

# ***AMENDED AND RESTATED***

## **ARTICLES OF INCORPORATION TENTH MOUNTAIN DIVISION FOUNDATION, INC.**

**On June 20, 1958, the TENTH MOUNTAIN DIVISION ASSOCIATION WAR MEMORIAL FOUNDATION, INC. was incorporated as a non-profit corporation. Various restatements and amendments including a change in the name of the corporation have been adopted since then and are on file with the Secretary of State of Colorado. The following articles, setting forth the provisions of the Articles of Incorporation, have been duly adopted as required by law, and supersede in the entirety all previous Articles of Incorporation and amendments thereto. Pursuant to C.R.S. §7-90-101, et. seq.; §7-90-304.5; and §7-130-106 the Foundation desires to amend and restate its Articles of Incorporation.**

### **ARTICLE I NON PROFIT STATUS**

The Corporation is organized pursuant to the Colorado Revised Non-Profit Corporations Act. Nothing in the previous sentence may be construed to authorize actions that violate the requirements of Section 501 (c) (3) of the Internal Revenue Code, under which the Corporation is tax exempt, and the Corporation shall neither undertake nor allow such actions.

### **ARTICLE II NAME**

The name of the Corporation is the Tenth Mountain Division Foundation, Inc.

### **ARTICLE III ADDRESS AND AGENT**

The Corporation's principal and registered office is located at 133 South Van Gordon Street, Suite 200, Lakewood, Colorado, 80228. The Registered Agent is Frankie J. Barr at that address.

### **ARTICLE IV LIFE OF THE CORPORATION**

The Corporation shall have perpetual existence.

**ARTICLE V**  
**CAPITAL STOCK, STOCKHOLDERS AND MEMBERS**

The Corporation shall have no capital stock, no stockholders and no voting members.

**ARTICLE VI**  
**CORPORATE PURPOSES**

1. To honor and memorialize the World War II 10<sup>th</sup> Mountain Division, and the veterans who served in it, especially those who gave their lives in the service of their country, and to do so by charitable, educational, and public service programs including scholarships and educational programs;
2. To honor and support the current 10<sup>th</sup> Mountain Division of the United States Army, and the veterans who have served and are serving in it, especially those who gave their lives in the service of their country and to do so by charitable, educational and public service programs; and
3. To conduct any other legal activity in support of its primary charitable, educational and public service mission.

**ARTICLE VII**  
**CORPORATE MANAGEMENT**

The management of the Corporation shall be vested in a Board of Directors. The number of Directors, their qualifications, powers, terms of office and related particulars shall be as specified in the Bylaws of the Corporation.

The Board shall elect the Officers of the Corporation and direct its affairs in accordance with its Bylaws.

**ARTICLE VIII**  
**SPECIAL LIMITATIONS**

- a) The powers of the Board of Directors and others acting on behalf of the Corporation are enabled and limited, within the law, by these Articles of Incorporation, the Corporation's Bylaws, the Colorado Revised Non-Profit Corporations Act ("Act"), and the Internal Revenue Code of 1986, as amended from time to time ("Code")
- b) All activities of the Corporation shall be devoted to one or more of its exempt purposes.

- c) No part of the earnings or income of the Corporation, or of its assets, shall inure to the benefit of, or be distributable to any Director, Officer, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and expenses incurred in furtherance of the exempt purposes of the Corporation. No individual shall share in the distribution of any of the corporate assets upon dissolution of the Corporation or otherwise.
- d) The Corporation shall not devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda.. The Corporation shall not participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for office.
- e) No part of the assets shall be contributed to any organization whose net earnings, or any part thereof, inure to the benefit of any individual or any substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation. The Corporation shall not discriminate on the basis of race, sex, age nationality, or religious preference in its activities.
- f) Notwithstanding any other provision of these Articles of Incorporation, if the Corporation is at any time a private foundation as defined in §509 of the Code, the following provisions shall apply:
  - i. The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the corporation to the tax imposed under §4942 of the Code.
  - ii. The Corporation shall not engage in any act of self-dealing, as defined in §4941(d) of the Code.
  - iii. The Corporation shall not retain any excess business holdings, as defined in §4943(c) of the Code.
  - iv. The corporation shall not make any investments in such a manner as to subject it to the tax imposed under §4944 of the Code.
  - v. The Corporation shall not make any taxable expenditures, as defined in §4945(d) of the Code.
  - vi. The Corporation shall not engage in the carrying on of propaganda or otherwise attempting to influence legislation.

## **ARTICLE IX** **INDEMNIFICATION**

The Corporation shall indemnify its directors, officers, employees and agents as set forth in the Bylaws of the corporation.

**ARTICLE X**  
**LIMITATION OF LIABILITY**

No director shall be personally liable to the Corporation for monetary damages for any breach of fiduciary duty as a director, except that no director's liability to the Corporation for monetary damages shall be eliminated or limited on account of any of the following: (a) any breach of the director's duty of loyalty to the Corporation; (b) any acts or omissions of the director not in good faith or that involve intentional misconduct or a knowing violation of law; (c) the director's assent to or participation in a loan by the Corporation to any director or officer of the Corporation; or (d) any transaction in which the director received improper personal benefit. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**ARTICLE XI**  
**DISSOLUTION**

Upon dissolution of the Corporation, its remaining assets shall be distributed for one or more exempt purposes within the meaning of §501(c)(3) of the Code. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively for such purposes or to such organization or organizations as such court shall determine which are organized and operated exclusively for such purposes.

**ARTICLE XII**  
**AMENDMENTS**

These Articles of Incorporation and the Bylaws may only be amended by a two-thirds affirmative vote of the Board of Directors of the Corporation.