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Form **990-PF**

Department of the Treasury  
Internal Revenue Service

**Return of Private Foundation**  
or Section 4947(a)(1) Nonexempt Charitable Trust  
Treated as a Private Foundation

OMB No 1545-0052

**2008**

Note: The foundation may be able to use a copy of this return to satisfy state reporting requirements

For calendar year 2008, or tax year beginning 09/01, 2008, and ending 08/31, 2009

G Check all that apply: Initial return  Final return  Amended return  Address change  Name change

**Use the IRS label. Otherwise, print or type. See Specific Instructions.**

Name of foundation: **THE PATTI AND EVERETT B. BIRCH FOUNDATION**

Number and street (or P O box number if mail is not delivered to street address): **C/O IMOWITZ KOENIG & CO., LLP**

Room/suite: **622 THIRD AVENUE, 33RD FLOOR**

City or town, state, and ZIP code: **NEW YORK, NY 10017**

A Employer identification number: **13-3630494**

B Telephone number (see page 10 of the instructions): **( ) -**

H Check type of organization:  Section 501(c)(3) exempt private foundation  
 Section 4947(a)(1) nonexempt charitable trust  Other taxable private foundation

I Fair market value of all assets at end of year (from Part II, col (c), line 16) \$ **57,322.**

J Accounting method:  Cash  Accrual  
 Other (specify) \_\_\_\_\_ (Part I, column (d) must be on cash basis)

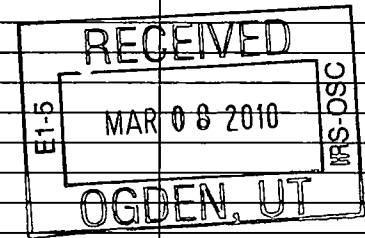
C If exemption application is pending, check here

D 1. Foreign organizations, check here   
2. Foreign organizations meeting the 85% test, check here and attach computation

E If private foundation status was terminated under section 507(b)(1)(A), check here

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here

| Part I Analysis of Revenue and Expenses (The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see page 11 of the instructions)) |   | (a) Revenue and expenses per books | (b) Net investment income | (c) Adjusted net income | (d) Disbursements for charitable purposes (cash basis only) |
|---|---|------------------------------------|---------------------------|-------------------------|---|
| Revenue   | 1 Contributions, gifts, grants, etc., received (attach schedule)                    |                                    |                           |                         |   |
|   | 2 Check <input type="checkbox"/> if the foundation is not required to attach Sch B. |                                    |                           |                         |   |
|   | 3 Interest on savings and temporary cash investments                                | 506.                               | 506.                      | NONE                    |   |
|   | 4 Dividends and interest from securities  |                                    |                           |                         |   |
|   | 5a Gross rents  |                                    |                           |                         |   |
|   | b Net rental income or (loss)   |                                    |                           |                         |   |
|   | 6a Net gain or (loss) from sale of assets not on line 10                            |                                    |                           |                         |   |
|   | b Gross sales price for all assets on line 6a                                       |                                    |                           |                         |   |
|   | 7 Capital gain net income (from Part IV, line 2)                                    |                                    |                           |                         |   |
|   | 8 Net short-term capital gain   |                                    |                           |                         |   |
|   | 9 Income modifications  |                                    |                           |                         |   |
|   | 10a Gross sales less returns and allowances   |                                    |                           |                         |   |
| b Less Cost of goods sold   |   |                                    |                           |                         |   |
| c Gross profit or (loss) (attach schedule)  |   |                                    |                           |                         |   |
| 11 Other income (attach schedule)   |   |                                    |                           |                         |   |
| 12 Total. Add lines 1 through 11  | 506.  | 506.                               | NONE                      |                         |   |
| Operating and Administrative Expenses   | 13 Compensation of officers, directors, trustees, etc.                              | NONE                               |                           |                         |   |
|   | 14 Other employee salaries and wages  |                                    |                           |                         |   |
|   | 15 Pension plans, employee benefits   |                                    |                           |                         |   |
|   | 16a Legal fees (attach schedule)  |                                    |                           |                         |   |
|   | b Accounting fees (attach schedule)   |                                    |                           |                         |   |
|   | c Other professional fees (attach schedule)   | 25,941.                            | NONE                      | NONE                    | 25,941.   |
|   | 17 Interest   |                                    |                           |                         |   |
|   | 18 Taxes (attach schedule) (see page 14 of the instructions)*                       | 55.                                | 55.                       | NONE                    | NONE  |
|   | 19 Depreciation (attach schedule) and depletion                                     |                                    |                           |                         |   |
|   | 20 Occupancy  |                                    |                           |                         |   |
|   | 21 Travel, conferences, and meetings  |                                    |                           |                         |   |
|   | 22 Printing and publications  |                                    |                           |                         |   |
|   | 23 Other expenses (attach schedule) STMT 3  | 1,065.                             | NONE                      | NONE                    | 1,065.  |
|   | 24 Total operating and administrative expenses. Add lines 13 through 23             | 27,061.                            | 55.                       | NONE                    | 27,006.   |
|   | 25 Contributions, gifts, grants paid  |                                    |                           |                         |   |
| 26 Total expenses and disbursements. Add lines 24 and 25  | 27,061.   | 55.                                | NONE                      | 27,006.                 |   |
| 27 Subtract line 26 from line 12  |   |                                    |                           |                         |   |
| a Excess of revenue over expenses and disbursements   | -26,555.  |                                    |                           |                         |   |
| b Net investment income (if negative, enter -0-)  |   | 451.                               |                           |                         |   |
| c Adjusted net income (if negative, enter -0-)  |   |                                    | NONE                      |                         |   |



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Form 990-PF (2008)

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| Part II Balance Sheets  |  | Attached schedules and amounts in the description column should be for end-of-year amounts only (See instructions) |                |                       |
|---|--|--|----------------|-----------------------|
|   |  | Beginning of year  | End of year    |                       |
|   |  | (a) Book Value   | (b) Book Value | (c) Fair Market Value |
| Assets  | 1 Cash - non-interest-bearing . . . . .  | 83,877.  | 57,322.        | 57,322.               |
|   | 2 Savings and temporary cash investments . . . . .   |  |                |                       |
|   | 3 Accounts receivable ▶  |  |                |                       |
|   | Less allowance for doubtful accounts ▶   |  |                |                       |
|   | 4 Pledges receivable ▶   |  |                |                       |
|   | Less allowance for doubtful accounts ▶   |  |                |                       |
|   | 5 Grants receivable . . . . .  |  |                |                       |
|   | 6 Receivables due from officers, directors, trustees, and other disqualified persons (attach schedule) (see page 15 of the instructions) |  |                |                       |
|   | 7 Other notes and loans receivable (attach schedule) ▶   |  |                |                       |
|   | Less allowance for doubtful accounts ▶   |  |                |                       |
|   | 8 Inventories for sale or use . . . . .  |  |                |                       |
|   | 9 Prepaid expenses and deferred charges . . . . .  |  |                |                       |
|   | 10 a Investments - U.S. and state government obligations (attach schedule)   |  |                |                       |
|   | b Investments - corporate stock (attach schedule) . . . . .  |  |                |                       |
|   | c Investments - corporate bonds (attach schedule) . . . . .  |  |                |                       |
|   | 11 Investments - land, buildings, and equipment basis ▶  |  |                |                       |
| Less accumulated depreciation (attach schedule) ▶   |  |  |                |                       |
| 12 Investments - mortgage loans . . . . .   |  |  |                |                       |
| 13 Investments - other (attach schedule) . . . . .  |  |  |                |                       |
| 14 Land, buildings, and equipment basis ▶   |  |  |                |                       |
| Less accumulated depreciation (attach schedule) ▶   |  |  |                |                       |
| 15 Other assets (describe ▶ STMT 4 )  | NONE   | NONE   | NONE           |                       |
| 16 Total assets (to be completed by all filers - see the instructions Also, see page 1, item I) . . . . . | 83,877.  | 57,322.  | 57,322.        |                       |
| Liabilities   | 17 Accounts payable and accrued expenses . . . . .   |  |                |                       |
|   | 18 Grants payable . . . . .  |  |                |                       |
|   | 19 Deferred revenue . . . . .  |  |                |                       |
|   | 20 Loans from officers, directors, trustees, and other disqualified persons . . . . .  |  |                |                       |
|   | 21 Mortgages and other notes payable (attach schedule) . . . . .   |  |                |                       |
|   | 22 Other liabilities (describe ▶ )   |  |                |                       |
|   | 23 Total liabilities (add lines 17 through 22) . . . . .   |  |                |                       |
| Net Assets or Fund Balances   | Foundations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 24 through 26 and lines 30 and 31.   |  |                |                       |
|   | 24 Unrestricted . . . . .  | 83,877.  | 57,322.        |                       |
|   | 25 Temporarily restricted . . . . .  |  |                |                       |
|   | 26 Permanently restricted . . . . .  |  |                |                       |
|   | Foundations that do not follow SFAS 117, check here and complete lines 27 through 31. <input type="checkbox"/>                           |  |                |                       |
|   | 27 Capital stock, trust principal, or current funds . . . . .  |  |                |                       |
|   | 28 Paid-in or capital surplus, or land, bldg, and equipment fund . . . . .   |  |                |                       |
| 29 Retained earnings, accumulated income, endowment, or other funds . . . . .                             |  |  |                |                       |
| 30 Total net assets or fund balances (see page 17 of the instructions) . . . . .                          | 83,877.  | 57,322.  |                |                       |
| 31 Total liabilities and net assets/fund balances (see page 17 of the instructions) . . . . .             | 83,877.  | 57,322.  |                |                       |

| Part III Analysis of Changes in Net Assets or Fund Balances  |   |          |
|--|---|----------|
| 1 Total net assets or fund balances at beginning of year - Part II, column (a), line 30 (must agree with end-of-year figure reported on prior year's return) . . . . . | 1 | 83,877.  |
| 2 Enter amount from Part I, line 27a . . . . .   | 2 | -26,555. |
| 3 Other increases not included in line 2 (itemize) ▶   | 3 |          |
| 4 Add lines 1, 2, and 3 . . . . .  | 4 | 57,322.  |
| 5 Decreases not included in line 2 (itemize) ▶   | 5 |          |
| 6 Total net assets or fund balances at end of year (line 4 minus line 5) - Part II, column (b), line 30 . . . . .  | 6 | 57,322.  |

**Part IV Capital Gains and Losses for Tax on Investment Income**

| (a) List and describe the kind(s) of property sold (e.g., real estate, 2-story brick warehouse, or common stock, 200 shs. MLC Co.)   |   |   | (b) How acquired<br>P-Purchase<br>D-Donation | (c) Date acquired<br>(mo., day, yr.)   | (d) Date sold<br>(mo., day, yr.) |
|--|---|---|--|--|----------------------------------|
| 1a   |   |   |  |  |                                  |
| b  |   |   |  |  |                                  |
| c  |   |   |  |  |                                  |
| d  |   |   |  |  |                                  |
| e  |   |   |  |  |                                  |
| (e) Gross sales price  | (f) Depreciation allowed<br>(or allowable)  | (g) Cost or other basis<br>plus expense of sale | (h) Gain or (loss)<br>(e) plus (f) minus (g) |  |                                  |
| a  |   |   |  |  |                                  |
| b  |   |   |  |  |                                  |
| c  |   |   |  |  |                                  |
| d  |   |   |  |  |                                  |
| e  |   |   |  |  |                                  |
| Complete only for assets showing gain in column (h) and owned by the foundation on 12/31/69  |   |   |  | (i) Gains (Col (h) gain minus col (k), but not less than -0-) or Losses (from col (h)) |                                  |
| (j) FMV as of 12/31/69   | (k) Adjusted basis<br>as of 12/31/69  | (l) Excess of col (i)<br>over col (j), if any   |  |  |                                  |
| a  |   |   |  |  |                                  |
| b  |   |   |  |  |                                  |
| c  |   |   |  |  |                                  |
| d  |   |   |  |  |                                  |
| e  |   |   |  |  |                                  |
| 2 Capital gain net income or (net capital loss) . . . . .  | { If gain, also enter in Part I, line 7<br>If (loss), enter -0- in Part I, line 7 } |   | 2  |  |                                  |
| 3 Net short-term capital gain or (loss) as defined in sections 1222(5) and (6)<br>If gain, also enter in Part I, line 8, column (c) (see pages 13 and 17 of the instructions)<br>If (loss), enter -0- in Part I, line 8, . . . . . | }   |   | 3  |  |                                  |

**Part V Qualification Under Section 4940(e) for Reduced Tax on Net Investment Income**

(For optional use by domestic private foundations subject to the section 4940(a) tax on net investment income.)

If section 4940(d)(2) applies, leave this part blank

Was the foundation liable for the section 4942 tax on the distributable amount of any year in the base period? . . . .  Yes  No  
 If "Yes," the foundation does not qualify under section 4940(e). Do not complete this part.

1 Enter the appropriate amount in each column for each year; see page 18 of the instructions before making any entries

| (a)<br>Base period years<br>Calendar year (or tax year beginning in)  | (b)<br>Adjusted qualifying distributions | (c)<br>Net value of noncharitable-use assets | (d)<br>Distribution ratio<br>(col (b) divided by col (c)) |
|---|--|--|---|
| 2007  | 464,216.                                 | 346,693.                                     | 1.338983  |
| 2006  | 155.                                     | 779.   | 0.198973  |
| 2005  | 434.                                     | 353.   | 1.229462  |
| 2004  | 324.                                     | 144.   | 2.250000  |
| 2003  | 323.                                     | 400.   | 0.807500  |
| 2 Total of line 1, column (d) . . . . .   |  |  | 2 5.824918  |
| 3 Average distribution ratio for the 5-year base period - divide the total on line 2 by 5, or by the number of years the foundation has been in existence if less than 5 years . . . . .  |  |  | 3 1.164984  |
| 4 Enter the net value of noncharitable-use assets for 2008 from Part X, line 5 . . . . .  |  |  | 4 84,925.   |
| 5 Multiply line 4 by line 3 . . . . .   |  |  | 5 98,936.   |
| 6 Enter 1% of net investment income (1% of Part I, line 27b) . . . . .  |  |  | 6 5.  |
| 7 Add lines 5 and 6 . . . . .   |  |  | 7 98,941.   |
| 8 Enter qualifying distributions from Part XII, line 4 . . . . .<br>If line 8 is equal to or greater than line 7, check the box in Part VI, line 1b, and complete that part using a 1% tax rate. See the Part VI instructions on page 18. |  |  | 8 27,006.   |

**Part VI Excise Tax Based on Investment Income (Section 4940(a), 4940(b), 4940(e), or 4948 - see page 18 of the instructions)**

|    |   |    |      |
|----|---|----|------|
| 1a | Exempt operating foundations described in section 4940(d)(2), check here <input type="checkbox"/> and enter "N/A" on line 1 . . . . .                     |    |      |
|    | Date of ruling letter _____ (attach copy of ruling letter if necessary - see instructions) . . . . .  |    |      |
| b  | Domestic foundations that meet the section 4940(e) requirements in Part V, check here <input type="checkbox"/> and enter 1% of Part I, line 27b . . . . . | 1  | 9.   |
| c  | All other domestic foundations enter 2% of line 27b Exempt foreign organizations enter 4% of Part I, line 12, col (b) . . . . .                           |    |      |
| 2  | Tax under section 511 (domestic section 4947(a)(1) trusts and taxable foundations only Others enter -0-) . . . . .  | 2  |      |
| 3  | Add lines 1 and 2 . . . . .   | 3  | 9.   |
| 4  | Subtitle A (income) tax (domestic section 4947(a)(1) trusts and taxable foundations only Others enter -0-) . . . . .                                      | 4  | NONE |
| 5  | <b>Tax based on investment income.</b> Subtract line 4 from line 3 If zero or less, enter -0- . . . . .   | 5  | 9.   |
| 6  | Credits/Payments  |    |      |
| a  | 2008 estimated tax payments and 2007 overpayment credited to 2008 . . . . .   | 6a |      |
| b  | Exempt foreign organizations-tax withheld at source . . . . .   | 6b | NONE |
| c  | Tax paid with application for extension of time to file (Form 8868) . . . . .   | 6c | 55.  |
| d  | Backup withholding erroneously withheld . . . . .   | 6d |      |
| 7  | Total credits and payments Add lines 6a through 6d . . . . .  | 7  | 55.  |
| 8  | Enter any <b>penalty</b> for underpayment of estimated tax. Check here <input type="checkbox"/> if Form 2220 is attached . . . . .                        | 8  |      |
| 9  | <b>Tax due.</b> If the total of lines 5 and 8 is more than line 7, enter amount owed . . . . .  | 9  |      |
| 10 | <b>Overpayment.</b> If line 7 is more than the total of lines 5 and 8, enter the amount overpaid . . . . .  | 10 | 46.  |
| 11 | Enter the amount of line 10 to be <b>Credited to 2009 estimated tax</b> <input type="checkbox"/> 46. <b>Refunded</b> <input type="checkbox"/> . . . . .   | 11 |      |

**Part VII-A Statements Regarding Activities**

|    | Yes | No  |
|----|-----|-----|
| 1a |     | X   |
| 1a |     | X   |
| 1b |     | X   |
| 1c |     | X   |
| 2  |     | X   |
| 3  | X   |     |
| 4a |     | X   |
| 4b |     | N/A |
| 5  |     | X   |
| 6  | X   |     |
| 7  | X   |     |
| 8a |     |     |
| 8b | X   |     |
| 9  |     | X   |
| 10 |     | X   |

**Part VII-A Statements Regarding Activities (continued)**

|  |   |    |   |   |
|--|---|----|---|---|
| 11   | At any time during the year, did the foundation, directly or indirectly, own a controlled entity within the meaning of section 512(b)(3)? If "Yes," attach schedule (see page 20 of the instructions) . . . . . | 11 |   | X |
| 12   | Did the foundation acquire a direct or indirect interest in any applicable insurance contract before August 17, 2008? . . . . .   | 12 |   | X |
| 13   | Did the foundation comply with the public inspection requirements for its annual returns and exemption application? . . . . .   | 13 | X |   |
| Website address ▶ N/A  |   |    |   |   |
| 14 The books are in care of ▶ C/O I K&CO., LLP-MARK R. IMOWITZ Telephone no ▶ 212-867-8711 |   |    |   |   |
| Located at ▶ 622 3RD AVE, 33RD FL, NEW YORK, NY ZIP + 4 ▶ 10017                            |   |    |   |   |
| 15   | Section 4947(a)(1) nonexempt charitable trusts filing Form 990-PF in lieu of Form 1041 - Check here . . . . . N/A ▶ <input type="checkbox"/>  | 15 |   |   |

**Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required**

File Form 4720 if any item is checked in the "Yes" column, unless an exception applies.

|     |  | Yes | No  |
|-----|--|-----|-----|
| 1a  | During the year did the foundation (either directly or indirectly)   |     |     |
| (1) | Engage in the sale or exchange, or leasing of property with a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| (2) | Borrow money from, lend money to, or otherwise extend credit to (or accept it from) a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| (3) | Furnish goods, services, or facilities to (or accept them from) a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| (4) | Pay compensation to, or pay or reimburse the expenses of, a disqualified person? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| (5) | Transfer any income or assets to a disqualified person (or make any of either available for the benefit or use of a disqualified person)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |     |     |
| (6) | Agree to pay money or property to a government official? (Exception. Check "No" if the foundation agreed to make a grant to or to employ the official for a period after termination of government service, if terminating within 90 days) . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| b   | If any answer is "Yes" to 1a(1)-(6), did any of the acts fail to qualify under the exceptions described in Regulations section 53.4941(d)-3 or in a current notice regarding disaster assistance (see page 20 of the instructions)? Organizations relying on a current notice regarding disaster assistance check here ▶ <input type="checkbox"/>  | 1b  | N/A |
| c   | Did the foundation engage in a prior year in any of the acts described in 1a, other than excepted acts, that were not corrected before the first day of the tax year beginning in 2008? . . . . .  | 1c  | X   |
| 2   | Taxes on failure to distribute income (section 4942) (does not apply for years the foundation was a private operating foundation defined in section 4942(j)(3) or 4942(j)(5))  |     |     |
| a   | At the end of tax year 2008, did the foundation have any undistributed income (lines 6d and 6e, Part XIII) for tax year(s) beginning before 2008? . . . . . <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>If "Yes," list the years ▶  |     |     |
| b   | Are there any years listed in 2a for which the foundation is not applying the provisions of section 4942(a)(2) (relating to incorrect valuation of assets) to the year's undistributed income? (If applying section 4942(a)(2) to all years listed, answer "No" and attach statement - see page 20 of the instructions) . . . . .  | 2b  | N/A |
| c   | If the provisions of section 4942(a)(2) are being applied to any of the years listed in 2a, list the years here ▶  |     |     |
| 3a  | Did the foundation hold more than a 2% direct or indirect interest in any business enterprise at any time during the year? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |     |     |
| b   | If "Yes," did it have excess business holdings in 2008 as a result of (1) any purchase by the foundation or disqualified persons after May 26, 1969, (2) the lapse of the 5-year period (or longer period approved by the Commissioner under section 4943(c)(7)) to dispose of holdings acquired by gift or bequest, or (3) the lapse of the 10-, 15-, or 20-year first phase holding period? (Use Schedule C, Form 4720, to determine if the foundation had excess business holdings in 2008) . . . . . | 3b  | N/A |
| 4a  | Did the foundation invest during the year any amount in a manner that would jeopardize its charitable purposes? . . . . .  | 4a  | X   |
| b   | Did the foundation make any investment in a prior year (but after December 31, 1969) that could jeopardize its charitable purpose that had not been removed from jeopardy before the first day of the tax year beginning in 2008? . . . . .  | 4b  | X   |

**Part VII-B Statements Regarding Activities for Which Form 4720 May Be Required (continued)**

5a During the year did the foundation pay or incur any amount to

(1) Carry on propaganda, or otherwise attempt to influence legislation (section 4945(e))?  Yes  No

(2) Influence the outcome of any specific public election (see section 4955), or to carry on, directly or indirectly, any voter registration drive?  Yes  No

(3) Provide a grant to an individual for travel, study, or other similar purposes?  Yes  No

(4) Provide a grant to an organization other than a charitable, etc., organization described in section 509(a)(1), (2), or (3), or section 4940(d)(2)? (see page 22 of the instructions)  Yes  No

(5) Provide for any purpose other than religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals?  Yes  No

b If any answer is "Yes" to 5a(1)-(5), did any of the transactions fail to qualify under the exceptions described in Regulations section 53.4945 or in a current notice regarding disaster assistance (see page 22 of the instructions)?  **5b** N/A

Organizations relying on a current notice regarding disaster assistance check here

c If the answer is "Yes" to question 5a(4), does the foundation claim exemption from the tax because it maintained expenditure responsibility for the grant?  Yes  No *N/A*

If "Yes," attach the statement required by Regulations section 53.4945-5(d)

6a Did the foundation, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?  Yes  No

b Did the foundation, during the year, pay premiums, directly or indirectly, on a personal benefit contract?  Yes  No **6b** X

If you answered "Yes" to 6b, also file Form 8870

7a At any time during the tax year, was the foundation a party to a prohibited tax shelter transaction?  Yes  No

b If yes, did the foundation receive any proceeds or have any net income attributable to the transaction?  Yes  No **7b** X

**Part VIII Information About Officers, Directors, Trustees, Foundation Managers, Highly Paid Employees, and Contractors**

**1 List all officers, directors, trustees, foundation managers and their compensation (see page 22 of the instructions).**

| (a) Name and address | (b) Title, and average hours per week devoted to position | (c) Compensation (If not paid, enter -0-) | (d) Contributions to employee benefit plans and deferred compensation | (e) Expense account, other allowances |
|----------------------|---|---|---|---------------------------------------|
| SEE STATEMENT 5      |   | NONE                                      | NONE  | NONE                                  |
|                      |   |   |   |                                       |
|                      |   |   |   |                                       |
|                      |   |   |   |                                       |

**2 Compensation of five highest-paid employees (other than those included on line 1 - see page 23 of the instructions). If none, enter "NONE."**

| (a) Name and address of each employee paid more than \$50,000 | (b) Title, and average hours per week devoted to position | (c) Compensation | (d) Contributions to employee benefit plans and deferred compensation | (e) Expense account, other allowances |
|---|---|------------------|---|---------------------------------------|
| NONE  |   |                  |   |                                       |
|   |   |                  |   |                                       |
|   |   |                  |   |                                       |
|   |   |                  |   |                                       |

Total number of other employees paid over \$50,000  NONE



**Part X Minimum Investment Return** (All domestic foundations must complete this part. Foreign foundations, see page 24 of the instructions.)

|          |  |           |         |
|----------|--|-----------|---------|
| <b>1</b> | Fair market value of assets not used (or held for use) directly in carrying out charitable, etc., purposes               |           |         |
| <b>a</b> | Average monthly fair market value of securities  | <b>1a</b> | NONE    |
| <b>b</b> | Average of monthly cash balances   | <b>1b</b> | 86,218. |
| <b>c</b> | Fair market value of all other assets (see page 24 of the instructions)  | <b>1c</b> | NONE    |
| <b>d</b> | <b>Total</b> (add lines 1a, b, and c)  | <b>1d</b> | 86,218. |
| <b>e</b> | Reduction claimed for blockage or other factors reported on lines 1a and 1c (attach detailed explanation)                | <b>1e</b> |         |
| <b>2</b> | Acquisition indebtedness applicable to line 1 assets   | <b>2</b>  | NONE    |
| <b>3</b> | Subtract line 2 from line 1d   | <b>3</b>  | 86,218. |
| <b>4</b> | Cash deemed held for charitable activities. Enter 1 1/2% of line 3 (for greater amount, see page 25 of the instructions) | <b>4</b>  | 1,293.  |
| <b>5</b> | <b>Net value of noncharitable-use assets.</b> Subtract line 4 from line 3. Enter here and on Part V, line 4              | <b>5</b>  | 84,925. |
| <b>6</b> | <b>Minimum investment return.</b> Enter 5% of line 5   | <b>6</b>  | 4,246.  |

**Part XI Distributable Amount** (see page 25 of the instructions) (Section 4942(j)(3) and (j)(5) private operating foundations and certain foreign organizations check here  and do not complete this part.)

|           |   |           |        |
|-----------|---|-----------|--------|
| <b>1</b>  | Minimum investment return from Part X, line 6   | <b>1</b>  | 4,246. |
| <b>2a</b> | Tax on investment income for 2008 from Part VI, line 5  | <b>2a</b> | 9.     |
| <b>b</b>  | Income tax for 2008. (This does not include the tax from Part VI)   | <b>2b</b> |        |
| <b>c</b>  | Add lines 2a and 2b   | <b>2c</b> | 9.     |
| <b>3</b>  | Distributable amount before adjustments. Subtract line 2c from line 1                                     | <b>3</b>  | 4,237. |
| <b>4</b>  | Recoveries of amounts treated as qualifying distributions   | <b>4</b>  |        |
| <b>5</b>  | Add lines 3 and 4   | <b>5</b>  | 4,237. |
| <b>6</b>  | Deduction from distributable amount (see page 25 of the instructions)                                     | <b>6</b>  |        |
| <b>7</b>  | <b>Distributable amount as adjusted.</b> Subtract line 6 from line 5. Enter here and on Part XIII, line 1 | <b>7</b>  | 4,237. |

**Part XII Qualifying Distributions** (see page 25 of the instructions)

|          |   |           |         |
|----------|---|-----------|---------|
| <b>1</b> | Amounts paid (including administrative expenses) to accomplish charitable, etc., purposes:  |           |         |
| <b>a</b> | Expenses, contributions, gifts, etc. - total from Part I, column (d), line 26   | <b>1a</b> | 27,006. |
| <b>b</b> | Program-related investments - total from Part IX-B  | <b>1b</b> | NONE    |
| <b>2</b> | Amounts paid to acquire assets used (or held for use) directly in carrying out charitable, etc., purposes   | <b>2</b>  | NONE    |
| <b>3</b> | Amounts set aside for specific charitable projects that satisfy the   |           |         |
| <b>a</b> | Suitability test (prior IRS approval required)  | <b>3a</b> | NONE    |
| <b>b</b> | Cash distribution test (attach the required schedule)   | <b>3b</b> | NONE    |
| <b>4</b> | <b>Qualifying distributions.</b> Add lines 1a through 3b. Enter here and on Part V, line 8, and Part XIII, line 4   | <b>4</b>  | 27,006. |
| <b>5</b> | Foundations that qualify under section 4940(e) for the reduced rate of tax on net investment income. Enter 1% of Part I, line 27b (see page 26 of the instructions) | <b>5</b>  | N/A     |
| <b>6</b> | <b>Adjusted qualifying distributions.</b> Subtract line 5 from line 4   | <b>6</b>  | 27,006. |

**Note:** The amount on line 6 will be used in Part V, column (b), in subsequent years when calculating whether the foundation qualifies for the section 4940(e) reduction of tax in those years.

**Part XIII Undistributed Income** (see page 26 of the instructions)

|  | (a)<br>Corpus | (b)<br>Years prior to 2007 | (c)<br>2007 | (d)<br>2008 |
|--|---------------|----------------------------|-------------|-------------|
| 1 Distributable amount for 2008 from Part XI, line 7   |               |                            |             | 4,237.      |
| 2 Undistributed income, if any, as of the end of 2007  |               |                            |             |             |
| a Enter amount for 2007 only   |               |                            | NONE        |             |
| b Total for prior years 20____, 20____, 20____   |               |                            |             |             |
| 3 Excess distributions carryover, if any, to 2008  |               |                            |             |             |
| a From 2003  | 303.          |                            |             |             |
| b From 2004  | 317.          |                            |             |             |
| c From 2005  | 416.          |                            |             |             |
| d From 2006  | 116.          |                            |             |             |
| e From 2007  | 446,991.      |                            |             |             |
| f Total of lines 3a through e  | 448,143.      |                            |             |             |
| 4 Qualifying distributions for 2008 from Part XII, line 4 ▶ \$ 27,006.   |               |                            |             |             |
| a Applied to 2007, but not more than line 2a   |               |                            | NONE        |             |
| b Applied to undistributed income of prior years (Election required - see page 26 of the instructions)   |               |                            |             |             |
| c Treated as distributions out of corpus (Election required - see page 26 of the instructions)   |               |                            |             |             |
| d Applied to 2008 distributable amount   |               |                            |             | 4,237.      |
| e Remaining amount distributed out of corpus   | 22,769.       |                            |             |             |
| 5 Excess distributions carryover applied to 2008 (If an amount appears in column (d), the same amount must be shown in column (a))   |               |                            |             |             |
| 6 Enter the net total of each column as indicated below:   |               |                            |             |             |
| a Corpus Add lines 3f, 4c, and 4e. Subtract line 5   | 470,912.      |                            |             |             |
| b Prior years' undistributed income Subtract line 4b from line 2b  |               |                            |             |             |
| c Enter the amount of prior years' undistributed income for which a notice of deficiency has been issued, or on which the section 4942(a) tax has been previously assessed |               |                            |             |             |
| d Subtract line 6c from line 6b Taxable amount - see page 27 of the instructions   |               |                            |             |             |
| e Undistributed income for 2007 Subtract line 4a from line 2a Taxable amount - see page 27 of the instructions   |               |                            | NONE        |             |
| f Undistributed income for 2008 Subtract lines 4d and 5 from line 1 This amount must be distributed in 2009  |               |                            |             |             |
| 7 Amounts treated as distributions out of corpus to satisfy requirements imposed by section 170(b)(1)(F) or 4942(g)(3) (see page 27 of the instructions)                   |               |                            |             |             |
| 8 Excess distributions carryover from 2003 not applied on line 5 or line 7 (see page 27 of the instructions)   | 303.          |                            |             |             |
| 9 Excess distributions carryover to 2009. Subtract lines 7 and 8 from line 6a  | 470,609.      |                            |             |             |
| 10 Analysis of line 9  |               |                            |             |             |
| a Excess from 2004   | 317.          |                            |             |             |
| b Excess from 2005   | 416.          |                            |             |             |
| c Excess from 2006   | 116.          |                            |             |             |
| d Excess from 2007   | 446,991.      |                            |             |             |
| e Excess from 2008   | 22,769.       |                            |             |             |

**Part XIV Private Operating Foundations** (see page 27 of the instructions and Part VII-A, question 9) NOT APPLICABLE

1 a If the foundation has received a ruling or determination letter that it is a private operating foundation, and the ruling is effective for 2008, enter the date of the ruling

b Check box to indicate whether the foundation is a private operating foundation described in section  4942(j)(3) or  4942(j)(5)

|  | Tax year |          |          |          | (e) Total |
|--|----------|----------|----------|----------|-----------|
|  | (a) 2008 | (b) 2007 | (c) 2006 | (d) 2005 |           |
| 2 a Enter the lesser of the adjusted net income from Part I or the minimum investment return from Part X for each year listed                    |          |          |          |          |           |
| b 85% of line 2a   |          |          |          |          |           |
| c Qualifying distributions from Part XII, line 4 for each year listed  |          |          |          |          |           |
| d Amounts included in line 2c not used directly for active conduct of exempt activities  |          |          |          |          |           |
| e Qualifying distributions made directly for active conduct of exempt activities Subtract line 2d from line 2c                                   |          |          |          |          |           |
| 3 Complete 3a, b, or c for the alternative test relied upon  |          |          |          |          |           |
| a "Assets" alternative test - enter  |          |          |          |          |           |
| (1) Value of all assets  |          |          |          |          |           |
| (2) Value of assets qualifying under section 4942(j)(3)(B)(i)  |          |          |          |          |           |
| b "Endowment" alternative test - enter 2/3 of minimum investment return shown in Part X, line 6 for each year listed                             |          |          |          |          |           |
| c "Support" alternative test - enter   |          |          |          |          |           |
| (1) Total support other than gross investment income (interest dividends, rents, payments on securities loans (section 512(a)(5)), or royalties) |          |          |          |          |           |
| (2) Support from general public and 5 or more exempt organizations as provided in section 4942(j)(3)(B)(ii)                                      |          |          |          |          |           |
| (3) Largest amount of support from an exempt organization  |          |          |          |          |           |
| (4) Gross investment income  |          |          |          |          |           |

**Part XV Supplementary Information** (Complete this part only if the foundation had \$5,000 or more in assets at any time during the year - see page 27 of the instructions.)

**1 Information Regarding Foundation Managers:**

a List any managers of the foundation who have contributed more than 2% of the total contributions received by the foundation before the close of any tax year (but only if they have contributed more than \$5,000). (See section 507(d)(2).)

NONE

b List any managers of the foundation who own 10% or more of the stock of a corporation (or an equally large portion of the ownership of a partnership or other entity) of which the foundation has a 10% or greater interest.

NONE

**2 Information Regarding Contribution, Grant, Gift, Loan, Scholarship, etc., Programs:**

Check here  if the foundation only makes contributions to preselected charitable organizations and does not accept unsolicited requests for funds. If the foundation makes gifts, grants, etc (see page 28 of the instructions) to individuals or organizations under other conditions, complete items 2a, b, c, and d

a The name, address, and telephone number of the person to whom applications should be addressed

SEE STATEMENT 6

b The form in which applications should be submitted and information and materials they should include.

IN WRITING, STATING THE NATURE, BACKGROUND, AND PURPOSE OF THE REQUEST

c Any submission deadlines:

NONE

d Any restrictions or limitations on awards, such as by geographical areas, charitable fields, kinds of institutions, or other factors

NONE

**Part XV Supplementary Information (continued)**

**3 Grants and Contributions Paid During the Year or Approved for Future Payment**

| Recipient<br>Name and address (home or business) | If recipient is an individual,<br>show any relationship to<br>any foundation manager<br>or substantial contributor | Foundation<br>status of<br>recipient | Purpose of grant or<br>contribution | Amount |
|--|--|--------------------------------------|-------------------------------------|--------|
| a <i>Paid during the year</i>                    |  |                                      |                                     | NONE   |
| <b>Total . . . . . ▶ 3a</b>                      |  |                                      |                                     | NONE   |
| b <i>Approved for future payment</i>             |  |                                      |                                     |        |
| <b>Total . . . . . ▶ 3b</b>                      |  |                                      |                                     |        |

Part XVI-A Analysis of Income-Producing Activities

Table with 5 columns: (a) Business code, (b) Amount, (c) Exclusion code, (d) Amount, (e) Related or exempt function income. Rows include Program service revenue, Membership dues and assessments, Interest on savings and temporary cash investments, Dividends and interest from securities, Net rental income or (loss) from real estate, Net rental income or (loss) from personal property, Other investment income, Gain or (loss) from sales of assets other than inventory, Net income or (loss) from special events, Gross profit or (loss) from sales of inventory, Other revenue, Subtotal, and Total.

(See worksheet in line 13 instructions on page 28 to verify calculations.)

Part XVI-B Relationship of Activities to the Accomplishment of Exempt Purposes

Table with 2 columns: Line No., Explain below how each activity for which income is reported in column (e) of Part XVI-A contributed importantly to the accomplishment of the foundation's exempt purposes (other than by providing funds for such purposes). (See page 28 of the instructions.)



FORM 990PF, PART I - OTHER PROFESSIONAL FEES

| DESCRIPTION        | REVENUE AND EXPENSES PER BOOKS | NET INVESTMENT INCOME | ADJUSTED NET INCOME | CHARITABLE PURPOSES |
|--------------------|--------------------------------|-----------------------|---------------------|---------------------|
| REPRESENTATION FEE | 441.                           | NONE                  | NONE                | 441.                |
| CONSULTING FEE     | 25,500.                        | NONE                  | NONE                | 25,500.             |
| TOTALS             | 25,941.                        | NONE                  | NONE                | 25,941.             |

FORM 990PF, PART I - TAXES

| DESCRIPTION              | REVENUE AND EXPENSES PER BOOKS | NET INVESTMENT INCOME | ADJUSTED NET INCOME | CHARITABLE PURPOSES |
|--------------------------|--------------------------------|-----------------------|---------------------|---------------------|
| TAX ON INVESTMENT INCOME | 55.                            | 55.                   | NONE                | NONE                |
| TOTALS                   | 55.                            | 55.                   | NONE                | NONE                |

FORM 990PF, PART I - OTHER EXPENSES  
=====

| DESCRIPTION   | REVENUE<br>AND<br>EXPENSES<br>PER BOOKS | NET<br>INVESTMENT<br>INCOME | ADJUSTED<br>NET<br>INCOME | CHARITABLE<br>PURPOSES |
|---------------|---|-----------------------------|---------------------------|------------------------|
| ADVERTISEMENT | 115.                                    | NONE                        | NONE                      | 115.                   |
| INSURANCE     | 950.                                    | NONE                        | NONE                      | 950.                   |
| TOTALS        | 1,065.                                  | NONE                        | NONE                      | 1,065.                 |

FORM 990PF, PART II - OTHER ASSETS

| DESCRIPTION              | ENDING BOOK VALUE | ENDING FMV |
|--------------------------|-------------------|------------|
| ORGANIZATION COST        | 10,665.           | 10,665.    |
| ACCUMULATED AMORTIZATION | -10,665.          | -10,665.   |
| TOTALS                   | NONE              | NONE       |

FORM 990PF, PART VIII - LIST OF OFFICERS, DIRECTORS, AND TRUSTEES

| NAME AND ADDRESS   | TITLE AND AVERAGE HOURS PER WEEK DEVOTED TO POSITION | COMPENSATION | CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS | EXPENSE ACCT AND OTHER ALLOWANCES |
|--|--|--------------|---|-----------------------------------|
| JESSICA HIRSHBEIN<br>340 RIVERSIDE DRIVE, APT 15A<br>NEW YORK, NY 10025                          | DIRECTOR, SECRETARY&TREASURER                        | NONE         | NONE                                    | NONE                              |
| AVNA CASSINELLI<br>A. H. RIISE<br>37 MAIN STREET<br>00802<br>ST. THOMAS<br>VIRGIN ISLANDS        | DIRECTOR, VICE PRESIDENT                             | NONE         | NONE                                    | NONE                              |
| VARTAN GREGORIAN<br>CARNEGIE CORPORATION OF NEW YORK<br>437 MADISON AVENUE<br>NEW YORK, NY 10022 | DIRECTOR, PRESIDENT                                  | NONE         | NONE                                    | NONE                              |
| NADIA EL BAROUDI<br>KYRINIAS 1, APARTMENT 101<br>ACROPOLIS, 2008<br>NICOSIA<br>CYPRUS            | DIRECTOR, VICE PRESIDENT                             | NONE         | NONE                                    | NONE                              |
| GRAND TOTALS   |  |              |   |                                   |
|  |  | NONE         | NONE                                    | NONE                              |

FORM 990PF, PART XV - NAME, ADDRESS AND PHONE FOR APPLICATIONS  
=====

MARK IMOWITZ-C/O IMOWITZ KOENIG&CO  
622 THIRD AVENUE  
NEW YORK, NY 10017

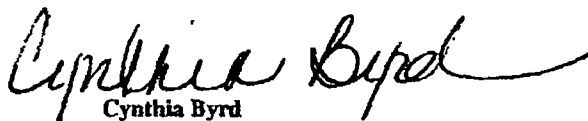
**STATE OF NEW YORK**  
*County of New York, s:*

THE ANNUAL RETURN OF THE PATTI AND EVERETT B. BIRCH FOUNDATION for the fiscal year ended 08/31/2009 is available at its principal office located at 622 Third Avenue, 33rd floor, New York, NY 10017 for inspection during regular business hours by any citizen who requests it within 180 days hereof. Principal Manager of the Foundation is MARKIMOWITZ. 1384721 j12

MaryKate Trawinski, being duly sworn, says that she is the PRINCIPAL CLERK of the Publisher of the **NEW YORK LAW JOURNAL**, a Daily Newspaper; that the Advertisement hereto annexed has been published in the said **NEW YORK LAW JOURNAL** one time on the 12th day of January, 2010.

TO WIT : JANUARY 12 , 2010

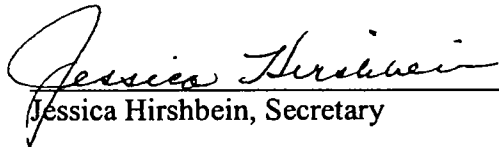
SWORN BEFORE ME, this 17th day  
Of February, 2010.



Cynthia Byrd  
Notary Public, State of New York  
No. 01BY6056945  
Qualified in Kings County  
Commission Expires April 09, 2011

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**THE PATTI AND EVERETT B. BIRCH FOUNDATION**  
(A Delaware Corporation)  
(the "Foundation")

I certify that the attached is a full, true and correct copy of the Amended and Restated By-laws of The Patti and Everett B. Birch Foundation unanimously adopted by the members of the Board of Directors as of the date hereof.

  
\_\_\_\_\_  
Jessica Hirshbein, Secretary

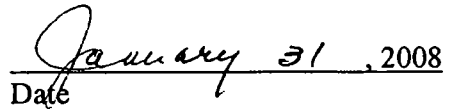
  
\_\_\_\_\_  
Date

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**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**THE PATTI AND EVERETT B. BIRCH FOUNDATION**  
(the "Foundation")

**ARTICLE I**

**MEMBERS**

**Section 1. The Members.** The members are (i) Vartan Gregorian, Avna Cassinelli, Jessica Hirshbein and Nadia El Baroudi (the "founding members") and (ii) other members, if any, as shall be appointed from time to time by unanimous vote of the members, such appointment to take effect at such time as may be specified by the members. If at any time there are no members then in office, the directors shall promptly elect at least one member at any regular meeting or at a special meeting convened for such purpose. As used herein, the terms "member" and "members" are interchangeable, insofar as the plural may refer equally to a single member or to more than one member.

**Section 2. Term.** Each member shall continue to be a member until his or her membership shall terminate by death or resignation, but the membership of any member, other than the founding members, may be terminated at any time, with or without cause and with or without notice, either at a meeting or by action in writing, by a majority of the other members.

**Section 3. Resignation.** Any member may resign from the Foundation by giving written notice of such intention to the President or Secretary, which notice shall be effective immediately or at the time specified therein without the need for acceptance, but shall be presented by the President or Secretary at the first meeting of the members following its receipt.

**Section 4. Annual Meeting.** The annual meeting of the members for the election of the members and the directors, and for the transaction of such other business as may properly come before the meeting shall be held at such place within or outside the State of Delaware and on such date and at such time in each year as shall be fixed from time to time by the members and designated in the notice or waiver of notice of the meeting.

**Section 5. Special Meetings.** Special meetings of the members, for any purpose or purposes, may be called at any time by the President of the Foundation or by a majority of the members or a majority of the directors holding office at the time. Special meetings of the members shall be held at such places within or outside the State of Delaware and on such dates and at such times as shall be fixed by the person or persons calling the meeting.

**Section 6. Notice of Meetings of the Members.** Whenever the members are required or permitted to take any action at a meeting, the written notice of the meeting shall state the place, date and hour of the meeting and, unless it is an annual meeting, identify the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given by electronic transmission (if consented to by the receiving party) and by overnight mail to each member, at least two weeks in advance of the day on which the meeting is to be held.

If a meeting is adjourned to another time or place, it shall be necessary to give notice of the adjourned meeting.

**Section 7. Waivers of Notice.** Notice of a meeting need not be given to any member who submits a signed waiver of notice of the meeting, in person or by proxy, whether before or after the meeting. The attendance of any member at a meeting, in person or by proxy, without

protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by said member.

**Section 8. Quorum.** A majority of the members shall constitute a quorum for the transaction of any business. For purposes of determining the existence of a quorum, a member may be present in person or by proxy. When a quorum is initially present, it may not be broken by the subsequent withdrawal of any members.

The members present may adjourn any meeting despite the absence of a quorum.

**Section 9. Voting Rights.** Every member shall be entitled at every meeting of the members to cast one vote.

**Section 10. Proxies.** Every member may authorize another person or persons to act for said member by proxy. Every proxy must be signed by the member or such member's attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it.

The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of the members.

**Section 11. Vote of Members.** Members, other than the founding members, shall be elected by unanimous vote of the members. Whenever any corporate action, other than the election of the directors or the members, is to be taken by vote of the members, it shall, except as otherwise required by these by-laws, be authorized by a majority of the votes cast at a meeting of the members.

**Section 12. Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the members may be taken without a meeting if a written consent thereto setting forth the action so taken is signed by the members, and such written consent shall be filed with the minutes of the members.

**Section 13. Meeting by Use of Telecommunications.** Any one or more of the members may participate in a meeting of the members by means of a conference telephone or similar telecommunications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

**Section 1. Powers and Number.** The Foundation shall be managed by its Board of Directors (the "Board"). The number of directors constituting the Board shall be not more than nine and not less than two, as shall be determined from time to time by a majority of the members.

**Section 2. Classification, Election and Term.** There shall be one class of directors. Vartan Gregorian, Avna Cassinelli, Jessica Hirshbein and Nadia El Baroudi (the "founding directors") shall serve for life or until their earlier resignation. The directors, other than the founding directors, shall be elected by a majority of the members and shall assume the office immediately upon election and serve until their successor shall have been elected and shall qualify, or until their death or resignation, or until they shall have been removed in the manner hereinafter provided.

**Section 3. Resignations.** Any director may resign from office at any time by delivering a letter of resignation to the President or Secretary, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 4. Removal.** Any or all of the directors, other than the founding directors, may be removed at any time with or without cause, by a vote of a majority of the members holding office at the time.

**Section 5. Newly Created Directorships and Vacancies.** Newly created directorships and vacancies among the directors for any reason may be filled by vote of the members in the manner provided in Article II, Section 2 of these by-laws, or, if the members fail to so act within 30 days, by a vote of a majority of the directors then in office or by a sole remaining director, although less than a quorum. Each director so elected shall serve until his or her successor shall have been elected and shall qualify, or until his or her death, resignation or removal.

**Section 6. Meetings.** Meetings of the Board may be held at any place within or without the State of Delaware as the Board may from time to time fix, or as shall be specified in the notice or waivers of notice thereof. The annual meeting of the Board shall be held at such time as determined by the Board. Special meetings of the Board shall be held whenever called by the President or by any director upon written demand of not less than one-third of the Board. In each case, the person or persons calling the special meeting shall fix the time and place of the meeting.

**Section 7. Quorum and Voting.** Unless a greater proportion is required by law, a majority of the Board shall constitute a quorum for the transaction of business or of any specified

item of business of the Board. Except as otherwise provided by law or by these by-laws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be an act of the Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place with notice to the directors.

**Section 8. Action Without a Meeting.** Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if the members of the Board or the committee unanimously consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

**Section 9. Meeting by Use of Telecommunications.** Any one or more members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of a conference telephone or similar telecommunications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 10. Notice of Meetings; Waiver.** Notice of the time and place of each regular or special meeting of the Board shall be given by electronic transmission (if consented to by the receiving party) and by overnight mail to each director, at least two weeks in advance of the day on which the meeting is to be held. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

**Section 11. Compensation and Expenses of Attending Meetings.** The directors shall not receive any compensation for their services as directors, but may receive an allowance for actual expenses incurred in attending meetings of the Board. Nothing herein contained shall be construed to preclude any director from serving the Foundation in any other capacity as an officer, employee agent or otherwise and receiving compensation therefor, as authorized by the Board.

### **ARTICLE III**

#### **OFFICERS, EMPLOYEES AND AGENTS**

**Section 1. Officers: Number and Qualification.** The officers of the Foundation shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time determine. Any person may hold two or more offices at the same time. Any officer may (but need not) be a director. Subject to removal, all officers shall be appointed to hold office until the next annual meeting of the Board following their election and until their respective successors are elected and qualified.

**Section 2. Compensation of Officers.** The President, Vice President, Secretary, Treasurer and other officers shall receive such reasonable compensation, if any, as the Board may from time to time determine.

**Section 3. Employees and Other Agents.** The Board may appoint from time to time such employees and other agents as it shall deem necessary, each of whom shall hold office at the discretion of the Board, and shall have such authority and perform such duties and shall receive such reasonable compensation, as the Board may from time to time determine. The Board may by resolution delegate these powers to the President or other officers of the Foundation.

**Section 4. Removal.** Any officer, employee or agent of the Foundation may be removed with or without cause by a vote of the majority of the Board. The Board may by resolution delegate these powers to the President or other officers of the Foundation.

**Section 5. President: Powers and Duties.** The President shall have general supervision of the affairs of the Foundation and shall keep the Board fully informed about the activities of the Foundation. He or she shall present at each annual meeting of the Board a report on the condition of the Foundation. He or she shall have the power to sign alone, unless the Board shall specifically require an additional signature, in the name of the Foundation all contracts authorized either generally or specifically by the Board. The President shall preside at meetings of the Board and shall perform such other duties as shall from time to time be assigned by the Board. The President shall have the power and duty to sign and timely file the Internal Revenue Service Form 990-PF, Return of Private Foundation, on behalf of the Foundation, and such other forms or returns as may be required by the Federal government or any State, or to delegate such duty to another party. Subject to the provisions of the General Corporation Law of the State of Delaware, the President shall have and may exercise to the extent specifically permitted by resolution of the Board, the power and authority of the Board in accordance with guidelines adopted by the Board to make grants to qualified organizations out of the Foundation's funds and the President may from time to time also make recommendations to the Board for such grants.

**Section 6. Vice President: Powers and Duties.** The Vice President shall have such titles and powers and perform such duties as may from time to time be prescribed by the Board of Directors, the President, or by the Executive Committee, if any, which duties may include powers elsewhere assigned or delegated to other officers.

**Section 7. Secretary: Powers and Duties.** The Secretary shall act as secretary of all meetings of the Board. He or she shall be responsible for keeping minutes of Board meetings in appropriate record books and giving and serving all notices of the Foundation. He or she shall be custodian of the corporate records and of the corporate seal and affix the latter when required. The Secretary shall perform all the duties customarily incident to the office of secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

**Section 8. Treasurer: Powers and Duties.** The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Foundation, and shall deposit or cause to be deposited all moneys and other valuable effects of the Foundation in the name and to the credit of the Foundation in such depositories as the Board may designate. At the annual meeting of the Board and whenever else required by the Board, he or she shall render a statement of the Foundation's accounts. He or she shall at all reasonable times exhibit the Foundation's books and accounts to any officer or director of the Foundation and shall perform all duties incident to the office of treasurer subject to the control of the Board.

#### **ARTICLE IV**

##### **COMMITTEES OF THE BOARD**

**Section 1. Committees in General.** By resolution adopted by a majority of the Board, it may establish and appoint an executive committee and other standing committees. Each committee shall consist of not less than two directors and, unless otherwise provided in these by-laws or by resolution of the Board, the chairperson of each committee shall be appointed by the President. A majority of a committee shall constitute a quorum for the transaction of business at any committee meeting. The executive committee and each standing

committee established and appointed by the Board, shall maintain a record of its actions and shall have such powers as authorized by these by-laws or by the resolution of the Board except as to the following matters:

1. the filling of vacancies of the members or on the Board, or on any committee;
2. the amendment or repeal of the by-laws or the adoption of the new by-laws;
3. the amendment or repeal of any resolution of the Board;
4. the fixing of compensation of the directors for serving on the Board or any committee;
5. the amendment or repeal of the Foundation's Certificate of Incorporation.

Special committees may be appointed by the President with the consent of the Board and shall have only the powers specifically delegated to them by the Board.

**Section 2. Executive Committee.** The executive committee shall have all the powers of the Board subject to the limitations on committee actions set forth in Article IV, Section 1, of these by-laws, and shall have power to manage the Foundation between meetings of the Board. The President shall be chairperson of the executive committee.

## **ARTICLE V**

### **CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS**

**Section 1. Checks, Notes and Contracts.** The Board is authorized to select such depositories as it shall deem proper for the funds of the Foundation and shall determine who shall be authorized on behalf of the Foundation to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

**Section 2. Investments.** The funds of the Foundation may be retained part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise,

including stocks, bonds or other securities, as the President may deem desirable, subject to any guidelines established by resolutions adopted by a majority of the Board.

## **ARTICLE VI**

### **BOOKS**

There shall be kept at the office of the Foundation correct books of account of the activities and transactions of the Foundation including a minute book, which shall contain a copy of the *Certificate of Incorporation*, a copy of these by-laws, and minutes of all meetings of the Board.

The Board shall regularly review the quality and integrity of the Foundation's accounting, auditing and reporting practices, with the goal of ensuring (a) reliable and trustworthy policies and practices for accounting, financial reporting and disclosure, (b) an adequate system of internal financial controls, and (c) compliance with applicable law and the Foundation's own policies concerning conflicts of interest.

## **ARTICLE VII**

### **FISCAL YEAR**

The fiscal year of the Foundation shall end each year on August 31<sup>st</sup>.

## **ARTICLE VIII**

### **INDEMNIFICATION**

**Section 1. Right to Indemnification.** The Foundation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she was a member, director, officer,

employee or agent of the Foundation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees.

**Section 2. Authority to Advance Expenses.** Expenses incurred by an officer or director (acting in his capacity as such) in defending a proceeding shall be paid by the Foundation in advance of the final disposition of such proceeding, provided, however, that if required by the General Corporation Law of the State of Delaware, as amended, such expenses shall be advanced only upon delivery to the Foundation of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Foundation as authorized in this article or otherwise. Expenses incurred by other agents of the Foundation (or by the directors or officers not acting in their capacity as such) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the Foundation for expense advances shall be unsecured and no interest shall be charged thereon.

**Section 3. Authority to Insure.** The Foundation shall purchase and maintain insurance to protect itself and any agent against any expense, whether or not the Foundation would have the power to indemnify the agent against such expense under applicable law or the provisions of this Article.

**Section 4. Limitation.** The Foundation shall not indemnify anyone if doing so would constitute an act of self-dealing within the meaning of Section 4941 of the Internal Revenue Code of 1986, as the same may be amended (the "Code") or the corresponding provision of any future United States Internal Revenue law, or the regulations thereunder.

**ARTICLE IX**

**PURPOSES**

The purposes of the Foundation are as follows:

(A) To engage in any lawful act or activity for which a non-stock, not-for-profit corporation may be organized under the General Corporation Law of the State of Delaware.

(B) To make distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code.

**ARTICLE X**

**AMENDMENTS**

These by-laws may be amended by the affirmative vote of a majority of the members, or, if none, a majority of the Board, provided that notice of the proposed amendment has been included in the notice of meeting.

**ARTICLE XI**

**WINDING DOWN**

If, for any reason, it shall be in the best interests of the Foundation to dissolve, such dissolution shall occur pursuant to Section 276 of the General Corporation Law of the State of Delaware.

\* \* \* \* \*

# Application for Extension of Time To File an Exempt Organization Return

▶ **File a separate application for each return**

- If you are filing for an **Automatic 3-Month Extension**, complete only **Part I** and check this box  **X**
  - If you are filing for an **Additional (Not Automatic) 3-Month Extension**, complete only **Part II** (on page 2 of this form)
- Do not complete Part II unless** you have already been granted an automatic 3-month extension on a previously filed Form 8868

## Part I Automatic 3-Month Extension of Time. Only submit original (no copies needed)

A corporation required to file Form 990-T and requesting an automatic 6-month extension - check this box and complete Part I only.

All other corporations (including 1120-C filers), partnerships, REMICs, and trusts must use Form 7004 to request an extension of time to file income tax returns

**Electronic Filing (e-file).** Generally, you can electronically file Form 8868 if you want a 3-month automatic extension of time to file one of the returns noted below (6 months for a corporation required to file Form 990-T) However, you cannot file Form 8868 electronically if (1) you want the additional (not automatic) 3-month extension or (2) you file Forms 990-BL, 6069, or 8870, group returns, or a composite or consolidated Form 990-T. Instead, you must submit the fully completed and signed page 2 (Part II) of Form 8868. For more details on the electronic filing of this form, visit [www.irs.gov/efile](http://www.irs.gov/efile) and click on *e-file for Charities & Nonprofits*

|   |  |   |
|---|--|---|
| <b>Type or print</b><br><br>File by the due date for filing your return. See instructions | Name of Exempt Organization<br><b>THE PATTI AND EVERETT B. BIRCH FOUNDATION</b>                                      | Employer identification number<br><b>13-3630494</b> |
|   | Number, street, and room or suite no. If a P O box, see instructions<br><b>622 THIRD AVENUE, 33RD FLOOR</b>          | <b>C/O IMOWITZ KOENIG &amp; CO., LLP</b>            |
|   | City, town or post office, state, and ZIP code. For a foreign address, see instructions<br><b>NEW YORK, NY 10017</b> |   |
|   |  |   |

### Check type of return to be filed (file a separate application for each return)

- |   |  |                                    |
|---|--|------------------------------------|
| <input type="checkbox"/> Form 990               | <input type="checkbox"/> Form 990-T (corporation)                | <input type="checkbox"/> Form 4720 |
| <input type="checkbox"/> Form 990-BL            | <input type="checkbox"/> Form 990-T (sec 401(a) or 408(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ            | <input type="checkbox"/> Form 990-T (trust other than above)     | <input type="checkbox"/> Form 6069 |
| <input checked="" type="checkbox"/> Form 990-PF | <input type="checkbox"/> Form 1041-A                             | <input type="checkbox"/> Form 8870 |

• The books are in the care of ▶ C/O IK&CO., LLP-MARK R. IMOWITZ

Telephone No ▶ 212 867-8711 FAX No ▶ \_\_\_\_\_

- If the organization does not have an office or place of business in the United States, check this box
- If this is for a Group Return, enter the organization's four digit Group Exemption Number (GEN) \_\_\_\_\_ If this is for the whole group, check this box  If it is for part of the group, check this box  and attach a list with the names and EINs of all members the extension will cover

1 I request an automatic 3-month (6 months for a corporation required to file Form 990-T) extension of time until 04/15, 2010, to file the exempt organization return for the organization named above. The extension is for the organization's return for

- ▶  calendar year \_\_\_\_\_ or
- ▶  tax year beginning 09/01, 2008, and ending 08/31, 2009

2 If this tax year is for less than 12 months, check reason  Initial return  Final return  Change in accounting period

|  |           |    |             |
|--|-----------|----|-------------|
| <b>3a</b> If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions  | <b>3a</b> | \$ | <u>55.</u>  |
| <b>b</b> If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit   | <b>3b</b> | \$ | <u>NONE</u> |
| <b>c Balance Due.</b> Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions | <b>3c</b> | \$ | <u>55.</u>  |

**Caution.** If you are going to make an electronic fund withdrawal with this Form 8868, see Form 8453-EO and Form 8879-EO for payment instructions

**For Privacy Act and Paperwork Reduction Act Notice, see Instructions.**