

N990000029.79

AUGUST & KULUNAS, P.A.

ATTORNEYS AT LAW

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JERALD DAVID AUGUST  
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OF COUNSEL

August 31, 2000

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

100003382511--7  
-09/06/00--01009--010  
\*\*\*\*\*35.00 \*\*\*\*\*35.00

Re: The David William McNicholas Foundation, Inc.

To whom it may concern:

Pursuant to section 617.1007 of the Florida Not for Profit Corporation Act, the above referenced corporation has restated its Articles of Incorporation.

Enclosed please find:

- (1) The Articles of Restatement for The David William McNicholas Foundation, Inc.
- (2) The filing of fee of \$35.00 payable to the Florida Department of State.

Please return an approved copy to the undersigned.

Sincerely,



Adi Rappoport

Enclosures

cc: Michael J. McNicholas

FILED  
00 SEP 29 PM 3:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

AC 9/29  
Amend

**AUGUST & KULUNAS, P.A.**

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JERALD DAVID AUGUST  
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OF COUNSEL

September 26, 2000

Florida Department of State  
Division of Corporations  
*Attention: Anna Chestnut, Corporate Specialist*  
P.O. Box 6327  
Tallahassee, FL 32314

Re: The David William McNicholas Foundation, Inc.  
Ref. Number: N99000002979

Dear Ms. Chestnut:

Pursuant to your letter of September 15, 2000 (a copy of which is attached), enclosed please find an original and a copy of the Articles of Amendment for the above-referenced corporation executed by the corporation's president. Please date stamp the copy, and return to it to the undersigned in the enclosed envelope.

Sincerely,



Adi Rappoport

Enclosure

**FILED**  
00 SEP 29 PM 3:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

September 15, 2000

AUGUST & KULUNAS, P.A.  
ATTN: ADI RAPPOPORT  
250 AUSTRALIAN AVE., SOUTH, STE 1100  
WEST PALM BEACH, FL 33401

SUBJECT: THE DAVID WILLIAM MCNICHOLAS FOUNDATION, INC.  
Ref. Number: N99000002979

We have received your document for THE DAVID WILLIAM MCNICHOLAS FOUNDATION, INC. and check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The document must be signed by the chairman, any vice chairman of the board of directors, its president, or another of its officers.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6908.

Anna Chesnut  
Corporate Specialist

Letter Number: 900A00048877

**ARTICLES OF RESTATEMENT  
FOR  
THE DAVID WILLIAM MCNICHOLAS FOUNDATION, INC.,  
A FLORIDA NON FOR PROFIT CORPORATION**

Pursuant to Section 617.1007 of the Florida Not For Profit Corporation Act, The David William McNicholas Foundation hereby restates its Articles of Incorporation as follows:

**ARTICLE I  
NAME**

The name of this corporation is the David William McNicholas Foundation, Inc. The duration of the corporation shall be perpetual.

**ARTICLE II  
MAILING AND STREET ADDRESS**

The mailing address and street address of the Corporation is:  
The David William McNicholas Foundation, Inc.  
320 West Ocean Boulevard  
Stuart, Florida 34994

**ARTICLE III  
PURPOSE**

To the extent permitted by §501(c)(3) of the Internal Revenue Code, the corporation is organized to receive and maintain a fund or funds of real or personal property or both and, subject to the restrictions and limitation which are hereinafter set forth, to use and apply the whole or any part of the income from the principal of the fund or funds exclusively for charitable, religious, scientific, literary or educational purposes, either directly or by contributions to organizations that qualify as tax-exempt organizations under §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or may hereafter be amended. Notwithstanding any other provision of these restated Articles of Incorporation, this corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by organizations described in §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

**ARTICLE IV  
INITIAL OBJECTIVES**

The initial specific charitable, scientific, literary, and educational objectives of this corporation are to raise funds through charity and other events to be disbursed towards efforts for the cure of Friedreich's Ataxia, a degenerative muscular disease.

**ARTICLE V  
NON-PROFIT STATUS**

This corporation shall be a non-profit corporation and shall have no capital stock, and no dividends or pecuniary profits shall be declared or paid to the directors, officers, or members thereof. No part of the net earnings of this corporation shall inure to the benefit of any director, officers, or member of this corporation or any private individual, provided however, that reasonable compensation may be paid for services rendered to this corporation in the furtherance of its purpose.

**FILED**  
00 SEP 29 PM 3:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE VI**  
**POWERS OF THE CORPORATION**

In furtherance of its objectives and to provide funds therefor, this corporation shall have the capacity and power to do any and all things necessary and appropriate to their accomplishment, including but not limited to:

a. To hold, manage, and administer any and all real and personal property of every kind and description acquired by the corporation; to use and apply the whole or part of the income therefrom and the principal interest thereof exclusively for charitable, religious, scientific, literary or educational purposes, either directly or by contributions to organizations that qualify as exempt organizations under §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

b. To accept and receive by gift, devise, bequest or otherwise for the uses and purposes of this corporation, any property – real, personal, or mixed – of any kind, nature or description.

c. To acquire by purchase, lease or otherwise; to own, hold, maintain and improve; to sell, exchange, mortgage, license, lease or otherwise dispose of, such real and personal property as may be necessary to further accomplish this corporation's purpose.

d. To invest and reinvest its funds and assets, subject to the limitations and conditions contained in any gift, devise, bequest or grant; provided, however, that such limitations and conditions are not in conflict with the provisions of §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

e. To make and enter into contracts and agreements of every kind and description necessary to further the purposes of this corporation and to apply for, receive, contract, administrate, and perform gifts, grants, awards, contracts, and programs to accomplish its purposes with any and all governmental, charitable, educational, or scientific organizations.

f. To lend its funds upon adequate security and to borrow for its corporate purposes and secure the same by mortgage or pledge of any and all its corporate real or personal property or both.

g. To exercise all rights and privileges appurtenant to any securities or any property held by this corporation, including, but without limitation to, the right to vote any share of stock which may be held by the corporation.

h. To act as trustee of funds for trusts created solely for charitable, religious, scientific, literary or educational purposes as shall be in furtherance of the purpose and objectives of this corporation.

i. To do any and every act or thing, and to engage in any other activity or undertaking necessary or convenient to the fulfillment of the purposes of this corporation which a corporate body may lawfully do or perform; provided, however, that only such acts or things shall be done and such activities or undertakings engaged in as are in furtherance of the tax-exempt purpose of this corporation and may be done or engaged in by an organization exempt under §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended.

j. No substantial part of the activities of this corporation shall be carrying on propaganda or otherwise attempting to influence legislation, and this corporation shall not participate in

(including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

k. To hold meetings, lectures, and other educational, business, and social programs, to engage speakers, to compile and distribute information, and to provide printed material, forms, recordings, and other presentations or materials for the benefit of the members and/or the public.

l. To engage in fund-raising activities, and to borrow money and to issue notes and other evidences of indebtedness and obligations from time to time for any lawful corporate purpose or objective, and to mortgage, pledge, and otherwise charge any or all its properties, rights, privileges, and assets to secure the payment thereof.

m. To establish terms and conditions of membership in the corporation.

n. To do any and every act or thing, and to engage in any other activity or undertaking necessary or convenient to the fulfillment of the purposes of this corporation which a corporate body may lawfully do or perform; provided, however, that only such acts or things shall be done and such activities or undertakings engaged in as are in furtherance of the tax-exempt purposes of this corporation and as may be done or engaged in by an organization exempt under §501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may be hereafter be amended.

#### **ARTICLE VII** **MEMBERSHIP**

The corporation shall have no members.

#### **ARTICLE VIII** **REGISTERED AGENT**

The corporation appoints Michael J. McNicholas 320 West Ocean Boulevard, Stuart, Florida 34994, as its registered agent. This appointment may be revoked at any time by the Board of Directors which shall have the right to name a successor registered agent for the corporation.

#### **ARTICLE IX** **BOARD OF DIRECTORS**

The number of directors of the corporation shall be fixed and may be altered from time to time as may be provided in the bylaws. In case of any increase in the number of directors, the additional directors may be elected by the existing directors at an annual or special meeting, as shall be provided in the bylaws.

The names of the members of the initial Board of Directors, who shall serve until their successors are qualified according to the bylaws are:

Michael J. McNicholas  
Thomas R. McNicholas  
Ted Astolfi  
Alexander Myers  
Mark Robitaille  
Barbara Sommers

The Board of Directors shall have full power to adopt, alter and amend the bylaws of this corporation and to make proper rules and regulations for the transaction of its affairs.

**ARTICLE X**  
**INCORPORATOR**

The name and address of the Corporation's incorporator is:

Michael J. McNicholas  
320 West Ocean Boulevard  
Stuart, FL 34994

All powers, duties and responsibilities of the incorporator ceased at the time of delivery of the Articles of Incorporation to the Florida Department of State.

**ARTICLE XI**  
**INDEMNIFICATION OF OFFICERS, DIRECTORS,**  
**EMPLOYEES, AND AGENTS**

Subject to the provisions of this Article, the Corporation shall indemnify any and all its existing and former directors, officers, and employees and agents against all expenses incurred by them and each of them including, but not limited to, legal fees, judgments, penalties and amounts paid in settlement or compromise which may arise or be incurred, rendered, or levied in any legal action brought or threatened against any of them for or on account of any action or commission alleged to have been committed while acting within the scope of services or employment as director, officer, employee or agent of the corporation, whether or not any action is or has been filed against them and whether or not any settlement or compromise is approved by a court. Indemnification shall be made by the corporation whether the legal action brought or threatened is by or in the right of the corporation by any other person.

Whenever any existing or former director, officer, employee or agent shall report to the president of the corporation or the chairman of the Board of Directors that he or she has incurred or may incur expenses, including but not limited to legal fees, judgments, penalties, and amounts paid in settlement or compromise in legal action brought or threatened against him or her for or on account of any action or omission alleged to have been committed by him or her while acting within the scope of his or her services or employment as director, officer, employee, or agent of the corporation, the Board of Directors shall, at its next regular or special meeting held within a reasonable time thereafter, determine in good faith whether, in regard to the matter involved in the action or contemplated action, such person acted, failed to act, or refused to act willfully or with gross negligence or with fraudulent or criminal intent.

If the Board of Directors determines in good faith that such person did not act, failed to act, or refused to act willfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action or contemplated action, indemnification shall be mandatory and shall be automatically extended as specified herein; provided, however, that no such indemnification shall be available with respect to liabilities under the Securities Act of 1933 and provided further that the corporation shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the corporation at its own expense and through counsel of its own choosing, to defend him or her in the action.


**ARTICLE XII**  
**AMENDMENT OF ARTICLES OF INCORPORATION**

The Articles of Incorporation may be amended by the affirmative vote of a majority of the Board of Directors of this corporation at a meeting called for the purpose of amending the Articles of Incorporation; provided, however, that in no event shall the purposes of this corporation be changed, and Article V and Article XI hereof shall not be altered or amended in any manner or way whatsoever.

**ARTICLE XIII**  
**DISSOLUTION**

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of §501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal officer of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

The president of the corporation hereby executes these Articles of Restatement on this 25<sup>th</sup> day of September, 2000.

  
\_\_\_\_\_  
Michael J. McNicholas, President



**CERTIFICATE APPROVING  
THE ARTICLES OF RESTATEMENT  
THE DAVID WILLIAM MCNICHOLAS FOUNDATION, INC.**

Pursuant to Section 617.1007 of the Florida Not For Profit Corporations Act, The David William McNicholas Foundation, Inc. has restated its Articles of Incorporation. The restatement contains amendments to the Articles of Incorporation which require the approval of a majority of the members of the corporation, under the terms of the corporation's original Articles of Incorporation filed on May 13, 1999.

The amendments to the Articles of Incorporation were adopted by unanimous written consent of the members on or about August 1, 2000. The votes cast for the amendment were sufficient for approval.