTIES OF OFFICERS

Section 1. President. The President shall be the principal executive officer of the Corporation and shall have in his or her charge the general direction and promotion of its affairs with authority to do such acts and to make such contracts as are necessary or proper to carry on the activities of the Corporation. He or she shall preside over all official meetings of the Corporation, provided no one has been specifically elected to the office of Chairman of the Board, and shall also perform those duties which usually devolve upon a president of a corporation under the laws of the State of Alabama. The President may, during the absence of any officer, delegate said officer's duties to any other officer or Director.

Section 2. President-Elect and Vice President. The President-Elect, in the absence of the President, shall preside over all official meetings of the Corporation. In the absence of the President and the President-Elect, the Vice-President shall preside over all official meetings of the Corporation. The President-Elect and the Vice President shall also perform such other duties as usually pertain to those officers or as may be delegated to them by the President or the Board of Directors.

Section 3. Secretary. The Secretary shall issue notices of all meetings, shall keep the minutes of all meetings, shall have charge of the seal of the Corporation, if any, shall serve as custodian for all corporate records, and shall make such reports and perform such duties as are incident to his or her office or which may be delegated to him or her by the President or Board of Directors.

Section 4. Treasurer. The Treasurer shall render to the President and Board of Directors at such times as may be requested an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall have charge of all funds of the Corporation and shall disburse the same under the direction of the Board of Directors. The Treasurer shall perform such other duties as are incident to the office or as may be delegated to that office by the President or by the Board of Directors.

ARTICLE V  
BOARD OF DIRECTORS

Section 1. Number. The number of Directors shall be eight (8) and shall consist of the members of the Board of Directors of Kiwanis Club of Homewood-Mountain Brook. The number of Directors constituting the Board of Directors shall be fixed by these Bylaws and may be changed only by amendment hereof; provided, however, that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. The number of Directors shall never be less than three (3).

Section 2. Authority. The Board of Directors shall have full authority to supervise the affairs and conduct the business of the Corporation subject only to such restrictions and limitation as may be fixed by law, by these Bylaws, or from time to time by vote of the membership.

Section 3. Meetings.

(a) Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board of Directors. Notice of regular meetings of the Board of Directors may be given as provided in these Bylaws. Meetings may be held at any time without notice if all the Directors are present, or, if at any time before or after the meeting, those present waive notice of the meeting in writing.

(b) Unless otherwise restricted by the Articles of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall constitute presence in person at the meeting.

(c) Unless otherwise provided in these Bylaws, notice of meetings, both regular and special, shall be given not less than two (2) days in advance of said meeting. Such notice may be by mail, electronic transmission, telephone or may be verbal. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed, with postage thereon pre-paid. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted, or the purpose of, any regular or special meeting of the Board of Directors need not be specified in the notice or waiver of notice of such meeting.

(d) A majority of the Board of Directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum is present when a meeting is convened, the directors present may continue to do business, taking action by a vote of the quorum, until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum, or the refusal of any director present to vote.

(e) Any action required or permitted to be taken at any meeting of the Board of 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. Such consent shall have the same effect as a unanimous vote of the Board of Directors.

Section 4. Committees. The Board of Directors may authorize such committees to carry on the functions and to achieve the purposes of the Corporation as it may desire, and may provide for their appointment, functions and duties.

Section 5. Vacancies and Removals. Whenever a vacancy occurs on the Board of Directors as a result of the death, resignation, removal, refusal, ineligibility or inability to serve, or otherwise, of any of the directors under the provisions prescribed in these Bylaws, the surviving or remaining Directors shall, as promptly as possible following the occurrence of such vacancy, elect and designate a successor or successors, who shall likewise hold office as a director for the remaining term of the former director.

#### ARTICLE VI ELECTION OF OFFICERS AND DIRECTORS

Since the officers and directors of this Corporation are the officers and directors of Kiwanis Club of Homewood-Mountain Brook, said officers and directors shall be elected in the manner prescribed in the bylaws of Kiwanis Club of Homewood-Mountain Brook.

#### ARTICLE VII AMENDMENTS

Section 1. Amendment by Member. These Bylaws may be amended by the vote of the Member named in ARTICLE I at any regular meeting, or at any special meeting called for that purpose.

Section 2. Approval of Kiwanis International. Neither these Bylaws nor any amendments thereto shall become effective until approved by Kiwanis International.

#### ARTICLE VIII POLICIES OF KIWANIS INTERNATIONAL

Section 1. Subject to Kiwanis International. The Corporation and its Member will at all times abide and be governed and controlled by the Bylaws and Policies of Kiwanis International now in force or hereafter from time to time adopted, insofar as any provision of such Bylaws may be applicable.

Section 2. Requirements of Kiwanis International. The Corporation will comply with all such conditions and requirements as Kiwanis International may prescribe.

Section 3. Board of Trustees of Kiwanis International. Whenever requested by the Board of Trustees of Kiwanis International, the Corporation shall dissolve or change its form of organization, as may from time to time be requested by said Board of Trustees.

#### ARTICLE IX COMPENSATION

The officers and directors of this Corporation shall receive no compensation for their services as such. They may, however, make payments for such clerical assistance and for such professional services as they deem necessary for the conduct of the affairs of the Corporation. Under no circumstances shall the Corporation make loans to officers and directors.

ARTICLE X  
INDEMNIFICATION

Section 1. Indemnification in Actions Arising Out of Capacity as Officer, Director, or Employee Acting in a Management Capacity on Behalf of the Corporation. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the corporation), by reason of the fact that the person is or was a director, officer, or employee acting in a managerial capacity on behalf of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding if he or she 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 Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, provided he is not adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duty. The termination of any claim, 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 he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Indemnification in Actions by or in Right of Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee acting in a managerial capacity on behalf of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she 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 Corporation, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. Indemnification When Successful. To the extent that a director, officer, or employee acting in a managerial capacity on behalf of the Corporation has been successful in defense of any action, suit or proceeding referred to in Section 1 and Section 2 of this Article X, or in defense of any claim, issue or matter therein, he or she shall be indemnified against any and all expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith, notwithstanding that he or she has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

Section 4. Determination of Meeting Applicable Standard. Any indemnification under Section 1 and Section 2 of this Article X (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, or employee is proper in the circumstances because he or she has met the applicable

standard of conduct set forth in Section 1 and Section 2 of this Article X. Such determination shall be made either:

(a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful with respect to, such claim, action, suit or proceeding; or

(b) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.

Section 5. Payment of Expenses in Advance of Disposition of Action. Any and all expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Section 4 of this Article X upon receipt of an undertaking by or on behalf of the director, officer, or employee to repay such amount if and to the extent that it shall be ultimately determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article X.

Section 6. Non-exclusivity of Article X. The indemnification authorized in and provided by this Article X shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of articles of incorporation, bylaw, agreement, or vote of the Board of Directors, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. The Corporation may purchase and/or maintain insurance on behalf of any person who is or was a director, officer, or employee acting in a managerial capacity on behalf of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation is required or permitted to indemnify him or her against such liability under the provisions of this Article X or any statute.

Section 8. Amendment of this Article X. This Article X of the Bylaws shall not be altered, amended, or repealed unless by and with the unanimous consent and approval of the Board of Directors.

## ARTICLE XI CONTRACTS

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose or to any amount.

ARTICLE XII  
FISCAL AND TAXABLE YEAR

The fiscal and taxable year of the Corporation shall commence and end on such date as the Board of Directors may determine, in accordance with all applicable provisions of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended (the "Code" and the Regulations").

ARTICLE XIII  
AGENTS AND REPRESENTATIVES

The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with these Bylaws, to the extent authorized or permitted by law.

ARTICLE XIV  
EXEMPT ACTIVITIES

Notwithstanding any other provision of these Bylaws, no director, officer, employee or representative of this Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under § 501(c)(3) of the Code and Regulations, or by an organization to which contributions are deductible under § 170(c)(2) of the Code and Regulations.

ARTICLE XV  
INVESTMENTS AND EXPENDITURES

Section 1. Investments. Except as otherwise provided herein, the Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, without being restricted to the class of investments which a trustee is or may hereafter be permitted by law to make, or any similar restriction, provided, however, that no action shall be taken by or on behalf of the Corporation if such action is a prohibited transaction or would result in the denial of the tax exemption under § 501(c)(3) of the Code and Regulations.

Section 2. Expenditures. The Board of Directors will have responsibility for reviewing written requests for expenditures of funds presented to the Corporation and approving or rejecting such requests. Authority for the expenditure of funds rests with the Board of Directors. The Board of Directors will have responsibility for establishing policies and procedures for the investment, management and safeguarding of all funds belonging to the Corporation.

Section 3. General Fund and Special Funds. The financial structure of the Corporation shall include: (1) General Fund for depositing unrestricted donations and (2) Special Funds for depositing restricted donations. The General Fund shall include a Principal (Corpus) Account for recording unrestricted donations and an Income Account for recording investment income or loss resulting from the investment of principal. The Board of Directors of the Corporation shall have authority to approve, by majority vote of such Board of Directors, appropriations for the expenditure of the investment income earned on the principal in the General Fund. The Board of Directors of the Corporation may approve an expenditure of the principal, or some portion thereof, in the General Fund by at least a three-fourths (3/4) vote of the Board; provided, however, that the Board shall have no authority

to approve an expenditure that would cause the balance of the principal to be reduced to less than Fifty Thousand Dollars (\$50,000.00). The Special Funds shall be used to record donor restricted donation and in accepting such restricted donations, the Board of Directors are bound to comply with such restrictions. The Board of Directors can refuse to accept restricted donations if in the opinion of the Board such restrictions are inconsistent and contrary to the purposes of the Corporation.

**CERTIFICATION**

We, the undersigned, as President and Secretary of Kiwanis Club of Homewood-Mountain Brook Foundation, hereby certify that the above and foregoing constitutes a true and correct copy of the original Bylaws of Kiwanis Club of Homewood-Mountain Brook Foundation and that all provisions are in full force and effect and have not been revoked or rescinded.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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John C. Rives  
President

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William Hanks, Jr.  
Secretary

**UNANIMOUS WRITTEN CONSENT IN LIEU OF  
SPECIAL MEETING OF BOARD OF DIRECTORS OF  
KIWANIS CLUB OF HOMEWOOD-MOUNTAIN BROOK FOUNDATION**

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Pursuant to Code of Alabama 1975, Section 10-3A-40, the undersigned, being all of the members of the Board of Directors of **KIWANIS CLUB OF HOMEWOOD-MOUNTAIN BROOK FOUNDATION**, a nonprofit corporation organized and existing under the laws of the State of Alabama, do hereby consent to the adoption of the following:

BE IT RESOLVED, That the Articles of Amendment to Articles of Incorporation (the "Amendment to Articles") of Kiwanis Club of Homewood-Mountain Brook Foundation, in the form attached hereto as Exhibit A, is hereby adopted and approved by the Board of Directors; and

BE IT RESOLVED, That said Amendment to Articles be submitted to a vote of the members of the Corporation entitled to vote thereon.

BE IT RESOLVED, That the present Bylaws of the Corporation are hereby repealed, and that the Amended and Restated Bylaws attached hereto as Exhibit B are hereby adopted and approved.

This written consent may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument and is to be placed with the minutes of proceedings of the Corporation, and the action taken herein is as fully effective as if enacted at a meeting duly called and held.

DATED \_\_\_\_\_, 2010.

\_\_\_\_\_  
William Caine

\_\_\_\_\_  
Samuel S. Gaston

\_\_\_\_\_  
Hal Parrish

\_\_\_\_\_  
John C. Rives

\_\_\_\_\_  
Peter M. Wright

(DIRECTORS)

**Exhibit A**

**Articles of Amendment to Articles of Incorporation**

**Exhibit B**  
**Amended and Restated Bylaws**

**KIWANIS CLUB OF HOMEWOOD-MOUNTAIN BROOK FOUNDATION**

**RESOLUTIONS TO BE ADOPTED BY THE MEMBERS**

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BE IT RESOLVED, That the Articles of Amendment to Articles of Incorporation of Kiwanis Club of Homewood-Mountain Brook Foundation, in the form attached hereto as Exhibit A, is hereby adopted and approved by the Members; and

BE IT RESOLVED, That the present Bylaws of the Corporation are hereby repealed, and that the Amended and Restated Bylaws attached hereto as Exhibit B are hereby adopted and approved.

**Exhibit A**

**Articles of Amendment to Articles of Incorporation**

**Exhibit B**  
**Amended and Restated Bylaws**