

# **BYLAWS OF THE KEKAHU FOUNDATION, INC.**

**October 21, 2015**

## **Article I: Name and Offices**

Section 1.1 Name. The name of this non-profit corporation is Kekahu Foundation, Inc.

Section 1.2 Purpose. The Kekahu Foundation, Inc. ("Corporation") is a non-profit corporation established under the laws of the State of Hawaii for the purpose of establishing and developing a community based group for the purpose of instruction in, and dissemination of, educational and cultural material in the public interest including, but not limited to, the use of a radio station located in the County of Kauai.

Section 1.3 Offices. The principal office of the Corporation shall be at such place in the State of Hawaii as the Board of Directors ("Board") shall from time to time determine. The Corporation may have such other offices within the State of Hawaii as the Board may designate.

Section 1.4 Logo. The Corporation may have an official logo.

## **Article II: Members**

Section 2.1 Members. Any individual, business or other group may become a Member by that individual's, business' or group's payment of annual membership dues specified by the Board, or by performing volunteer work for a number of hours specified by the Board. The Board may specify reduced membership rates for various types of Members (for example, senior citizens or students). The Members' names and contact information will be recorded in the records of the Corporation and updated at least annually.

Section 2.2 Member Rights. The rights of Members are the following:

- (a) To call for meetings of the Members, as specified in Article III of these Bylaws.
- (b) To elect and remove members of the Board, as specified in Article IV of these Bylaws.
- (c) To initiate, approve or reject changes to these Bylaws, as specified in Article XII of these Bylaws.
- (d) To participate in meetings of the Board and Committees of the Board, as specified in Article IV of these Bylaws.
- (e) To provide recommendations to the Board on matters relevant to the Corporation, as specified in Articles III and IV of these Bylaws.

Except for votes on the matters specified above, votes of the Members shall be advisory and non-binding.

Section 2.3 Voting. Each individual who is a Member and who has been a Member for at least one year and is a legal resident of Kauai is entitled to cast one vote on any matter that is submitted to the vote of the Members. The Board shall determine the method(s) of voting, provided that such method(s) shall be consistent with all requirements specified in these Bylaws.

### **Article III: Meetings of Members**

Section 3.1 Meetings of Members. Meetings of the Members may either be called by the Board or up to three (3) times per calendar year by written petition of not less than ten (10) percent of the Members who are eligible to vote, which shall be signed, dated, and delivered to the Secretary of the Corporation and describe the purpose or purposes for which the meeting is to be held. Members shall be afforded reasonable opportunity, through public service announcements on the Corporation's radio station, to notify other Members of such petitions. In the case of a meeting called by petition, the meeting shall be scheduled within a reasonable time, not to exceed sixty (60) days, after receipt by the Corporation of the petition that meets the requirements of this Section. The Board shall designate any appropriate place within the County of Kauai, State of Hawaii for any special Members' meeting. If no designation is made, the place of meeting shall be the principal office of the Corporation.

Section 3.2 Notice of Meetings. The Corporation shall give reasonable notice to the Members, as shown on the Corporation's records, of the date, time and place of the Members' meeting at least fourteen (14) days and not more than thirty (30) days prior to the meeting. All notices of meetings shall be given by such means as are reasonably sufficient to give actual notice to the Members, which means shall include at least two of the following: (i) electronic mail or first class pre-paid mail to each Member's last known electronic mail address or mailing address as shown in the Corporation's records; (ii) broadcasting over the Corporation's radio station (unless the station is not then broadcasting) and posting on the Corporation's and/or Corporation's radio station's website; (iii) publication in any newsletter or other regular publication which is published by the Corporation and mailed to Members after the meeting has been scheduled but prior to the date of the meeting; (iv) publication in a local newspaper of public record. All notices shall contain a description of the purpose or purposes for which the meeting is called, and at all times that the Corporation is the recipient of federal or state grant funding, notice of meetings shall meet or exceed the minimum compliance requirements of applicable law.

Section 3.3 Agenda. In addition to the meeting purpose or purposes stated in a meeting petition, Members may, through a petition of five (5) percent of the Members who are eligible to vote submitted to the Secretary of the Corporation at least seven (7) days prior to the meeting, place any matter related to the Corporation on the meeting agenda for discussion.

### **Article IV: Board of Directors**

Section 4.1 Number. The Board of Directors shall consist of not less than seven (7) and not more than fifteen (15) directors, the precise number to be determined from time to time by the Board. Should the number of directors fall to less than seven from time to time, the Board may nonetheless continue to exercise all duties of the Board.

Section 4.2 Term. The term of office for directors shall be three (3) years, except for directors who have been appointed to fill vacancies, whose terms shall be the unexpired terms of the directors being replaced. Terms of the directors shall be staggered so that

the terms of one-third (1/3) of the directors, or as close thereto as is practical and equitable, shall commence at each annual meeting of the Board. Each director shall hold office until his or her successor is seated, or until his or her death, resignation or removal.

Section 4.3 Election and Appointment of Directors. The Members are entitled to elect directors to fill one-third (1/3) (or, at the Board's discretion, a greater proportion) of the Board seats that are scheduled to be filled at the annual meeting of the Board, through the following election process.

(a) The Board's Election Committee shall annually solicit the interest of the Members in having the Board conduct a direct election for directors, and shall annually solicit the interest of candidates to participate in such an election.

(b) In addition to the qualifications stated in Section 4.4 of these Bylaws, every potential candidate in the election process must: (i) submit to the Election Committee a petition for candidacy signed by at least fifteen (15) (or at the Board's discretion, a lower number) current Members who are eligible to vote pursuant to Section 2.3 of these Bylaws, or submit to the Election Committee a petition for candidacy that is signed by at least four (4) current directors, or request and receive nomination by the Election Committee; (ii) submit a statement of qualifications; (iii) participate in an interview with the Election Committee during which the expectations for directors will be fully discussed; and (iv) agree to participate in an Election Committee-sponsored candidate forum. The Election Committee shall verify that all applicants meet all qualification requirements.

(c) The Election Committee shall conduct an election if: (i) at least fifteen (15) percent (or at the Board's discretion, a lower number) of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws affirm that they desire to have the Board conduct an election, and (ii) the number of qualified candidates who respond to the Election Committee's solicitation for candidates exceeds the number of seats that are available to be filled through the election process.

(d) If an election is conducted, each candidate's statement of qualifications will appear on the ballot and on the website of the Corporation's radio station, and each candidate will be afforded the opportunity to participate in one-or-more forums in a public venue or on the Corporation's radio station. Balloting shall be conducted by whatever combination of direct mail, electronic mail and/or on-line voting the Board determines to be best suited to the goal of affording reasonable voting opportunities to the Members at reasonable expense.

(e) For those seats to be filled through the election process, the candidates who receive the greatest number of votes will be seated by the Board at the next annual meeting of the Board. The Board will fill the remaining vacant Board seats through a Board-conducted appointment process.

Section 4.4 Qualifications. All directors and all candidates for the Board, regardless of whether elected or appointed: (i) must have been Members for at least one year prior to the times of their candidacy or appointment; (ii) must be legal residents of Kauai at the times of their candidacies or appointments and at least 18 years of age at the time of their candidacies or appointments; and (iii) must remain Members and legal residents of

Kauai throughout their terms of office. Paid staff members of the Corporation may not be directors.

Section 4.5 Resignations. A director may resign at any time by delivering written notice to the President or Secretary of the Corporation. A resignation shall be effective upon receipt or on such later date as is stated in the written notice. The acceptance of a resignation shall not be necessary to make it effective.

Section 4.6 Vacancies. Any permanent vacancy on the Board caused by death, resignation, removal or other cause may be, but is not required to be, filled by a majority vote of the remaining directors, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director being replaced. In the case of a temporary vacancy due to excused absence, sickness, or disability, the remaining directors, or director, may, but need not, appoint a substitute director who shall be a director during such absence or disability and until the absent or disabled director returns to duty. The determination by the remaining directors, as shown by the minutes, of the fact of such absence or disability and the duration thereof shall be conclusive as to all persons and the Corporation.

Section 4.7 Unexcused Absences. If any director is absent without cause for three (3) or more regular Board meetings during any twelve month period, that director's position shall be deemed vacant. Whether the absence is for cause or not shall be determined by the President or Vice President of the Corporation, which determination may be reversed by the vote of the full Board. After not less than ten (10) days written notice to the absent director, the Board may elect to fill the vacancy pursuant to Section 4.6 above.

Section 4.8 Removal by the Board. Any director may be removed for good cause, as determined by the Board in its reasonable discretion, by a two-thirds (2/3) vote of the directors, but only at a regular or special meeting duly noticed and called for the purpose.

Section 4.9 Removal by the Members. Members may submit to the Board a petition, signed by at least twenty-five (25) percent of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws, requesting that a director be removed from office. Upon receipt of such petition, the Board shall validate the signatures and if it is determined that the signature criterion has been met, the Board shall, within ninety (90) days of receipt of such petition, conduct an election by direct mail, electronic mail and/or on-line voting to enable the Members to vote on the removal of the director. Notice of such election shall be provided to the Members through at least two of the mechanisms listed in Section 3.2 of these Bylaws. If at least one-third (1/3) of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws participate in the election and at least two-thirds (2/3) of those voting favor removal from office, the director shall be removed from office.

Section 4.10 Reduction. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

Section 4.11 Meetings.

(a) Annual Meeting. The annual meeting of the Board shall be held in January of each year or as soon thereafter as is practicable, for the purposes of installing new directors

pursuant to Section 4.3 and transacting such other business as may come before the meeting.

(b) Regular Meetings. Regular meetings of the Board shall be held at dates and times to be determined by the Board.

(c) Special Meetings. Special meetings of the Board may be called by the President or any four Board members, and the written notice of any special meeting shall describe the purpose or purposes for which it is to be held.

(d) Place of Meetings. All Board meetings shall be held at such place as the Board shall determine, provided that reasonable efforts shall be made to provide adequate seating for members of the public at all open meetings.

(e) Notice of Meetings. Public notice of all meetings of the Board shall be given not less than seven (7) days nor more than thirty (30) days prior to the meeting date, and at all times that the Corporation is the recipient of federal or state grant funding, notice of Board meetings shall meet or exceed the minimum compliance requirements of applicable law.

(f) Quorum. A quorum for the transaction of business at a Board meeting shall consist of the physical presence, or presence by teleconference or videoconference, of a majority of the number of directors then entitled to vote. A majority of the directors present at any meeting at which a quorum is present shall constitute the act of the Board, unless a greater vote is required by the Articles of Incorporation, these Bylaws, or statute. A quorum shall not be necessary to adjourn a meeting.

(g) Open Meetings. With the exceptions stated herein, the Board and its committees shall hold open meetings preceded by reasonable notice to the public. However, the Board or its committees may hold closed meetings or sessions to consider matters relating to personnel matters, individual employees, proprietary information, litigation, and other matters requiring the confidential advise of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of the Corporation. The Executive Committee may also act by polling its members. If any such meeting is closed pursuant to this provision, the reasons for doing so shall be stated in the Board or committee minutes and, if reasonably possible, in the notice of the meeting.

(h) Presumption of Assent. A director who is present at a meeting of the Board at which an action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent or refusal to vote is entered in the minutes of the meeting or unless the director either files a written dissent to such action before the adjournment thereof or forwards such dissent by mail to the Secretary of the Corporation within two (2) business days after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 4.12 Compensation of Directors. No director shall receive any salary or other compensation for his or her services as a director. Directors may be reimbursed for Board-approved expenses or costs incurred while acting on behalf of the Corporation or the Board.

Section 4.13 Member Participation at Board Meetings. A reasonable amount of time shall be provided for Member and public input at all Board meetings. In addition, Members shall be given the opportunity to provide advisory input on major matters such as the acquisition or disposition of broadcast licenses and other significant Corporation assets, real estate transactions, mergers, amendments to the bylaws, or a change of physical location of the Corporation's radio station.

Section 4.14 Member-Initiated Agenda Items at Board Meetings. Motions or recommendations that have been made by petition of at least five (5) percent of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws, and motions or recommendations that have been voted upon and approved at a Membership meeting at which at least ten (10) percent of the Members were present, shall be placed on the agenda of the next regular or special Board meeting for Board discussion and action. Such Board meeting shall take place no longer than one hundred-twenty (120) days after the Board's receipt of the petition or the vote of the Members. At such Board meetings, Members shall be entitled to provide input on such motions and recommendations, subject to a reasonable limit on the amount of time for which any Member may speak. Board discussions and actions on such motions and recommendations shall be communicated to the Members within fourteen (14) days of the Board meeting.

#### **Article V: Powers and Duties of the Board of Directors**

Section 5.1. General Powers. All corporate powers shall be exercised by or under the authority of, and the affairs of the Corporation managed under the direction of, the Board.

Section 5.2. Specific Powers. In addition to all powers enumerated in the Hawaii Nonprofit Corporation Act, or any successor law, and without prejudice to the general powers stated in the preceding Section 5.1, it is hereby expressly declared that the Board shall have the following powers:

- (a) To adopt and alter a common seal of the Corporation;
- (b) To make and change regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs;
- (c) To purchase, pay for, or otherwise acquire for the Corporation any real or personal property, rights, interests, or privileges which are consistent with the Corporation's purposes;
- (d) To borrow money and to make and issue notes, bonds and other negotiable and transferable instruments, mortgages, deeds of trust and trust agreements and to do every act and things necessary to effectuate the same;
- (e) To remove any officer with or without cause and, in their discretion, from time to time, to devolve the powers and duties of any officer upon any other person for the time being;

- (f) To appoint and remove or suspend such subordinate officers or agents as it may deem necessary, to determine their duties, to fix, and from time to time change, their salaries or remuneration, and to require security as and when they think fit;
- (g) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers or agents;
- (h) To determine who shall be authorized on the Corporation's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts and other instruments;
- (i) To determine who shall be entitled to vote in the name and behalf of the Corporation, upon, or to assign and transfer, any shares of stock, bonds or other securities of other corporations held by this Corporation;
- (j) To delegate any of the powers of the board in relation to the ordinary business of the Corporation to any standing or special committee, or to any officer or agent (with power to subdelegate) upon such terms as they think fit;
- (k) To call special meetings of the Members for any purpose or purposes.

## **Article VI: Officers**

Section 6.1 Number. The officers of the Corporation shall be the President, Vice President, Secretary, Treasurer and such other officers as may be elected by the Board at the annual meeting of the Board or any subsequent meeting called for that purpose. Except for the President, a person may hold any two offices at the direction of the Board. All officers must be members of the Board.

Section 6.2 Election and Term of Office. All officers shall be elected by the Board at the annual Board meeting and shall serve for one (1) year terms or until their successors are elected. All officers shall be subject to removal at any time without cause by the Board. The Board, in its discretion, may elect acting or temporary officers, may elect officers to fill vacancies occurring for any reason whatsoever, and may limit or enlarge the duties and powers of any officer elected by it.

Section 6.3 President. The President shall be the principal executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation. The President shall preside at all meetings of the Members and Board; shall have power to call special meetings of the directors for any purpose or purposes; shall, subject to the approval of the directors, appoint and discharge employees and agents of this Corporation and fix their compensation; shall see that the books, reports, statements and certificates required by law are properly kept, made and filed according to law; and shall generally do and perform all acts incident to the office of President, or which are authorized or required by applicable law.

Section 6.4 Vice President. In the absence, disability or refusal to act by the President, the Vice President shall perform all of the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The

Vice President shall have such powers and perform such other duties as from time to time may be prescribed by the President, the Board or the Bylaws.

Section 6.5 Secretary. The Secretary shall keep the minutes of all meetings of the Members, the Board, and committees; shall keep or cause to be kept a register showing the names of the Members, directors and officers with their addresses; shall give notice in conformity with the Bylaws of all meetings of the Members, the Board, and committees; shall conduct and keep the official correspondence of the Corporation as directed by the Board or officers; shall ensure that the past and current records of the Corporation are maintained at the principal office of the Corporation; and shall perform all other duties assigned by the President or the Board.

Section 6.6 Treasurer. The Treasurer shall have the custody of all funds, securities, evidence of indebtedness and other similar documents of the Corporation; shall receive and give or cause to be given receipts for moneys paid in on account of the Corporation and shall pay out of the funds on hand all just debts of the Corporation of whatever nature upon authority of the same; shall enter or cause to be entered in the books of the Corporation to be kept for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation, and, whenever required by the President or the directors, shall render a statement of cash accounts; shall keep or cause to be kept such books as will show a true record of the expense, losses, gains, assets and liabilities of the Corporation; and shall perform all of the other duties incident to the office of Treasurer. When required by the directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board shall prescribe.

Section 6.7 Other Officers. The Board may appoint such other officers and agents as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 6.8 Temporary Absence or Inability. In the case of absence or temporary inability to act of any officer of the Corporation or of any person herein authorized to act in the officer's place, the Board may from time to time delegate the powers or duties of such officer to any other officer, or any director or other person whom it may select.

Section 6.9 Permanent Vacancy. Any permanent vacancy in any office shall be filled by the Board at the first meeting following the vacancy for the unexpired portion of the term.

Section 6.10 Resignation. An officer may resign at any time by delivering written notice to the Corporation.

Section 6.11 Salaries and Expenses. All officers shall serve in their capacities as officers without salary or other compensation. Expenses incurred in connection with the performance of an officer's official duties may be reimbursed upon approval of the Board or the Executive Committee.



## **Article VII: Committees**

Section 7.1 Committees. The Board may create and appoint one or more committees of the Board, each of which shall consist of two or more directors and such other persons as may be included pursuant to Section 7.4 below, which shall exercise those authorities delegated to the committee by the Board. However, the Board may not delegate to a committee of the Board the authority to authorize expenditures of Corporation funds; approve or recommend to Members the dissolution or merger of the Corporation, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets; elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; or recommend to the Members the adoption, amendment, or repeal of the Articles of Incorporation or these Bylaws.

Section 7.2 Executive Committee. There shall be an Executive Committee consisting of the President, the Treasurer, and at least one other Board member appointed by the Board. The Executive Committee shall have and exercise the authority of the Board to act on matters which must be decided before the next regular meeting of the Board but do not merit a special meeting of the Board.

Section 7.3 Election Committee. There shall be an Election Committee consisting of not less than two Board members and not less than one other Member of the Corporation who is not a director, all of whom shall be appointed by the Board. The Election Committee shall advise the Board regarding nominations for directors and filling Board vacancies; shall present nominations to the Board on an ongoing basis; shall carry out the election-related responsibilities outlined in Sections 4.3, 4.9, 12.2 and 12.3 of these Bylaws; and shall otherwise ensure that the requirements of these Bylaws regarding Board elections are carried out.

Section 7.4 Other Committees. There shall be such other committees as the Board, from time to time, may create. The Board shall specify the missions, duties and authorities of such committees at the times such committees are created, and shall periodically update those missions, duties and authorities as needed. The chairperson of each such committee shall be a member of the Board, but members of each committee may include persons who are not Board members. The membership of each committee shall be approved by the Board, and vacancies on any committee shall be filled by the Board from time to time as they occur.

Section 7.5 Quorum. A majority of the members of a committee shall constitute a quorum. Any transaction of a committee shall require a majority vote of any quorum present at any meeting. Each member of a committee, including the person presiding at the meeting, shall be entitled to one vote.

Section 7.6 Meetings. Committees shall meet at the call of the chairperson at such place as he or she shall designate after reasonable notice has been given to each committee member and the public pursuant to Article IV, Section 4.11(e). Unless a meeting is allowed to be closed pursuant to Article IV, Section 4.11(g) of these Bylaws, all committee meetings shall be open to the public. Each committee shall keep minutes of its proceedings and make a written report to the Board of the committee's actions at the next following regular Board meeting.

Section 7.7 Term of Office. Board members shall be appointed to committees annually by the Board at the annual meeting. All other committee members may continue as committee members until they resign, are removed, or miss three or more meetings during any twelve-month period without good cause as determined by the committee.

Section 7.8 Chairperson. One member of each committee who is also a member of the Board shall be elected chairperson by the members of the committee.

Section 7.9 Removal of Committee Members. The Board may remove a member or members of any committee at any time, with or without cause.

## **Article VIII: Funds and Contracts**

Section 8.1 Disbursements. Disbursements of the funds of the Corporation related to the purposes for which it is organized may be made by the Board in its discretion or by such directors, officers, or staff members as the Board may designate.

Section 8.2 Limitations on Disbursements. The Board shall not make any disbursements or contributions of the funds or assets of the Corporation to or for the benefit, directly or indirectly, of any Member, director, officer or employee of the Corporation, except for reasonable payments for services actually rendered to the Corporation by such Member, director, officer or employee.

Section 8.3 Handling of Funds. All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable by the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board. Where other provision has not been made by resolution of the Board, all checks, drafts, notes, bonds, and instruments shall be signed, executed and delivered by the President or the Vice-President, and by the Treasurer or the Secretary.

Section 8.4 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may designate.

Section 8.5 Execution of Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credits or to render it liable for any purpose or to any amount. Where other provision has not been made by resolution of the Board, all acceptances, deeds, lease, contracts and all other documents and instruments shall be signed, executed and delivered by the President or the Vice-President, and by the Treasurer or the Secretary.

## **Article IX: Indemnification of Officers and Directors**

Section 9.01 Indemnification by Corporation.

(a) For the purposes of this Section 9.01, "agent" means any person who 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, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes, without limitation, attorneys' fees, any expenses of a completed action or proceeding, and any expenses of establishing a right to indemnification under subsection (d) or (e) of this Section 9.01.

(b) Subject to any limitations contained in the Hawaii Nonprofit Corporation Act, the Corporation shall have the power 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) by reason of the fact that such person is or was an agent of the Corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such 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.

(c) The Corporation shall have power 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 by reason of the fact that the person is or was an agent of the Corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in or not opposed to the best interests of the Corporation. No indemnification shall be made under this subsection (c) 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 the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall deem proper.

(d) To the extent that an agent of the Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (b) or (c) above, or in defense of any claim, issue or matter therein, the agent shall be indemnified by the Corporation against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subsection (d) above, any indemnification under this Section 9.01 shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the agent is proper in the circumstances because

the agent has met the applicable standard of conduct set forth in subsection (b) or (c). The determination shall be made:

- (1) By the Board by a majority vote of a quorum consisting of directors who were not parties to the proceeding; or
- (2) If a quorum is not obtainable, by independent legal counsel in a written opinion; or
- (3) By the Members then qualified to vote; or
- (4) By the court in which the proceeding is or was pending upon application made by the Corporation or the agent or the 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 Corporation.

(f) No indemnification or advance shall be made under this Section 9.01, except as provided in subsection (d) or subsection (e)(2) above, in any circumstance where it appears that:

- (1) It would be inconsistent with a provision of the Articles of Incorporation, the Bylaws or an agreement in effect at the time of the occurrence of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (2) It would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 9.02 Advancing Expenses. The Corporation may advance to each agent the expenses incurred in defending any proceeding referred to in Section 9.01 of these Bylaws prior to the final disposition of such proceeding upon receipt of any undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in Section 9.01 of these Bylaws.

Section 9.03 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such a capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of the section.

## **Article X: Records**

Section 10.1 Corporate Records. The Corporation shall maintain the following records on a permanent basis, and shall keep a copy of the same for inspection according to the terms of these Bylaws: the Articles of Incorporation, including all restatements and amendments to them currently in effect; the Bylaws, including all restatements and amendment to them currently in effect; minutes of all meetings of its Members and all open meetings of the Board; a record of all actions taken by committees of the Board; resolutions adopted by the Board relating to the characteristics, qualifications, rights,

limitations, and obligations of Members; a record of its Members in a form that permits preparation of a list of the name and mailing address of all Members in alphabetical order; a list of the names and mailing addresses of its current directors and officers; the last three (3) annual financial statements and accountant's reports; any annual or other financial reports or statements filed by the Corporation with the Corporation for Public Broadcasting; and the most recent annual report delivered to the State of Hawaii Department of Commerce and Consumer Affairs as required by Hawaii law. All books and records shall remain the property of the Corporation.

Section 10.2 Inspection of Records By Members. Subject to the provisions of this Article X, any Member shall be entitled to inspect and copy, at a reasonable time and location specified by the Corporation, and at a reasonable cost for copying as stated in Section 10.3, any of the records of the corporation kept for inspection described in Section 10.1 above, if the Member gives the Corporation written notice of the Member's demand at least five business days before the date on which the Member wishes to inspect and copy.

Section 10.3 Scope of Inspection Right. A Member's agent or attorney shall have the same inspection and copying rights as the Member who the agent or attorney represents. The right to copy records under Section 10.2 includes, if reasonable, the right to receive copies. The Corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the Member, or the Member's agent or attorney. The charge shall not exceed the estimated cost of production or copying of the records. The Corporation may comply with a Member's demand to inspect the membership list under Section 10.2 by providing the Member with a list of its members that was compiled as of the date of the Member's demand.

Section 10.4 Limitations on Use of Membership List. Without the consent of the Board, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member of the Corporation, including but not limited to the following: soliciting money or property unless such money or property will be used solely to benefit the Corporation; any commercial purpose; selling or purchasing goods, services, or property by any person; or selling or purchasing the list or any part thereof by any person or organization for a purpose or purposes not directly related to the business or affairs of the Corporation. As a condition to making the membership list available for inspection or copying, the Corporation may require a written and signed statement from the person requesting the list as to the purpose of the request, and if in the reasonable determination of the Corporation's staff the person's stated purpose is not consistent with this Article X, the request may be denied. Any denial of a request for inspection or copying may be appealed to the Board.

## **Article XI: Community Advisory Board**

There shall be a Community Advisory Board, which shall act in an advisory capacity to the Board in matters related to the governance, activities, and policies of the Corporation. The Board shall select the initial members of the Community Advisory Board, but thereafter the members of the Community Advisory Board shall be selected according to such rules and procedures as the Community Advisory Board shall determine. The Community Advisory Board shall establish its own governing rules and procedures.

## **Article XII: Amendments to Bylaws**

Section 12.1 Board-Initiated Bylaws Amendments. These Bylaws may be altered, amended, revised or repealed, and new Bylaws may be adopted, by an affirmative vote of not less than two-thirds (2/3) of all members of the Board who are then in office, such vote to be taken at a regular meeting of the Board or at a special meeting of the Board called for the purpose. Notice of any such alterations, amendments, revisions or repeals of the Bylaws shall be provided to the Members through at least two of the mechanisms listed in Section 3.2 of these Bylaws.

Section 12.2 Member Referendum on Board-Initiated Bylaws Amendments. For a thirty (30) day period following notice to the Members of any alterations, amendments, revisions or repeals of the Bylaws made pursuant to Section 12.1 of these Bylaws, the Members may submit to the Board a petition, signed by at least fifteen (15) percent of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws, requesting that a referendum be conducted on the alterations, amendments, revisions or repeals. Upon receipt of such petition, the effect of the alterations, amendments, revisions or repeals shall be suspended, pending Board validation of the signatures. If it is determined that the signature criterion has not been met, the suspension shall be lifted and the alterations, amendments, revisions or repeals shall go into effect. If it is determined that the signature criterion has been met, the effect of the alterations, amendments, revisions or repeals shall remain suspended and the Board shall conduct a referendum by direct mail, electronic mail and/or on-line voting to enable the Members to vote on the alterations, amendments, revisions or repeals. If at least one-third (1/3) of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws participate in the referendum and at least two-thirds (2/3) of those who vote reject the proposed alterations, amendments, revisions or repeals, the proposed alterations, amendments, revisions or repeals shall be voided. Otherwise, the alterations, amendments, revisions or repeals shall go into effect.

Section 12.3 Member-Initiated Bylaws Amendments. The Members, through a petition of fifteen (15) percent of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws, may propose, up to three (3) times per calendar year, to amend these Bylaws. Upon receipt and validation of such petition, the Board may amend these Bylaws pursuant to Sections 12.1 and 12.2 of these Bylaws. Otherwise, the Board shall conduct an election within one hundred-twenty (120) days by direct mail, electronic mail and/or on-line voting to enable the Members to vote on the proposed amendment(s) to these Bylaws. Notice of such election shall be provided to Members through at least two of the mechanisms listed in Section 3.2 of these Bylaws. If at least one-third (1/3) of the Members who are eligible to vote pursuant to Section 2.3 of these Bylaws participate in the election and at least two-thirds (2/3) of those who vote approve the proposed amendment(s), the proposed amendment(s) shall be incorporated into these Bylaws.

## **Article XIII: Miscellaneous**

Section 13.1 Fiscal Year. The fiscal year of the Corporation shall be October 1 through September 30.

Section 13.2 Corporate Seal. If a corporate seal is authorized by the directors, it shall be circular in form and shall contain the name of the Corporation, the date of its creation, and the words: "INCORPORATED STATE OF HAWAII". The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced.

Section 13.3 Rules of Order. The affairs of the Corporation shall be conducted by Robert's Rules of Order, as amended, so far as applicable and except as may be otherwise provided by the Articles of Incorporation, these Bylaws, or any resolution of the Board. When the President or other presiding officer determines that meeting participants prefer action by consensus, it shall be allowed provided that no Member (in the case of membership meetings) or director (in the case of Board meetings) specifically requests a formal vote.

Section 13.4 Nondiscriminatory Policy. The Corporation supports a non-discriminatory policy in all aspects of its operation and activity. The Corporation, Board, and staff shall be prohibited from pursuing any practice or activity that discriminates against any person based upon his or her race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or any other characteristic protected under applicable federal or state law.

### **End of Bylaws**

Amended and Approved by the Kekahu Foundation Board of Directors on October 21, 2015.