

FILED  
DONETTA DAVIDSON  
COLORADO SECRETARY OF STATE

## ARTICLES OF INCORPORATION

OF

NONPROFIT

HARRY H. BEREN FOUNDATION I.G.

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\$ 50.00  
SECRETARY OF STATE  
01-05-2004 12:00:39

Sheldon H. Smith, acting as incorporator of a corporation under the Colorado Revised Nonprofit Corporation Act, adopts the following Articles of Incorporation for such corporation.

### ARTICLE I

The name of the corporation is Harry H. Beren Foundation I.G.

### ARTICLE II

The period of its duration shall be perpetual.

### ARTICLE III

The corporation is organized pursuant to Section III.D.5. of the Trust Agreement executed on April 13, 1987 by Harry H. Beren of Marietta, Ohio, in his capacity as both Trustor and Trustee, otherwise known as the Harry H. Beren Trust D, exclusively for those charitable, scientific, literary or educational purposes within the meaning of and pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (or under the corresponding provision of any future United States Internal Revenue law) as are provided for under the terms of the Harry H. Beren Trust D. References in these Articles of Incorporation to the "Code" shall be to the Internal Revenue Code of 1986, as amended from time to time, and references in these Articles of Incorporation to the "Trust" shall be to the Harry H. Beren Trust D.

As set forth in Section II.C.3.f. of the Trust, such purposes include making gifts to those charitable organizations supported by Harry H. Beren during his lifetime, in

such amounts, at such times, and under such conditions as shall be determined from time to time in the discretion of the corporation's Board of Directors, subject to the approval of the corporation's members. Any such gifts must further religious, charitable, scientific, literary, or educational purposes, and must also further those purposes as are specified in Section II.C.3.f. of the Trust. Any such gifts must be made under those terms and conditions as are specified in Section II.C.3.f. of the Trust. Finally, any such gifts must be made only to those organizations that: (1) were recognized by the Internal Revenue Service as exempt from federal income tax under section 501(c) of the Code as of January 14, 1990 (or are a direct successor organization or outgrowth of any such entity); and (2) qualify at the time of such gift as a "public charity" under the relevant provisions of the Code.

#### **ARTICLE IV**

A. No part of the income or net earnings of the corporation shall inure to the benefit of, or be distributable to, any member, director or officer of the corporation or any other private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and reimbursement may be made for any expenses incurred for the corporation by any officer, director, agent or employee, or any other person or corporation, pursuant to and upon authorization of the corporation's members); and provided further that no member, director or officer of the corporation, or any other private individual shall be entitled to share in any distribution of any of the corporate assets on dissolution of the corporation or otherwise. No substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation,

except as otherwise provided in section 501(h) of the Code. The corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office.

B. No part of the assets of the corporation shall inure to the benefit of or be distributable to any organization whose income or net earnings or any part thereof inure to the benefit of any private shareholder or other individual or any substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation.

C. Upon dissolution of the corporation, all of its assets shall be paid over or transferred to one or more exempt organizations of the kind described in section 501(c)(3) of the Code, and with purposes similar to those of the corporation, as determined by the corporation's Board of Directors, subject to the approval of the corporation's members.

D. Notwithstanding any other provision hereof, this corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization which is tax exempt under the provisions of section 501(c)(3) of the Code.

E. Notwithstanding any other provision hereof, this corporation shall not conduct or carry on any activities not permitted to be conducted or carried on pursuant to the terms of the Trust.

F. Notwithstanding any other provision of these Articles during any period that the corporation is a "private foundation" within the meaning of section 509 of the Code, the corporation shall be required to distribute its income for each taxable year of the corporation at such time and in such manner as not to subject the corporation to tax

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under section 4942 of the Code; and the corporation shall be prohibited from engaging in any act of self-dealing as defined in section 4941(d) of the Code, from retaining any excess business holdings in violation of the provisions of section 4943(c) of the Code, from making any investments in such manner as to subject the corporation to tax under section 4944 of the Code, and from making any taxable expenditures as defined in section 4945(d) of the Code.

#### **ARTICLE V**

The corporation shall have voting members. The corporation's initial and sole voting member shall be Isaac Grossman. The corporation's bylaws shall set forth those circumstances under which additional members may be admitted, and the manner of such admission.

#### **ARTICLE VI**

The corporation's members shall appoint the members of the corporation's Board of Directors. The bylaws of the corporation shall permit the voting members of the corporation to establish a range for the size of the Board of Directors by fixing a minimum and maximum number of directors. Within such range, the number of directors may be fixed or changed from time to time by the corporation's voting members. The corporation's Board of Directors shall conduct the business of the corporation, subject to the approval of the corporation's members.

#### **ARTICLE VII**

The address of the initial registered office of the corporation is, and the name of its initial registered agent at such address is Sheldon H. Smith, c/o Holland & Hart, LLP, 555 17th Street, Suite 3200, Denver, CO 80202.

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## **ARTICLE VIII**

The address of the principal office of the corporation is 1493 North Lake Drive, Lakewood, New Jersey 08701.

## **ARTICLE IX**

These Articles of Incorporation, the corporation's bylaws, and any other provisions regarding the organization and management of the corporation may only be amended by vote of more than two-thirds of the corporation's members.

## **ARTICLE X**

The taxable year of the corporation shall be selected by the corporation's members.

## **ARTICLE XI**

### **ELIMINATION OF CERTAIN LIABILITIES OF DIRECTORS**

There shall be no personal liability, either direct or indirect, of any director of the corporation to the corporation or to its members for monetary damages for any breach or breaches of fiduciary duty as a director; except that this provision shall not eliminate the liability of a director to the corporation or to its members for monetary damages for any breach, act, omission or transaction as to which the Colorado Revised Nonprofit Corporation Act (as in effect from time to time) prohibits expressly the elimination of liability. This provision is in the corporation's original Articles of Incorporation and thus is effective on the date of the corporation's incorporation. This provision shall not limit the rights of directors of the corporation for indemnification or other assistance from the corporation. This provision shall not restrict or otherwise diminish the provisions of Section 13-21-115.7, Colorado Revised Statutes (concerning

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no liability of directors except for wanton and willful acts or omissions), any amendment or successor provision to such Section, or any other law limiting or eliminating liabilities. Any repeal or modification of the foregoing provisions of this Article by the members of the corporation or any repeal or modification of the provision of the Colorado Revised Nonprofit Corporation Act which permits the elimination of liability of directors by this Article shall not affect adversely any elimination of liability, right or protection of a director of the corporation with respect to any breach, act, omission, or transaction of such director occurring prior to the time of such repeal or modification.

## **ARTICLE XII**

The name and address of the incorporator is Sheldon H. Smith, whose address is c/o Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, Colorado 80202. Furthermore, the (a) name or names, and (b) mailing address or addresses, of any one or more of the individuals who cause this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused are: Sheldon H. Smith, c/o Holland & Hart LLP, 555 17<sup>th</sup> Street, Suite 3200, Denver, Colorado 80202.