

**SECOND AMENDED AND RESTATED  
CODE OF BYLAWS  
OF  
USTA/MIDWEST TENNIS & EDUCATION FOUNDATION, INC.**

**Article 1.**  
**Identification**

Section 1.1 Name. The name of the corporation shall be USTA/Midwest Tennis & Education Foundation, Inc. (the "Foundation").

Section 1.2 Principal Office and Registered Agent. The Foundation shall have and continuously maintain a registered office in the State of Indiana. The Foundation may have offices at such other places within or outside the State of Indiana as the Foundation Board of Directors (the "Board") may from time to time determine. The Foundation shall also have and continuously maintain a registered agent in the State of Indiana.

**Article 2.**  
**Purposes**

Section 2.1 The Foundation is organized to carry out the purposes as set forth in Section 3.1 of the Second Amended and Restated Articles of Incorporation, which are as follows:

To promote and support tennis and educational opportunities for youth, and both adults and youth with disabilities, within the geographic area of the United States Tennis Association ("USTA") Section comprising USTA/Midwest, Inc.

**Article 3.**  
**Membership**

Section 3.1 Qualifications for Membership. Membership in the Foundation shall be governed by the provisions of Section 6.1 of the Second Amended and Restated Articles of Incorporation of the Foundation, which prescribe that the sole Member of the Foundation is USTA/Midwest, Inc., acting through its Board of Directors.

Section 3.2 Membership Not Transferable. USTA/Midwest, Inc. shall not transfer its membership in the Foundation to any other person or entity.

**Article 4.**  
**Meetings of Member**

Section 4.1 Annual Meeting. An annual meeting of the Foundation shall be held at such time and place within or outside the State of Indiana as the Board shall determine, and shall, unless the circumstances otherwise require, be held in conjunction with the annual meeting of

USTA/Midwest, Inc. The purpose of the annual meeting is to allow the Member of the Foundation to transact such business as may properly come before the Member.

Section 4.2 Special Meetings. Special meetings of the Foundation may be called at any time by the President and shall be called upon the written request of a majority of all members of the Board of Directors of USTA/Midwest, Inc. The written request shall state the purpose(s) of the proposed meeting, and only those matters specified in the request may be acted upon at the special meeting. Special meetings of the Foundation shall be held at the place and time fixed by the Board.

Section 4.3 Notice of Meetings. The Secretary, or the Officer or persons calling a meeting, shall give notice to the Member stating the place, day, and hour of any meeting of the Foundation. Such notice shall be delivered or sent by first-class mail or electronic mail to the Member at least ten (10) days before the date of such meeting.

Section 4.4 Waiver of Notice. The Member may waive notice of a meeting before or after the date and time stated in such notice. Such waiver shall be (i) in writing, (ii) signed by the Member, (iii) set forth in reasonable detail the time and place of the meeting and the purposes, and (iv) delivered to the Secretary of the Foundation for inclusion in the minutes for filing with the Foundation's records. Attendance at any meeting shall constitute a waiver of notice thereof unless such attendance is for the purpose of objecting to the transacting of any business on grounds that the meeting was not lawfully called or convened.

Section 4.5 Approval of Member. Any action that requires the approval of the Member of the Foundation shall be approved by a majority vote of all the members of the Board of Directors of USTA/Midwest, Inc.

Section 4.6 Action without Meeting. Any action that may be taken at a meeting of the Member may be taken without a meeting if, prior to such action, written consents setting forth the action to be taken are submitted by all the members of the Board of Directors of USTA/Midwest, Inc. and filed with the minutes of the proceedings of the Foundation.

## **Article 5.** **Board of Directors**

Section 5.1 Duties. The business and affairs of the Foundation shall be managed by the Board.

### Section 5.2 Composition, Election, and Terms of Office.

- (a) The Board of Directors shall be composed of the Officers (4), the elected member whose position is titled "Executive Committee Director-at-Large" (1), and ten (10) other Directors-at-Large, making a total Board of fifteen (15) members (hereinafter "Directors" or "Director"). The number of Directors may, from time to time, be increased or decreased by resolution adopted by not less than a majority of the

Board, subject to the limitation that the Board shall never be reduced to less than five (5) nor increased to more than fifteen (15) members.

- (b) Each Director shall be elected by the Member in even-numbered years in accordance with Section 8.3 below.
- (c) The term of each Director shall be two (2) years commencing on January 1 of odd-numbered years. There shall be no limit on the number of terms to which a Director may be nominated, elected, and serve in their respective positions.

Section 5.3 Regular Meetings. Meetings of the Board may be held regularly pursuant to a resolution of the Board to such effect. No notice shall be necessary for any regular meeting held pursuant to such resolution.

Section 5.4 Special Meetings. Special meetings of the Board may be held upon call of the President or upon call of a majority of the Directors. A written notice stating the time, place, and general purpose of any special meeting shall be given to each Director by the Secretary or by the Officer or persons calling the meeting by first-class mail or electronic mail. Notice shall be given at least 24 hours before the time of such meeting if the notice is given by electronic mail or at least five (5) days before the date of such meeting if the notice is mailed. Attendance at any special meeting shall constitute a waiver of notice thereof unless such attendance is for the purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened.

Section 5.5 Quorum.

- (a) The presence of a majority of the Board including either the President or Vice President shall be necessary to constitute a quorum for the transaction of any business. The act of the majority of the Directors present and voting at any meeting at which a quorum is present shall be the act of the Board.
- (b) A Director shall be deemed to be present at a meeting if attending in person, telephonically or by video transmission.

Section 5.6 Action without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if, prior to such action, written consents setting forth the action to be taken are submitted by all the Directors and filed with the minutes of the Board.

Section 5.7 Resignation of Directors. Any Director may resign at any time. A resignation shall be made in writing to the Board and shall take effect at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective. A resignation by an Officer shall be deemed a resignation from the entire Board including both the Officer position held and the position as Director, unless the written resignation clearly states that the Officer is resigning only from the Officer position held and not from the position as Director on the Board itself. A vacancy in an Officer position shall be filled in accordance with the restrictions in Section 5.2(a) above, and the process in Section 5.8 below.

Section 5.8 Vacancies. Any vacancy occurring on the Board by death, resignation, removal,

disqualification or otherwise may be filled by a majority vote of the remaining Directors. Any Director thus elected shall hold office until the next election of Directors and until the Director's successor is elected and qualified. When the number of Directors is increased by resolution or by amendment to this Second Amended and Restated Code of Bylaws, the vacancy or vacancies thus created shall be filled by a majority vote of the remaining Directors. Any Director thus elected shall hold office until the next election of Directors and until the Director's successor is elected and qualified.

Section 5.9 Removal. The Member of the Foundation may remove any and all Directors at any time, with or without cause, by a majority vote of the entire Board of Directors of USTA/Midwest, Inc. The Director who is being considered for removal shall be entitled to appear at the meeting of the Member and be heard.

## **Article 6.** **Officers**

Section 6.1 Number and Title. The Officers of the Foundation shall be a President, a Vice President, a Treasurer, and a Secretary.

Section 6.2 President. The President shall preside at all meetings of the Member and of the Board and the Executive Committee and shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 6.3 Vice President. In the absence of the President or in the event of the President's inability or refusal to act, the Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board.

Section 6.4 Treasurer. The Treasurer shall monitor the financial management and controls of the Foundation and its budgeting process, including the development of its annual budget. The Treasurer shall keep, or cause to be kept, correct and complete records of accounts showing at all times the actual financial condition of the Foundation. The Treasurer shall ensure that all monies, notes, securities, and other valuables that may from time to time come into the possession of the Foundation are maintained in a secure manner. The Treasurer shall furnish a statement of the financial condition of the Foundation at the annual meeting of the Member. The Treasurer shall prepare and timely file, or cause to be prepared and timely filed, on behalf of the Foundation any reports and returns as may be required from time to time to maintain the Foundation in good standing under the laws of the State of Indiana. The Treasurer shall further prepare and timely file, or cause to be prepared and timely filed, on behalf of the Foundation any federal or state income tax returns as may be required from time to time to establish and maintain the exempt status of the Foundation for purposes of federal and state income taxation.

Section 6.5 Secretary. The Secretary shall be responsible for the giving of notice and the keeping of minutes of the meetings of the Member, the Executive Committee, and the Board. The notices of meetings shall be sent out under the name of the Secretary. The Secretary shall be the

legal custodian of the corporate records of the Foundation and, in general, shall perform all duties incident to the office of Secretary. The Secretary shall perform such other duties as may be assigned by the President.

## **Article 7.** **Executive Committee**

**Section 7.1 Composition.** The Executive Committee shall be composed of the Officers (President, Vice President, Secretary, and Treasurer), and the Executive Committee Director-at-Large.

**Section 7.2 Duties.** The Executive Committee shall have general supervision of the Foundation. With authorization by the Board, the Executive Committee may disburse funds acting on behalf of the Board, provided the Executive Committee stays within the general policies and overall budget for the year established by the Board and provided the Executive Committee reports such actions to the Board at its next meeting.

**Section 7.3 Meetings.** Regular meetings of the Executive Committee shall be held as needed. All actions taken by the Executive Committee shall be based on a majority vote of the entire Executive Committee.

## **Article 8.** **Committees**

**Section 8.1 Standing Committees.** The Foundation shall have the following Standing Committees:

- (a) Nominating Committee, which shall function in accordance with Section 8.3 below;
- (b) Finance Committee, which shall include the three standing subcommittees of Budget, Audit, and Building;
- (c) Grant and Scholarship Committee; and
- (d) Development Committee.

**Section 8.2 Other Committees.** The Foundation shall have such other committees as may be established by the Board or by the President as deemed necessary to accomplish the mission and goals of the Foundation.

**Section 8.3 Nominating Committee.**

- (a) On or before September 1 in even-numbered years, the Executive Committee shall appoint a Nominating Committee of at least five (5) Directors to determine the slate for the election of the Officers, the Executive Committee Director-at-Large (who, with the four Officers, comprises the Executive Committee), and the other

Directors-at-Large.

- (b) The Secretary shall send the slate of nominees for office and ballots to the Member no later than November 15 of even-numbered years. The slate of nominees shall be presented to and voted on either in person, by mail, or by electronic means by the Member, and the ballots returned to the Secretary no later than November 30 of even-numbered years. The outcome shall be determined by a majority vote of the Member and shall be publicized as soon after the election as possible.

## **Article 9.** **Chief Executive Officer**

Section 9.1 The Foundation shall have a chief executive whose title shall be "Chief Executive Officer" or "CEO," and who:

- (a) Shall serve as the chief executive officer of the Foundation;
- (b) Shall be appointed by and serve at the pleasure of the Board;
- (c) Shall be a non-voting ex-officio member of all committees, except the Nominating Committee;
- (d) Shall, subject to the direction and evaluation of the Board and Executive Committee and fully accountable to them, oversee the policies and procedures of the Foundation, and shall be responsible for the functioning of the Foundation Office; and
- (e) Shall be responsible for all operations of the Foundation and executing all Board and Executive Committee decisions, employing or dismissing personnel, managing budgetary and contract processes, managing staff work, and performing such additional duties as may be requested by the Board or the Executive Committee.

## **Article 10.** **Participation by District Associations**

Section 10.1 General. Each District Association of USTA/Midwest, Inc. shall have the opportunity to utilize the 501(c)(3) status of the Foundation to solicit tax deductible contributions for qualifying educational and charitable purposes. If a District Association chooses to solicit funds using the Foundation's 501(c)(3) status, it will be required to form a separate board and adopt governing bylaws, which shall be subject to the approval of the Foundation Board.

Section 10.2 Maintenance of Separate Accounts. The Foundation shall maintain a separate account for each District Association choosing to participate. All contributions designated as being made on behalf of a specific District Association shall be allocated to the separate account established for the District Association.

Section 10.3 District Associations' Access to Accounts. Each District Association may request that distributions from its account be made for any activity that is permissible for 501(c)(3) organizations and does not jeopardize the Foundation's 501(c)(3) status. Such distributions shall not be made to the District Association but shall be made on behalf of the District Association directly to the recipient or to the vendor of the goods or services that have been provided for the activity being conducted. If a District Association forms its own 501(c)(3) corporation, it may request that the entire balance of its account be transferred to the new corporation and the Foundation shall so transfer the funds upon receipt from the District Association of a determination letter from the Internal Revenue Service that such corporation is a qualified 501(c)(3) corporation.

## **Article 11.** **Board Alumni, Charter Champions, and Honorary Patrons**

Section 11.1 Invitation. The Board may invite individuals who have served on the Board (Board Alumni), who were Charter Champions of the Foundation, or who are identified as Honorary Patrons to attend meetings of the Foundation. These individuals shall be available to the Foundation for consultation and advice. Board Alumni, Charter Champions, and Honorary Patrons shall have no voting rights or other privileges, duties, obligations, or responsibilities and shall not be counted for the purpose of ascertaining quorum requirements. Board Alumni, Charter Champions, or Honorary Patrons may be nominated to serve as Directors, and if so elected, shall have all voting rights.

## **Article 12.** **Indemnification**

### Section 12.1 Indemnification.

- (a) The Foundation shall indemnify any person as of right who is or was a Director, Officer, employee, or agent of this Foundation, or is or was serving as a director, officer, employee, or agent of another corporation, partnership, or other enterprise at the request of the Foundation, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement reasonably incurred by such person, to the fullest extent now or hereafter permitted by law, in connection with or resulting from any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, or in connection with an appeal relating thereto), in which such person may be involved as a party or otherwise by reason of being or having been a Director, Officer, employee, or agent of the Foundation or of such other organization; provided, such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to any criminal action or proceeding, in a manner which such person had no reasonable cause to believe was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which the person reasonably believed to be in, or not opposed to, the best interests of the Foundation, and, with respect to any criminal action, suit, or proceeding, in a manner which

such person had reasonable cause to believe was unlawful.

- (b) Any Director, Officer or employee of the Foundation who has been successful as a party on the merits or otherwise in such person's defense of any claim, action, suit, or proceeding referred to in the first sentence of Section 12.1(a) shall be indemnified as of right against expenses (including attorneys' fees) reasonably incurred by such person in connection therewith (except to the extent covered by insurance).
- (c) Except as provided in Section 12.1(b) above, any indemnification under Section 12.1(a) shall be made by the Foundation only upon a determination that indemnification of the particular Director, Officer, employee, or agent is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 12.1(a). Such determination shall be made (i) by the Board by a majority vote of a quorum consisting of members of the Board of Directors who were not parties to such claim, action, suit, or proceeding, or (ii) if such a quorum is not obtainable or if so directed by a majority vote of a quorum consisting of members of the Board who were not parties to such claim, action, suit, or proceeding, by independent legal counsel (who may be regular counsel of the Foundation or other disinterested person(s), (such counsel or person(s) being hereafter called the "referee"), in a written opinion. The person claiming indemnification shall, if requested, appear before the referee and answer questions which the referee deems relevant, and shall be given ample opportunity to present to the referee evidence upon which such person relies for indemnification. The Foundation shall, at the request of the referee, make available facts, opinions or other evidence in any way relevant to the referee's findings which are within the possession or control of the Foundation.
- (d) The indemnification provided by this Section 12.1 shall not be deemed exclusive of any other rights to which a Director, Officer, employee, or agent may be entitled under any Bylaw, resolution, agreement, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, employee, or agent of the Foundation, and shall inure to the benefit of the heirs, executors and administrators of such a person. The indemnification provided by this Section 12.1 shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, arising from acts or omissions to act occurring whether before or after the adoption hereof.
- (e) This Foundation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Foundation, or who is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the Foundation would have the power to indemnify such person against such liability under the provisions of this Section



12.1, together with expenses actually and reasonably incurred by such person in connection with such person's defense thereof; provided that when and to the extent that the Foundation has purchased and maintained such insurance, it shall have no duty under this Section 12.1 to indemnify any such person to the extent such liability is covered by such insurance.

### **Article 13.** **Miscellaneous**

Section 13.1 Execution of Contracts and Other Documents. Unless otherwise ordered by the Board, all written contracts and other documents entered into by the Foundation shall be executed on behalf of the Foundation by the President or the CEO. The Board may authorize any Officer or Officers or agents of the Foundation, in addition to the Officers so authorized by this Second Amended and Restated Code of Bylaws, to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Foundation. Such authority may be general or confined to specific instances.

Section 13.2 Investments. The property, assets, and funds of the Foundation may, in furtherance of the purposes of the Foundation, be invested in such shares of stock, whether common or preferred, bonds, or other securities or other personal property or real estate as the Board may from time to time authorize and approve; provided, however, that no investment shall be made in such manner as to subject the Foundation to tax under Section 4944 of the Internal Revenue Code of 1986, as the same may be amended from time to time, or the corresponding provision of any future United States revenue law.

Section 13.3 Fiscal Year. The fiscal year of the Foundation shall run from January 1 through December 31.

Section 13.4 Deposits. All monies of the Foundation shall be deposited or invested in the name of the Foundation in one of the Foundation's accounts.

Section 13.5 Budget. The annual budget of estimated income and expenditures of the Foundation, and all revisions thereof, shall be approved by the Board.

Section 13.6 Restriction Upon Acceptance of Gifts. No gifts or other contributions to the Foundation shall be accepted by the Foundation if the use or expenditure of such gift or other contribution is subject to any condition which is inconsistent with the purposes of the Foundation as stated herein.

Section 13.7 Interest of Directors in Contracts. Any contract or other transaction between the Foundation and one or more of its Directors, or between the Foundation and any firm of which one or more of its Directors are members or employees, or in which they are interested, or between the Foundation and any corporation or association of which one or more of its Directors are shareholders, members, directors or employees, or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such Director or Directors at the meeting of the Board which acts upon or in reference to such contract or transaction, and notwithstanding such Director's participation in such action, if the fact of such interest shall be disclosed or known to

the Board and the Board shall, nevertheless, authorize, approve and ratify such contract or transaction by a vote of a majority of the Directors present, such interested Director or Directors to be counted in determining whether a quorum is present, but not to be counted in calculating the majority of such quorum necessary to carry such vote; provided however, that such contract or transaction shall be at arm's length and not violative of the proscriptions of these Bylaws against the Foundation's use or application of its funds for private benefit.

Section 13.8 Compensation of Employees. In order to carry out the purposes and activities of the Foundation, such individuals as are deemed necessary may be employed, and each such employee may be paid such compensation for services actually rendered in the course of such employment as may be fixed in the manner provided by the Board.

**Article 14.**  
**Amendment to Bylaws**

Section 14.1 Amendment to Bylaws. This Second Amended and Restated Code of Bylaws may be amended by the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the Board and shall require the consent of the Member.