

ARTICLES OF INCORPORATION  
OF  
EBEN INCORPORATED

TO THE HONORABLE JUDGE OF PROBATE  
OF SHELBY COUNTY, ALABAMA:

The undersigned for the purpose of forming a corporation pursuant to the provisions of the Code of Alabama (1994) § 10-2B-1.01 et seq. hereby certify as follows:

1. **NAME.** The name of the Corporation is:

"EBEN Incorporated"  
03/25/1997-09089

2. **DURATION.**

11:11 AM CERTIFIED

2.1 The duration of the Corporation shall be perpetual.

SHELBY COUNTY JUDGE OF PROBATE

2.2 The Corporation shall continue as a separate entity independent of its shareholders for all purposes during the period of time provided in Section 2.1 of this Article 2 and shall continue notwithstanding the death, insanity, incompetence, conviction for felony, resignation, withdrawal, transfer of shares of stock, retirement or expulsion of any one or more of the shareholders, or any other event which under the laws of the State of Alabama and under like circumstances of life independent of the life or status of its shareholders.

3. **PURPOSE.** The purpose for which the Corporation is organized is to conduct the business of providing brokerage services to tire manufacturers, and to transact any or all lawful businesses for which business corporations may be incorporated in accordance with the laws of Alabama.

4. **GOVERNING LAW AND POWERS.** The Corporation shall be governed by the "Alabama Business Corporation Act," Code of Alabama, §10-2B-1.01 et seq., including all amendments thereto. The Corporation shall have all the powers and privileges necessary or convenient to effectuate its purposes, including those enumerated in the Alabama Business Corporation Act. The powers of the Corporation pursuant to the laws of Alabama include, without limitation, the following:

4.1 To purchase, acquire, hold, improve, sell, convey, assign, exchange, release, mortgage, encumber, lease, hire, and deal in real and personal property of every kind and character insofar as the same shall be necessary or appropriate in connection with the lawful purposes of the Corporation.

4.2 To enter into, make and perform, in its own name, contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, association, corporation, municipality, county,

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state, territory, government, governmental subdivision, or body politic.

4.3 To sue and be sued as an independent entity.

4.4 To borrow and lend money, without security, or upon the giving or receipt of such security as the Board of Directors of this Corporation may deem advisable by way of mortgage, pledge, transfer, assignment, or otherwise, of real and personal property of every nature and description, or by way of guaranty, or otherwise, and to enter into revolving credit agreements or other loan agreements of any kind with banks or other finance or institutional investors.

4.5 To draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, debentures and other negotiable or transferable instruments.

4.6 To issue bonds, debentures or other securities or obligations and to secure the same by mortgage, pledge, deed of trust or otherwise.

4.7 To purchase, take, receive, redeem or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares of stock, and its bonds, debentures, notes, scrip or some other security or evidence of indebtedness, and to hold, sell, transfer or reissue the same.

4.8 To enter into any pension, profit sharing or stock option plans or other projects for the assistance and welfare of its directors, officers and employees.

4.9 To acquire, hold, use, sell, assign, lease or grant licenses in respect of mortgages or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks and trade names, relating to or useful in connection with any business of the Corporation.

4.10 To acquire bonds or shares of stock of the Corporation or any other corporation.

4.11 To acquire the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, partnership, association, professional association, professional corporation or corporation.

4.12 To endorse, lend its credit to, or otherwise guarantee, or obligate itself for, or pledge or mortgage all or any part of its properties for the payment of the principal and interest, or either, on any bonds, debentures, notes, scrip, coupons, or other obligations or evidences of indebtedness, or the performance of any

contract, mortgage, or obligation, or any other corporation or association, domestic or foreign or of any person, firm, partnership or joint venture.

4.13 To enter into any lawful and ethical arrangements for sharing of expenses or profits, union of interest, reciprocal concession, or cooperation, as partner (general or limited), member, manager, joint venturer, or otherwise, with any person, partnership, limited liability company, corporation, association, combination, organization, entity or other body whatsoever, domestic or foreign, carrying on or proposing to carry on, or any business or transaction deemed necessary, convenient or incidental to the carrying out of any of the objects of this Corporation.

4.14 To lend money and use its credit to assist its employees.

4.15 To have one or more offices to carry on all of the Corporation's operations and business without restriction or limit as to amount, in any of the states, districts, territories or possessions of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, possession, or country.

4.16 To do any and all of the things herein set out and such other things as are incidental or conducive to the attainment of the objects and purposes of this Corporation, to the same extent as natural persons might or could do and in any part of the world, as principal, factor, agent, contractor, or otherwise, either alone or in conjunction with any person, firm, association, partnership, limited liability company, corporation or any entity of whatsoever kind, and to do any and all such acts and things and to have and exercise any and all such powers to the full extent authorized or permitted to a corporation under any laws that may now or hereafter be applicable or available to this Corporation.

The foregoing clauses, and each phrase thereof, shall be construed as objects, powers, and purposes of the Corporation in addition to those powers specifically conferred upon the Corporation by law, and it is hereby expressly provided that the foregoing specific enumeration of purposes and powers shall not be held to limit or restrict in any manner the powers of the Corporation otherwise granted by law.

5. **INITIAL REGISTERED OFFICE AND AGENT.** The location and mailing address of the initial registered office of the Corporation, and the name of its initial registered agent at such address are as follows:

Ben F. Habshey  
7000 Highway 25  
Montevallo, Alabama 35115



## 6. CAPITAL STOCK.

6.1 The aggregate number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock of the par value of One Dollar (\$1.00) per share, which shall be divided into two classes, namely, Class A Common Stock and Class B Common Stock.

6.2 Class A Common Stock shall consist of Five Hundred (500) Shares and Class B Common Stock shall consist of Five Hundred (500) Shares. Said two classes of common stock shall have identical rights and privileges in all respects, except with respect to the election of the directors of the Corporation.

6.3 The holders of the shares of Class A Common Stock, voting as a class separate from the holders of the shares of Class B Common Stock, shall have the right to (1) elect one director of the Corporation, who shall be known as the Class A Director, (2) remove any Class A Director with or without cause at any time, and (3) fill any vacancy of said Class A Director.

6.4 The holders of the shares of Class B Common Stock, voting as a class separate from the holders of the shares of Class A Common Stock, shall have the right to (1) elect one director of the Corporation, who shall be known as the Class B Director, (2) remove any Class B Director with or without cause at any time, and (3) fill any vacancy of said Class B Director.

6.5 Each outstanding share of each respective class of voting common stock shall be entitled to one (1) vote in the election or removal of each director to be elected or removed by such respective Class; and the vote of a majority of the outstanding shares of such respective class of voting common stock shall be required for the election or removal of each director by such Class. No share of any class of common stock shall have any right to vote in the election or removal of the director of any other class of common stock. Any vacancy on the Board shall be filled by the vote of a majority of the holders of the class of stock who had elected the director to be replaced and shall not be filled by the other directors.

6.6 The Corporation may from time to time issue its shares of stock for such consideration (not less than the par value respecting shares having a par value) as may be fixed from time to time by the Board of Directors and may receive in payment thereof, in whole or in part, money, labor done, services actually performed or real or personal property (tangible or intangible). In the absence of fraud in the transaction, the judgment of the Board of Directors as to the value of the consideration received for shares shall be conclusive. Any and all shares so issued for which the consideration so fixed shall have been paid or delivered shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon and the holders of such shares shall not be liable for any further payment in respect thereof.

6.7 The Corporation may, from time to time, lawfully enter into any agreement to which all or less than all of the holders of record of the issued and outstanding shares of its capital stock shall be parties, restricting the transfer of any or all shares of its capital stock represented by certificates therefor upon such reasonable terms and conditions as may be approved by the Board of Directors of this Corporation.

6.8 The Corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the Corporation shares of any class or classes of its stock.

6.9 The Corporation shall have a lien on the shares of its shareholders for any debt or liability incurred to it by such shareholders before notice of transfer of or levy on such shares, which lien may be exercised by cancellation, forfeiture, or public or private sale, upon reasonable notice, of such shares which remedies are cumulative to an action to enforce payment or other remedies provided by law.

6.10 All persons who shall acquire stock in this Corporation shall acquire it subject to the provisions of these Articles of Incorporation. So far as not otherwise expressly provided by the laws of the State of Alabama, the Corporation shall be entitled to treat the person or entity in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in said share on the part of any other person, whether or not the Corporation shall have notice thereof.

6.11 No shareholder shall be entitled as a matter of right to subscribe for, purchase, or receive any shares of stock, or other securities convertible into stock, of the Corporation which it may issue or sell whether out of the number of shares thereof, but any such additional shares of stock or other securities may be issued and disposed of by the Board of Directors to such persons and upon such terms as in its absolute discretion it may deem advisable. No shareholder of any shares of stock shall have any preemptive rights with respect to the issuance of any class of stock including treasury shares.

6.12 The Corporation may purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares.

## **7. DIRECTORS AND OFFICERS.**

7.1 The business and affairs of the Corporation shall be managed by its Board of Directors which shall consist of two (2) directors, divided into one (1) Class A Director and one (1) Class B Director. The number of directors may be changed as provided in the Bylaws of



the Corporation, but no decrease shall have the effect of shortening the term of any incumbent director.

7.2 The members of the Board of Directors shall be elected at the annual meeting of the shareholders and shall hold office for one (1) year until the next annual meeting of shareholders or until their successors have been duly elected and qualified.

7.3 In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is hereby expressly authorized:

a. The power to adopt, alter, amend or repeal the Bylaws or adopt new Bylaws shall be vested in the Board of Directors and the shareholders or either of them, provided, however, that the Board of Directors may not alter, amend or repeal any Bylaw establishing what constitutes a quorum at shareholders' meetings or which was adopted by the shareholders and specifically provides that it cannot be altered, amended or repealed by the Board of Directors, or which is not otherwise permitted by applicable law to be altered, amended or repealed solely by the action of the Board of Directors;

b. To fix and determine and to vary the amount of working capital of the Corporation; to determine whether any, and if any, what part of any accumulated profits shall be declared and paid as dividends; to determine the date or dates for the declaration and payment of dividends; and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in.

c. To take any action required or permitted to be taken by the Board of Directors at a meeting or without a meeting if a consent in writing setting forth the action so taken, is signed by all of the directors.

d. To ratify and approve any action taken by or on behalf of the Corporation's employees, agents, officers, directors or any other party, and, upon such ratification and approval, any such actions so taken shall be effective for and as the act of the Corporation as though such act had been adopted and approved by the Board of Directors at the time such action was taken.

e. The Corporation may, in its Bylaws, confer powers upon the Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon directors by statute.

7.4 The name and address of the person who shall serve as the initial member of the Board of Directors of the Corporation until the first meeting of shareholders is as follows:

NAME	ADDRESS
<u>Class A Director</u>	
Ben F. Habshey	7000 Highway 25 Montevallo, AL 35115
<u>Class B Director</u>	
Eric R. Habshey	7000 Highway 25 Montevallo, AL 35115

7.5 Members of the Board of Directors need not be shareholders of the Corporation.

7.6 The officers of the Corporation shall include a President, Secretary, Treasurer and such other officers as the Board of Directors may from time to time determine.

7.7 The President shall have authority to execute all deeds, mortgages, bonds and other contracts requiring a seal, under the seal of the Corporation. The Secretary or any Assistant Secretary shall have authority to affix this seal to instruments requiring it, and attest the same.

7.8 The officers of the Corporation need not be members of the Board of Directors.

7.9 No contract or other transaction between the Corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction, if the contract or transaction is fair and reasonable to the Corporation and if either:

(1) The fact of such relationship or interest is disclosed to the Board of Directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(2) The fact of such relationship or interest is disclosed to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent.

Common or interested directors may not be counted in determining the presence of a quorum at a meeting of the

Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

## 8. INDEMNIFICATION.

### 8.1 Definitions. In this Article 8:

(a) the term "director" means an individual who is or was a director of the Corporation or an individual who, while a director of the Corporation, is or was serving at the Corporation's request as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the Corporation's request if his or her duties to the Corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term "director" includes, unless the context requires otherwise, the estate or personal representatives of a director.

(b) the term "expenses" includes counsel fees.

(c) the term "liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(d) the term "official capacity" means (1) when used with respect to a director, the office of director in the Corporation; and (2) when used with respect to an individual other than a director, as contemplated in Section 8.7 of this Article 8, the office in the Corporation held by an officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation. The term "official capacity" does not include service for any other corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(e) the term "party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(f) the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

### 8.2 Authority to Indemnify.

(a) Except as provided in subsection (d) of this Section 8.2, the Corporation shall indemnify an individual made a party to a proceeding because he or she is or was a director against liability incurred in the proceeding if:



(1) The individual conducted himself or herself in good faith; and

(2) The individual reasonably believed:

(i) In the case of conduct in his or her official capacity with the Corporation, that the conduct was in the Corporation's best interests; and

(ii) In all other cases, that the conduct was at least not opposed to the Corporation's best interests; and

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan, for a purpose he or she reasonably believed to be in the interests of the participants in, and beneficiaries of, the plan, is conduct that satisfies the requirement of subsection (a)(2)(ii) of this Section 8.2.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this Section 8.2.

(d) The Corporation may not indemnify a director under this Section 8.2:

(1) In connection with a proceeding by or in the right of the Corporation in which the director was adjudged liable to the Corporation; or

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by him or her.

(e) Indemnification permitted under this Section 8.2 in connection with a proceeding by or in the right of the Corporation is limited to reasonable expenses incurred in connection with the proceeding.

8.3 Mandatory Indemnification. The Corporation shall indemnify a director who was successful, on the merits or otherwise, in the defense of any proceeding, or of any claim, issue or matter in such proceeding, where he or she was a party because he or she is or was

a director of the Corporation, against reasonable expenses incurred in connection therewith, notwithstanding that he or she was not successful on any other claim, issue or matter in any such proceeding.

#### 8.4 Advances for Expenses.

(a) The Corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) The director furnishes the Corporation a written affirmation of good faith belief that he or she has met the standard of conduct described in Section 8.2 of this Article 8;
- (2) The director furnishes the Corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct, or is not otherwise entitled to indemnification under Section 8.2(d) of this Article 8, unless indemnification is approved by the court under Section 8.5 of this Article 8; and
- (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article 8.

(b) The undertaking required by subsection (a) (2) of this Section 8.4 must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section 8.4 shall be made in the manner specified in Section 8.6 of this Article 8.

8.5 Court-ordered Indemnification. A director of the Corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding, or may file an action therefor in another court of competent jurisdiction if such court has jurisdiction over the Corporation and the Corporation is a party to the proceeding. On receipt of such an application or the filing of such an action, the court after giving any notice it considers necessary may order indemnification if it determines:

- (a) The director is entitled to mandatory indemnification under Section 8.3 of this Article 8, in which case the court shall also order the Corporation to pay

the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the standard of conduct set forth in Section 8.2 of this Article 8 or was adjudged liable as described in Section 8.2(d) of this Article 8, but if he or she was adjudged so liable the indemnification is limited to reasonable expenses incurred.

#### 8.6 Determination and Authorization of Indemnification.

(a) The Corporation may not indemnify a director under Section 8.2 of this Article 8 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 8.2 of this Article 8.

(b) The determination shall be made:

- (1) By the Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
- (2) If a quorum cannot be obtained under subdivision (1) of this Section 8.6(b), by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;
- (3) By special legal counsel;
  - (i) Selected by the Board of Directors or its committee in the manner prescribed in subdivision (1) or (2) of this Section 8.6(b); or
  - (ii) If a quorum of the Board of Directors cannot be obtained under subdivision (1) of this Section 8.6(b) and a committee cannot be designated under subdivision (2) of this Section 8.6(b), selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or



- (4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination. A majority of the shares that are entitled to vote on the transaction by virtue of not being owned by or under the control of such directors constitutes a quorum for the purpose of taking action under this Section.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b) (3) of this Section 8.6 to select counsel.

#### 8.7 Indemnification of Officers, Employees, and Agents.

(a) The Corporation shall indemnify and advance expenses under this Article 8 to an officer of the Corporation who is not a director to the same extent as to a director.

(b) The Corporation may (but shall not be required to) indemnify and may advance expenses under this Article 8 to an employee or agent of the Corporation who is not a director or officer to the same extent as to a director, but only if and to the extent the Board of Directors of the Corporation specifically authorizes and approves such indemnification with respect to a particular employee or agent, and such indemnification shall be subject to any limitations or conditions the Board of Directors may impose in connection with such authorization and approval.

8.8 Insurance. The Corporation may purchase and maintain insurance, or furnish similar protection (including but not limited to trust funds, self-insurance reserves, or the like), on behalf of an individual who is, or was a director, officer, employee, or agent of the Corporation, or who, while a director, officer, employee, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the Corporation would have power to indemnify him or her against the same liability under Section 8.2 or 8.3 of this Article 8.

#### 8.9 Application of Indemnification Provisions.

(a) Any indemnification, or advances for expenses, authorized under this Article 8 shall not be deemed exclusive of

and shall be in addition to that which may be contained in the Corporation's articles of incorporation, bylaws, a resolution of its shareholders or Board of Directors, or in a contract or otherwise.

(b) This Article 8 does not limit the Corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when he or she has not been made a named defendant or respondent to the proceeding.

9. **EXCULPATION OF DIRECTORS.** To the extent permitted by the laws of the State of Alabama, no director shall be liable to the Corporation or its shareholders for money damages for any action taken, or any failure to act, as a director, except liability for (A) the amount of a financial benefit received by a director to which he or she is not entitled; (B) an intentional infliction of harm on the Corporation or the shareholders; (C) a violation of Code of Alabama (1994) § 10-2B-8.33; (D) an intentional violation of criminal law; or (E) a breach of the director's duty of loyalty to the Corporation or its shareholders.

10. **INCORPORATOR.** The name and address of the incorporator are as follows:

<u>Name</u>	<u>Address</u>
Ronald A. Levitt	505 North 20th Street, Suite 500 Birmingham, Alabama 35203

11. **AMENDMENTS.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter provided by law, and all rights conferred upon officers, directors and shareholders herein are granted subject to this reservation, provided, however, that no such amendment, alteration, change or repeal shall be effective without the approval of a majority of the holders of the common shares of stock and that no such amendment, alteration, change or repeal upon which the holders of any class of common stock shall be entitled to vote as a class shall be effective without the approval of a majority of the holders of that class of common stock.

IN WITNESS WHEREOF, the undersigned Incorporator hereunto subscribed his name to these Articles of Incorporation on March 24, 1997.

  
\_\_\_\_\_  
Ronald A. Levitt

This document prepared by:  
Ronald A. Levitt  
Walston, Wells, Anderson & Bains, LLP  
505 North 20th Street, Suite 500  
Birmingham, AL 35203  
(205) 251-9600

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# STATE OF ALABAMA

I, Jim Bennett, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that pursuant to the provisions of Section 10-2B-4.02, Code of Alabama 1975, and upon an examination of the corporation records on file in this office, the following corporate name is reserved as available:

EBEN Incorporated

This domestic corporation name is proposed to be incorporated in Shelby County and is for the exclusive use of Ronald Levitt, 500 Financial Center, Birmingham, AL 35203 for a period of one hundred twenty days beginning March 17, 1997 and expiring July 16, 1997.



In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

March 17, 1997

Date

A handwritten signature in cursive script that reads "Jim Bennett".

Jim Bennett

Secretary of State



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