

ANDRE AGASSI FOUNDATION FOR EDUCATION

SECOND AMENDED AND RESTATED CODE OF REGULATIONS

ARTICLE 1

Trustees

Section 1.1 Number

The Board of Trustees of the Corporation (the “Board of Trustees”) shall consist of at least three (3) individuals and no more than ten (10) individuals.

Section 1.2 Authority

The Board of Trustees, subject to limitations contained in the Ohio Revised Code, the Articles of Incorporation of the Corporation, and this Code of Regulations, (a) shall exercise, conduct and control the powers, property and affairs of the Corporation, (b) shall formulate policy for the Corporation, (c) shall employ any personnel of the Corporation, and (d) may adopt by-laws for its own government and for that of any committee.

Section 1.3 Status of Members

The Trustees of the Corporation shall be the members of the Corporation and shall, for the purposes of any statute or rule of law relating to corporations, be taken to be the members of the Corporation.

Section 1.4 Election and Term of Office

The members of the initial Board of Trustees shall be the organizing Trustees of the Corporation identified in Article V of the Articles of Incorporation of the Corporation. Subject to the provisions of Section 1.5 and 1.6 of this Code of Regulations, members of the initial Board of Trustees shall serve as Trustees until their successors are elected and qualified. Thereafter, each Trustee shall serve for a term of three (3) years, or until his or her successor is duly elected and qualified.

Trustees shall be elected at the annual meeting of the Corporation held at the time or within the year of the expiration of the terms of the members of the Board of Trustees.

A Trustee may be elected to a consecutive term on the Board of Trustees without limitation on the number of such consecutive terms.

Section 1.5 Regulation

Any Trustee may resign by submitting a written resignation at a meeting of the Board of Trustees or by mailing such resignation to the Corporation at its principal office, and, thereupon,

such resignation shall become effective forthwith without need of any acceptance, unless otherwise specified therein.

Section 1.6 Removal of Trustees

At any annual or special meeting of the Trustees duly called for that purpose, any Trustee may be removed with or without cause by a majority vote of the other Trustees. Written notice that an individual is being considered for removal shall be given to the Board of Trustees at least seven (7) days prior to the date of the meeting at which the name of such individual is to be presented for removal. A successor Trustee may thereupon be appointed to fill the vacancy thus created, but only in accordance with the procedure set forth in Section 1.7 below. Any Trustee whose removal has been proposed shall be given an opportunity to be heard at the meeting at which his or her removal is considered.

Section 1.7 Vacancies

Vacancies in the Board of Trustees cause by the resignation or removal of a Trustee, or if a Trustee otherwise ceases to serve, shall be filled by a vote of the remaining Trustees, and each person so elected shall be a Trustee for the remaining term of the departed Trustee. A person elected to fill a vacancy created by an increase in the number of Trustees shall serve for a term determined by the Members, but not in excess of three (3) years.

Section 1.8 Compensation

Trustees shall not be compensated for services provided to the Corporation in their capacity as trustees. Trustees may be compensated for the reasonable value of any other services authorized by and provided to the Corporation. Trustees may be reimbursed for actual expenses incurred by them in the performance of their duties when such expenses are appropriately documented by receipts or other evidence of payment.

Section 1.9 Annual Meetings

Except as otherwise provided by law, a meeting of the Board of Trustees for the purpose of the election of officers, and the consideration of any other business that may be properly brought before the Board of Trustees shall be held annually at such time and place as the Board of Trustees may from time to time designate.

Section 1.10 Special Meetings

Special meetings of the Board of Trustees may be called, and upon the written request of at least two (2) Trustees, shall be called by the President of the Corporation.

Section 1.11 Notice of Annual and Special Meetings

Notice of annual, regular and special meetings shall be given to each Trustee personally or by mail, telephone, or telegraph at least three (3) days prior to the date designated for such meeting. Such notice shall state the time, place and purpose of the meeting subject thereto.

Section 1.12 Waiver of Notice

Before or at any meeting of the Board of Trustees, any Trustee may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Trustee at any meeting of the Board of Trustees shall be a waiver of notice by such Trustee of the time and place thereof.

Section 1.13 Action by Written Consent

To the extent permitted by law, any lawful action of the Board of Trustees may be taken without a meeting, if written consent to such action is signed by all the Trustees and filed with the minutes of the Board of Trustees.

Section 1.14 Telephonic Meetings

Meetings of the Board of Trustees may be held through any communications equipment if (i) all persons participating in the meeting can hear each other and (ii) all participants are advised of the communications equipment as well as the names of the participants in the meeting. Participation in a meeting pursuant to this Section 1.14 shall constitute presence in person at such meeting.

Section 1.15 Quorum

Except as otherwise provided by law, at all meetings of the Board of Trustees, a majority of the total number of Trustees established for the corporation is necessary to constitute a quorum for the transaction of business. At a meeting at which a quorum is present, the acts of a majority of the Trustees present shall constitute the acts of the Board of Trustees. Each Trustee shall have one vote.

Section 1.16 Advisory Panels

The Board of Trustees or the President or other officer may appoint one or more advisory panels to consult and advise the Board of Trustees, President, or other officer on such matters as the Board of Trustees, the President, or other officer may determine and upon such terms and at such times as the Board of Trustees, the President, or other officer may determine or delegate to others to determine. Without limiting the foregoing, one such advisory panel may be designated as the “Board of Directors” which may have among its purposes to advise the Board of Trustees or the officers of the Corporation in determining the recipients and amounts of grants made by the Corporation and to help ensure the success of fundraisers of the Corporation. Notwithstanding the designation of such advisory panel as “Board of Directors,” the members of such panel shall not be “Directors” of the Corporation within the meaning of Section 1702.01 of the Ohio Revised Code or for any other purpose except as provided in the last sentence of this

Section 1.16. The Directors for purposes of Section 1702.01 of the Ohio Revised Code shall be the Trustees and nothing in this Section 1.16 shall be construed to limit or restrict the power and authority of the Board of Trustees as provided in Article 1 of hereof, the Articles of Incorporation, the Ohio Revised Code, or other applicable law. Further advisory panel members, including members of the advisory panel designated as the Board of Directors, shall not by virtue of being a member thereof be trustees, members, officers, or committee members of the Corporation and shall have none of the powers or duties of a trustee, member, officer or committee member provided, however, that persons who are trustees, members, officers, or committee members may also be members of an advisory panel including the advisory panel designated as the Board of Directors. Nothing in this Section 1.16 shall disqualify any member of an advisory panel from coverage under a directors and liabilities insurance policy.

ARTICLE 2 Officers

Section 2.1 Designation

The principal officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer. Any two or more offices may be held by the same person. An officer may be, but is not required to be, a member of the Board of Trustees. The Trustees may appoint such other officers as, in their judgment, may be necessary (for example, Chairman, Chief Executive Officer, Chief Operating Officer, etc.).

Section 2.2 Election of Officers

The officers of the Corporation shall be elected by the Board of Trustees at its annual meeting and, unless sooner removed by the Board of Trustees, the officers shall serve for a term of three (3) years or until their successors are elected and qualified. Any vacancies from time to time occurring in offices shall be filled by the Board of Trustees, and such appointments shall be for a term expiring at the next succeeding annual meeting of the Board of Trustees. The Board of Trustees shall appoint such temporary or acting officers as may be necessary during the temporary absence or disability of the regular officers.

Section 2.3 Resignation

Any officer may resign by submitting a written resignation at a meeting of the Board of Trustees or by mailing such resignation to the Corporation at its principal office, and thereupon such resignation shall become effective forthwith without need of any acceptance, unless otherwise specified therein.

Section 2.4 Removal

Any officer may be removed with or without cause by a vote of the Board of Trustees at any annual, regular, or special meeting of the Board of Trustees duly called for that purpose. Written notice shall be given at least three (3) days prior to the date of the meeting at which the

name of such individual is to be presented for removal by the Board of Trustees. A successor officer may thereupon be elected to fill the vacancy thus created.

Section 2.5 Compensation

Officers shall not be compensated for services provided to the Corporation in their capacities as officers. Officers may be compensated for the reasonable value of any other services authorized by and provided to the Corporation. Officers may be reimbursed for actual expenses incurred by them in the performance of their duties when such expenses are appropriately documented by receipts or other evidence of payment.

Section 2.6 President

The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Board of Trustees. He shall have all the general powers and duties which are usually vested in the office of president of a corporation.

Section 2.7 Vice President

In the absence or disability of the President, a Vice President (as determined by the Board of Trustees) shall perform the duties and exercise the powers of the President. Vice Presidents of the Corporation shall otherwise perform the duties and functions customarily performed by the vice presidents of a corporation, together with such other duties as the Board of Trustees may prescribe.

Section 2.8 Secretary

The Secretary shall keep the minutes of all meetings of the Board of Trustees. He shall have custody of such books and records of the Corporation as the Board of Trustees may provide. The Secretary shall perform the duties and functions customarily performed by the secretary of a corporation, together with such other duties as the Board of Trustees may prescribe.

Section 2.9 Treasurer

The Treasurer shall have custody of the Corporation's funds and securities, and shall keep full and accurate account of all receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name of and to the credit of the Corporation in such depositories as may be designated by the Board of Trustees. He shall disburse the funds of the Corporation as may be ordered by the Board of Trustees, taking proper vouchers for such disbursements, and shall render an account of all his transactions as treasurer and of the financial condition of the Corporation whenever called upon to do so. The Treasurer shall also perform the duties and functions customarily performed by the treasurer of a corporation, together with such other duties as the Board of Trustees may prescribe.

ARTICLE 3
Committees

Section 3.1 Appointment

The President or the Board of Trustees may from time to time appoint committees.

Section 3.2 Powers and Duties

The power and duties of such committees shall be such as may be delegated by the President or by the Board of Trustees at the time of appointment of such committees.

Section 3.3 Vacancies

Vacancies in the membership of any committee may be filled at any time by the President or by the Board of Trustees.

ARTICLE 4
Management

Section 4.1 Fiscal Year

The fiscal year of the Corporation shall be the calendar year.

Section 4.2 Execution of Corporation Documents

With the prior authorization of the Board of Trustees, all notes and contracts may be executed on behalf of the Corporation by any officer or officers of the Corporation. All checks shall be executed on behalf of the Corporation by any persons authorized by the Board of Trustees.

Section 4.3 Receipt of Property

The Trustees may receive and accept property by way of fundraising activities, gift, grant, bequest or devise, from any person, foundation, corporation, either public or private, governmental instrumentality, or otherwise, but no gift, bequest or devise of any such property shall be received and accepted if it shall, in the opinion of the Trustees, jeopardize the Corporation's Federal income tax exemption pursuant to section 501(a) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").

Section 4.4 Investments

In extension and not in limitation of the common law and statutory powers of trustees and other powers granted herein or in the Articles of Incorporation of the Corporation, the Trustees shall have the following discretionary powers:

- a. To invest and reinvest principal and income in such property and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable;
- b. To sell, lease, or exchange any property, at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relating to the Corporation's property, as they consider advisable;
- c. To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable, and as security for such loans to mortgage or pledge any property with or without power of sale; to acquire or hold any property subject to any mortgage or pledge; and to assume any mortgage or pledge on or of property acquired or held by the Corporation;
- d. To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other, instruments, sealed or unsealed, incident to any transaction in which they engage;
- e. To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets;
- f. To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold Corporation property without indication of fiduciary capacity but only in the name of a registered nominee, provided the Corporation property is at all times identified as such on the books of the Corporation; to keep any or all the Corporation property or funds in any place or places in the United States; to employ clerks, accountants, legal counsel, investment counsel, investment agents, and any special services, and to pay reasonable compensation for all such services and all necessary or proper expenses in connection with the administration of Corporation property.

The Trustees' powers are exercisable solely in a fiduciary capacity consistent with and in furtherance of the charitable purposes of the Corporation.

ARTICLE 5

Parliamentary Procedure

Roberts' Rules of Order Revised shall govern the proceedings at all meetings of the Board of Trustees to the extent that such Rules do not conflict with applicable law, the Articles of Incorporation, or this Code of Regulations.

ARTICLE 6
Indemnification and Insurance

The Corporation may indemnify such persons as it is permitted to indemnify by Section 1702.12(E) of the Ohio Revised Code, and the heirs, executors, and administrators of such persons, to the full extent permitted by and in accordance with the provisions of that Section. Reference to Section 1702.12(E) in the previous sentence shall constitute a reference to any legislation hereafter enacted by the Ohio Legislature on the same general subject as present Section 1702.12(E), a person who would be entitled to indemnity only as an agent (a director, officer, employee, member or trustee, is not to be considered an “agent” for purposes of this sentence) of the Corporation, or only as an agent of another entity, may be denied indemnity by the Corporation. The corporation may purchase and maintain indemnity insurance on behalf of itself and/or any person who it decides to indemnify pursuant to this Article 6.

ARTICLE 7
Amendments

These Regulations may be amended or repealed by the Trustees at an annual meeting or a special meeting called to consider the same, provided that advance notice has been given in writing of the purpose of the meeting; or for any purpose contrary to the provisions of section 501(c)(3) of the Internal Revenue Code.