

**Bylaws of
Downtown Berkeley Association
A California Nonprofit Mutual Benefit Corporation**

**ARTICLE I
NAME AND PRINCIPAL OFFICE**

The name of the corporation is Downtown Berkeley Association (“DBA”). The principal office for the transaction of the affairs and activities of this corporation shall be located at 2230 Shattuck Avenue, Suite C, Berkeley, California. The Board of Directors may change the location of the principal office within the County of Alameda. Any such change shall be noted on these Bylaws opposite this Article I.

**ARTICLE II
PURPOSE**

The purpose of this corporation is to promote and improve the downtown business area of the City of Berkeley, California.

**ARTICLE III
LIMITATIONS**

Section 1: Assets. This Corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits or dividends of its members and is organized solely for nonprofit purposes. No part of the profits or net income of this Corporation shall ever inure to the benefit of any Director, officer or member thereof, or to any individual. Upon the dissolution or winding up of the Corporation, after payment of, or provision for payment of, all debts and liabilities of this Corporation, the remaining assets shall be distributed to a nonprofit fund, foundation or corporation which has been formed to provide benefits or services for Downtown Berkeley and which has established its tax exempt status under §501(c) of the Internal Revenue Code. If no such corporation as described above is in existence at the time of dissolution, then the remaining assets shall be distributed to a nonprofit fund, foundation or corporation, which has established its tax-exempt status under §501(c) of the Internal Revenue Code.

**ARTICLE IV
MEMBERS**

Section 1: Classes. The owner, or the owner’s representative, of a parcel paying the Downtown Berkeley Property and Business Improvement District (“DBPBID”) assessment shall be a member. Each assessed parcel may only have one representative as a member of the corporation. An individual who owns multiple parcels may represent and vote on behalf of multiple parcels.

Section 2: Standing. Members who are no more than thirty days past due in remittance of the DBPBID assessment shall be in good standing.

Section 3: Membership Rights. All members in good standing shall have the right to vote, proportionally weighted according to the amount of DBPBID assessment paid as set forth in these Bylaws, on the election of Directors, on the disposition of all or substantially all of the assets of the corporation, on any merger and its principal terms and any amendment of those terms, and on any election to dissolve the corporation. In addition, those members shall have all rights afforded members under the California Nonprofit Mutual Benefit Corporation Law. Those rights are subject to changes in the California Nonprofit Mutual Benefit Corporation Law, and include, but are not limited to:

- A. Approving certain amendments to Bylaws;
- B. Approving most amendments to Articles of Incorporation;
- C. Approving dissolution or the sale of substantial assets;
- D. Inspecting corporate books;
- E. Electing directors; and
- F. Calling special meetings.

Section 4: Membership Termination. A membership shall terminate on occurrence of any of the following events:

- A. Resignation of the member; or
- B. Any event that renders the member ineligible for membership, or failure to satisfy membership qualifications.

Section 5: Membership Suspension. A member may be suspended, under these Bylaws, based on the good faith determination by the Board, or a committee or person authorized by the Board to make such a determination, that the member has failed in a material and serious degree to observe the corporation's rules of conduct, or has engaged in conduct materially and seriously prejudicial to the corporation's purposes and interests. A person whose membership is suspended shall not be a member during the period of the suspension.

Section 6: Termination and Suspension Procedures. If grounds appear to exist for suspending or terminating a member under these Bylaws, the following procedure shall be followed:

- A. The Board shall give the member at least fifteen (15) days' prior notice of the proposed suspension or termination and the reasons for the proposed suspension or termination. Notice shall be given by any method reasonably calculated to provide actual notice. Notice given by mail shall be sent by first-class or registered mail to the member's last address as shown on the corporation's records.
- B. The member shall be given an opportunity to be heard, either orally or in writing, at least five days before the effective date of the proposed suspension or termination. The hearing shall be held, or the written statement considered, by the Board or by a

- committee or person authorized by the Board to determine whether the suspension or termination should occur.
- C. The Board, committee or person shall decide whether the member should be suspended, expelled, or sanctioned in any way. The decision of the Board, committee or person shall be final.
 - D. Any action challenging an expulsion, suspension, or termination of membership, including a claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension, or termination.

Section 7: Transfer of Memberships. A membership may be transferred through the sale of property to a prospective member meeting the qualifications set forth in these Bylaws; provided, however, that no member may transfer a membership or any right arising from it for value. The Board may, by resolution, impose transfer fees or other conditions on the transferring party as it deems fit, provided that those fees and conditions are the same for similarly situated members. All rights of membership cease on the member's death, suspension, termination, or dissolution.

ARTICLE V MEMBERS MEETINGS

Section 1: Annual Meeting. A general meeting of the members shall be held at least annually at such time and place, and on such notice as the Board may determine. Unless elected by written ballot, Directors shall be elected at this meeting. Subject to these Bylaws and the California Nonprofit Mutual Benefit Corporation Law, any other proper business may be transacted at this meeting.

Section 2: Place of Meetings. Meetings of the members shall be held at any place within the DBPBID designated by the Board or by the written consent of all members entitled to vote at the meeting, given before or after the meeting. In the absence of any such designation, members' meetings shall be held at the corporation's principal office. The Board may authorize members who are not present in person to participate by telephone or videoconferencing.

Section 3: Special Meetings. The Board or the President of the Board, if any, or five percent (5%) or more of the members by number, may call a special meeting of the members for any lawful purpose at any time. A special meeting called by any person entitled to call a meeting of the members shall be called by written request, specifying the general nature of the business proposed to be transacted, and addressed to the attention of any submitted to the President of the Board, if any, or the Secretary of the corporation. The officer receiving the request shall cause notice to be given promptly to all members entitled to vote, under Section 4 below, stating that a meeting will be held at a specified time and date fixed by the Board. However, the meeting date shall be at least ten (10), but not more than ninety (90) days after receipt of the request. If the notice is not given within 20 days after the request is received the person or persons requesting the meeting may give the notice. Nothing in this Section shall be construed as limiting, fixing, or affecting the time at which a meeting of members may be held when the meeting is called by the

Board. No business, other than the business that was set forth in the notice of the meeting, may be transacted at a special meeting.

Section 4: Notice.

- A. Member Action. Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to each member entitled to vote at that meeting. The notice shall specify the place, date, and hour of the meeting. The notice shall also specify the means of telephone or videoconference, if any, by which members may participate in the meeting. For the annual meeting, the notice shall state the matters that the Board, at the time notice is given, intends to present for action by the members. For a special meeting, the notice shall state the general nature of the business to be transacted and shall state that no other business may be transacted. The notice of any meeting at which Directors are to be elected shall include the names of all persons who are nominees when notice is given.
- B. Specific Proposals. Approval by the members of any of the following proposals, other than by unanimous approval by those entitled to vote, is valid only if the notice or written waiver of notice states the general nature of the proposal or proposals:
 - 1. Removing a Director without cause;
 - 2. Filling vacancies on the Board pursuant to Article VI, Section 8 of these Bylaws;
 - 3. Amending the Articles of Incorporation;
 - 4. Electing to wind up and dissolve the corporation; or
 - 5. Approving a contract or transaction between the corporation and one or more Directors, or between the corporation and any entity in which a Director has a material financial interest.
- C. Manner of Notice. Notice of any meeting of members shall be in writing and shall be given at least ten (10) but no more than ninety (90) days before the meeting date. The notice shall be given either personally, by e-mail by the corporation, or by first-class, registered, or certified mail, or by other means of written communication, charges prepaid, and shall be addressed to each member entitled to vote, at the address of that member as it appears on the books of the corporation or at the address given by the member to the corporation for purposes of notice. If no address appears on the corporation's books and no address or email has been so given, notice shall be deemed to have been given if either:
 - 1. Notice is sent to that member by first-class mail, or facsimile or other written communication to the corporation's principal office; or
 - 2. Notice is published at least once in a newspaper of general circulation in the county in which the principal office is located.
- D. Brown Act. Notwithstanding the foregoing, notice of meetings shall also be given in accordance with the provisions of the Ralph M. Brown Act, Government Code §54950 et. seq. The noticing provisions in these Bylaws shall be subject to any amendments of the Ralph M. Brown Act.

Section 5: Quorum. Thirty-three percent (33%) of the voting power shall constitute a quorum for the transaction of business at any meeting of members. The members may vote only on matters as to which notice of their general nature was given under Section 4 above, pursuant to Corporations Code §7512. Except as otherwise required by law, the Articles of Incorporation, or these Bylaws, the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, even if enough members have withdrawn to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum.

Section 6: Voting. Members' votes shall be weighted proportional to the amount of DBPBID assessment paid by each member. Subject to the California Nonprofit Mutual Benefit Corporation Law, members in good standing on the record date as determined under Section 8 below shall be entitled to vote at any meeting of members. Voting may be by voice or by ballot, except that election of Directors must be held in accordance with the provisions of Article VI, Section 4. Each member entitled to vote may cast one vote on each matter submitted to a vote of the members. If a quorum is present, the affirmative vote of a majority of the voting power represented at the meeting entitled to vote and voting on any matter, shall be deemed the act of the members unless the vote of a greater number, or voting by classes, is required by the California Nonprofit Mutual Benefit Corporation Law or the Articles of Incorporation. Any action that members may take at any meeting of members may also be taken without a meeting by complying with the following procedures:

- A. The corporation shall distribute one written ballot to each member entitled to vote on the matter. The ballot and any related material may be sent by electronic transmission by the corporation, and responses may be returned to the corporation by electronic transmission that meets the requirements of these Bylaws. All solicitations of votes by written ballot shall:
 1. State the number of responses needed to meet the quorum requirement;
 2. State, with respect to ballots other than for election of Directors, the percentage of approvals necessary to pass the measure or measures; and
 3. Specify the time by which the ballot must be received in order to be counted.
 4. Each ballot so distributed shall:
 - a. Set forth the proposed action;
 - b. Give the members an opportunity to specify approval or disapproval of each proposal; and
 - c. Provide a reasonable time in which to return the ballot to the corporation.
- B. In any election of Directors, a written ballot that a member marks "withhold" or otherwise marks in a manner indicating that authority to vote is withheld, shall not be voted either for or against the election of a Director.
- C. Approval by written ballot shall be valid only when:
 1. The number of votes cast by ballot (including ballots that were marked "withhold" or otherwise indicate that authority to vote is withheld), within the

- time frame specified equals or exceeds the quorum required to be present at a meeting authorizing the action; and
2. The number of approvals equals or exceeds the number of votes that would be required for approval at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot without a meeting.
- D. A written ballot may not be revoked.
- E. All written ballots shall be filed with the secretary of the corporation and maintained in the corporate records for at least three years.

Section 8: Record Date.

- A. For purposes of establishing the members entitled to receive notice of any meeting, entitled to vote at any meeting, entitled to vote by written ballot, or entitled to exercise any rights in any lawful action, the Board of Directors may, in advance, fix a record date.
1. The record date fixed for sending notice of a meeting shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting.
 2. The record date fixed for voting at a meeting shall be no more than sixty (60) days before the date of the meeting.
 3. The record date fixed for voting by written ballot shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited.
 4. The record date fixed for taking any other action shall be no more than sixty (60) days before that action.
- B. If not otherwise fixed by the Board:
1. The record date for determining members entitled to receive notice of a meeting of members shall be the next business day preceding the day on which notice is given, or, if notice is waived, the next business day preceding the day on which the meeting is held. If not otherwise fixed by the Board, the record date for determining members entitled to vote at the meeting shall be the day on which the meeting is held.
 2. The record date for determining members entitled to vote by written ballot shall be the day on which the first written ballot is mailed or solicited.
 3. The record date for determining members entitled to exercise any rights with respect to any other lawful action shall be the date on which the board adopts the resolution relating to that action, or the sixtieth (60th) day before the date of that action, whichever is later.
- C. For purposes of this Section, a person holding a membership at the close of business on the record date shall be a member of record.

Section 9: Proxies. Each member entitled to vote shall have the right to do so either in person or by one or more agents authorized by a written proxy, signed by the member and filed with the secretary of the corporation. A proxy shall be deemed signed if the member's name is placed on the proxy by the member or the member's attorney-in-fact, whether by manual signature, typewriting, facsimile transmission, or otherwise.

- A. If the corporation has one hundred (100) or more members, any form of proxy distributed to ten (10) or more members shall give the member an opportunity to specify a choice between approval and disapproval of each matter or group of related matters and, subject to reasonable specified conditions, shall provide that, when the person solicited specifies a choice in any such matter, the vote shall be cast according to that specification. In an election of Directors, any form of proxy that a member marks “withhold,” or otherwise marks in a manner indicating that authority to vote for the election of Directors is withheld, shall not be voted either for or against the election of a Director.
- B. Any revocable proxy covering matters for which a vote of the members is required shall not be valid unless the proxy sets forth the general nature of the matter on which the vote will be. Such matters include amendments to the Articles of Incorporation; amendments to the Articles or Bylaws changing proxy rights; removal of Directors without cause; filling vacancies on the Board of Directors; the sale, lease exchange, conveyance, transfer, or other disposition of all or substantially all corporate assets unless the transaction is in the usual and regular course of the corporation’s activities; the principal terms of a merger or the amendment of a merger agreement; the election to dissolve the corporation; and contracts or transactions between the corporation and one or more Directors or between the corporation and an entity in which a Director has a material financial interest.
- C. No proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless provided otherwise in the proxy, except that the maximum term of a proxy shall be three (3) years after the date of execution. The revocability of a proxy that states on its face that it is irrevocable shall be governed by Corporations Code §7613. A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect until either:
 - 1. It is revoked by the member executing it before the vote is cast under that proxy:
 - a. By a writing delivered to the corporation stating that the proxy is revoked;
 - b. By a subsequent proxy executed by that member and presented to the meeting; or
 - c. As to any meeting, by the member’s personal attendance and voting at the meeting.
 - 2. Written notice of the death or incapacity of the maker of the proxy is received by the corporation before the vote under the proxy is counted.

Section 10: Adjournment. Any members’ meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the members represented at the meeting, either in person or by proxy. No meeting may be adjourned for more than forty-five (45) days. When a members’ meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned (or the means of electronic transmission by and to the corporation or electronic video screen

communication, if any, by which members may participate) are announced at the meeting at which adjournment is taken. If after adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting.

ARTICLE VI DIRECTORS

Section 1: Number of Directors. The corporation shall have no less than seven (7) and no more than eighteen (18) Directors. The exact number of Directors shall be fixed, within these limits, by a resolution adopted by the Board of Directors. Each Director shall have one (1) vote. A reduction in the number of Directors shall not result in removal of any Director before his or her term of office expires.

Section 2: Tenure. The Directors in office immediately following adoption of these Bylaws shall serve staggered terms of sixteen (16), twenty-eight (28), or forty (40) months, or until their successors have been duly qualified and elected. At the first duly constituted meeting of the Board after adoption of these Bylaws, the Directors shall draw lots to determine their individual terms. Thereafter, Directors shall serve staggered three-year terms. Directors' terms shall begin at the annual meeting during which they are elected to office. Directors may not serve more than two consecutive terms. After a one-year absence, former Directors who have previously served two consecutive terms will be eligible to serve on the board.

Section 3: Criteria.

- A. The Board composition will meet the following criteria:
 - 1. A majority of the Directors shall be members.
 - 2. The Board shall represent both benefit zones of the DBPBID, as defined in the DBPBID Management Plan. This provision shall be subject to any amendments to the DBPBID Management Plan, and shall cease upon termination of the DBPBID or removal of the DBA as the DBPBID owners' association.
 - 3. At least two Directors shall be the owner or owners' authorized representative of a business, and not the owners of property, within the DBPBID boundaries.
- B. The Board may also include:
 - 1. Members who are representatives of education institutions and public property owners.
 - 2. Members who are large and small property and business owners; owners of downtown Berkeley properties with varying uses including office, retail, hospitality, education, and government; and member or non-member residential property owners and tenants who are either a property owner, an executive of an owner organization, or a primary representative of a residence or condominium association.

Section 4: Annual Election. Directors shall be elected by members at the annual meeting of the corporation in accordance with the following procedures:

- A. The Executive Committee shall create the nominating committee not later than ninety (90) days prior to the annual meeting.
- B. The nominating committee shall submit a report to the President, naming potential candidates, at least sixty (60) days prior to the annual meeting.
- C. The Board shall review and approve the nominating committee report. The President shall cause the resulting slate of candidates to be published to all members within thirty (30) days of Board approval and no less than thirty (30) days prior to the annual meeting.
- D. Members may also submit nominations to the President. A nomination by members shall be in writing, signed by twenty-five (25) members not including the nominee, and signed by the nominee to indicate their willingness to serve on the Board. Any such nominations must be submitted not less than ten (10) days prior to the annual meeting.
- E. Directors shall be elected by written ballot at the annual meeting. Where there is only one candidate for each vacant Directorship, and these Bylaws require the vote to be by ballot, the Secretary may cast the vote of the members for the nominee; if anyone objects, however, it is necessary to ballot in the usual way. Written ballots shall be weighted by the amount of DBPBID assessment paid by each member. The President shall appoint three members as inspectors to count the ballots at the annual meeting. Any question of validity of any ballot shall be resolved by a majority vote of the inspectors. The inspectors shall report the results of the ballot to the President, who shall announce the results at the annual meeting.
- F. Notwithstanding the foregoing, the first election after adoption of these Bylaws shall be held following the procedures outlined above, except that the deadlines for each time period described in Sections A through C above shall be: for Section A, sixty (60) days; for Section B, thirty (30) days, and for Section C fifteen (15) days. Further, the first election after adoption of these Bylaws may be held at a duly noticed special meeting rather than the annual meeting as indicated in Section E above..

Section 5: Powers. Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law, the provisions of the DBPBID Management District Plan, and any other applicable laws, and subject to any limitations of the Articles of Incorporation and these Bylaws, the corporation's activities and affairs shall be managed, and all corporate powers shall be exercised by, or under the direction of, the Board.

Section 6: Specific Powers. Without prejudice to the general powers set forth in Article V, Section 6 of these Bylaws, but subject to the same limitations, the Board shall have the power to do the following:

- A. Appoint and remove, at the pleasure of the Board, all corporate officers, agents, and employees; prescribe powers and duties for them as are consistent with the law, the

- Articles of Incorporation, and these Bylaws; fix their compensation; and require from them security for faithful service.
- B. Change the principal office or the principal business office in the County of Alameda from one location to another; cause the corporation to be qualified to conduct its activities in any other state, territory, dependency, or country; conduct its activities in or outside California; and designate a place in the County of Alameda for holding any meeting of members.
 - C. Borrow money and incur indebtedness on the corporation's behalf and cause to be executed and delivered for the corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidence of debt and securities.

Section 7: Occurrence of Vacancies. A vacancy or vacancies on the Board shall occur in the event of:

- A. The death, removal or resignation of any Director; or
- B. The expiration of a Director's term; or
- C. The declaration by resolution of the Board of a vacancy in the office of a Director who has been convicted of a felony, declared of unsound mind by a court order, or found by final order or judgment of any court to have breached a duty arising under Corporations Code §7238, the DBPBID Management District Plan, or other applicable laws; or
- D. The vote of the members, or, if the corporation has fewer than fifty (50) members, the vote of a majority of all members, to remove the Director; or
- E. An increase in the authorized number of Directors; or
- F. The failure of a Director to maintain good standing; or
- G. The failure of a Director to attend three (3) or more consecutive meetings without an approved absence. In this event, the Director may only be removed if the remainder of the Board votes to remove that Director; or
- H. The failure of an election to elect the number of Directors required to be elected in that election.

Section 8: Filling Vacancies. Vacancies shall be filled for the duration of the departed Director's term.

- A. Except for vacancies created by the members' removal of a Director, vacancies on the Board may be filled by approval of the Board, or if the number of Directors then in office is less than a quorum, by either:
 1. The unanimous written consent of the Directors then in office; or
 2. The affirmative vote of a majority of Directors then in office at a meeting held according to the notice provisions of these Bylaws and the Ralph M. Brown Act; or
 3. A sole remaining Director.
- B. The members may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors.

Section 9: Resignation of Directors. Any Director may resign by giving written notice to the President or the Secretary of the Board. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a Directors' resignation is effective at a later time, the Board may elect a successor to take office as of the date when the resignation becomes effective.

Section 10: Removal of Directors. Any Director may be removed, with or without cause, by the vote of the majority of the members of the entire Board of Directors at a special meeting called for that purpose, or at a regular meeting, provided that notice of that meeting and of the removal are given as provided in Article VI.

Section 11: Compensation and Reimbursement. Directors shall serve as volunteers and shall not be compensated. Directors may be reimbursed for expenses, as the Board may establish by resolution to be just and reasonable to the corporation at the time that the resolution is adopted.

ARTICLE VII DIRECTORS MEETINGS

Section 1: Annual Meeting. The annual meeting of the corporation shall be held at such time as the Board may fix from time to time. At the annual meeting, Directors shall be elected and other business may be transacted, subject to the provisions of these Bylaws. Notice of the annual meeting shall be posted at least seventy-two (72) hours prior to the meeting in a publicly accessible location, in accordance with the requirements of the Ralph M. Brown Act. Each notice shall state the general business to be transacted, and the day, time and place of the meeting.

Section 2: Board of Directors Regular Meetings. The Board shall meet not less than quarterly on dates agreed upon by the Board. Notice of regular meetings shall be posted at least seventy-two (72) hours prior to the meeting in a publicly accessible location, in accordance with the requirements of the Ralph M. Brown Act. Each such notice shall state the general business to be transacted, and the day, time and place of the meeting. Business may be transacted at any regular meeting of the Board in accordance with the requirements of the Ralph M. Brown Act.

Section 3: Board of Directors Special Meetings. Special meetings of the Board may be called by the President or any three Directors. Notice of special meetings shall be given to each Director stating the time, place, and business to be discussed at least twenty-four (24) hours before the time of the meeting specified in the notice. Notice shall be delivered to the Board personally, by email, or by any other means pursuant to Government Code §54956. Notice shall also be posted at least twenty-four (24) hours prior to the meeting in a publicly accessible location in accordance with the requirements of the Ralph M. Brown Act.

Section 4: Notice of Meetings. Notice of all meetings will be given in accordance with the provisions of the Ralph M. Brown Act, Government Code §54950 et. seq. The noticing provisions in these Bylaws shall be subject to any amendments of the Ralph M. Brown Act.

Section 5: Place of Meetings. All meetings of the corporation shall be held at such location in the County of Alameda as may be determined by the Board.

Section 6: Electronic Appearance. Teleconferencing and videoconferencing, as authorized by §54953 of the Ralph M. Brown Act may be used for all purposes in connection with meetings. All votes taken during a teleconferenced and videoconferenced meeting shall be by roll call. If teleconferencing or videoconferencing is used, the Board shall post the agenda at all teleconference and videoconference locations and conduct teleconference and videoconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the Board. Each teleconference and videoconference location shall be identified in the notice and agenda of the meeting, and each teleconference and videoconference location shall be accessible to the public. During any meeting utilizing teleconference or videoconference, at least a quorum of the members of the Board shall participate from locations within the boundaries of Downtown Berkeley. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to §54954.3 at each teleconference and videoconference location.

Section 7: Quorum. At any meeting of the Board, a majority of the members of the Board shall constitute a quorum. If less than a quorum is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present. There shall be no voting by proxies or voting by absentia.

ARTICLE VIII OFFICERS

Section 1: Offices Held. The officers of the corporation shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may from time to time designate. All officers shall be members in good standing of the Board. Any number of offices may be held by the same person. The officers shall also serve on the executive committee.

Section 2: Election of Officers. The officers of this corporation shall be chosen annually by the Board and shall serve at the pleasure of the Board, subject to the rights of any officer under any employment contract.

Section 3: Term. All officers shall be elected for a term of one year or until their successors are elected and qualified.

Section 4: Removal of Officers. Without prejudice to the rights of any officer under an employment contract, the Board may remove any officer with or without cause.

Section 5: Resignation of Officers. Any officer may resign at any time by giving written notice to the Board. The resignation shall take effect on the date the notice is received or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation shall be without prejudice to any rights of the corporation under any contract to which the officer is a party.

Section 6: Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed by these Bylaws for normal appointments to that office. However, vacancies need not be filled on an annual basis.

Section 7: Responsibilities of President. The President shall preside at all meetings and have such other powers and duties as the Board or these Bylaws may require.

Section 8: Responsibilities of Vice President. The Vice President shall assume the duties of the President in his or her absence and have such other powers and duties as the Board or these Bylaws may require.

Section 9: Responsibilities of Secretary. The Secretary of the corporation shall have the following responsibilities:

- A. The Secretary shall keep, or cause to be kept by delegation, at the corporation's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings, and actions of the Board, of committees of the Board, and of any members' meetings. The minutes of meetings shall include the time and place that the meeting was held; whether the meeting was annual, general, or special, and if special, how authorized; the notice given; the names of persons present at Board and committee meetings; and the number of members present or represented at members' meetings.
- B. The Secretary shall keep, or cause to be kept by delegation, at the corporation's principal office, a copy of the Articles of Incorporation and Bylaws, as amended to date.
- C. The Secretary shall keep, or cause to be kept by delegation, at the corporation's principal office or at a place determined by resolution of the Board, a record of the corporation's members, showing each member's name, address, business represented, and class of membership.
- D. The Secretary shall give, or cause to be given by delegation, notice of all meetings that these Bylaws require to be given. The Secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may require.

- E. The Secretary shall maintain, or cause to be maintained by delegation, the corporation's records in accordance with the requirements of the California Public Records Act, Government Code §6250 et seq.

Section 10: Responsibilities of Treasurer. The Treasurer of the corporation shall have the following responsibilities:

- A. The Treasurer shall keep and maintain, or cause to be kept and maintained by delegation, adequate and correct books and accounts of the corporation's properties and transactions. The Treasurer shall send or cause to be given to the members and Directors such financial statements and reports as are required to be given by law, by these Bylaws, by the DBPBID Management District Plan, or by the Board. The books of account shall be open to inspection by any Director at all reasonable times.
- B. The Treasurer shall deposit, or cause to be deposited by delegation, all money and other valuables in the name and to the credit of the corporation with such depositories as the Board may designate; shall disburse the corporation's funds as the Board may order; shall render to the President and the Board, when requested, an account of all transactions as Treasurer and of the financial condition of the corporation; and have such other powers and perform such other duties as the Board or these Bylaws may require.

Section 11: Contracts with Directors. No Director of this corporation nor any other corporation, firm, association, or other entity in which one or more of this corporation's Directors are Directors or have a material financial interest, shall be interested, directly or indirectly, in any contract or other transaction with this corporation unless:

- A. The material facts as to the transaction and such Director's interest are fully disclosed or known to the members and such contract or transaction is approved by the members in good faith, with any membership owned by any interested Director not being entitled to vote thereon; or
- B. The material facts regarding such Director's financial interest in such contract or transaction or regarding such common Directorship, officership, or financial interest are fully disclosed in good faith and are noted in the minutes or are known to all Board members before consideration by the Board of such contract or transaction, and such contract of transaction is authorized in good faith by a majority of the Board by a vote sufficient for that purpose without counting the vote of the interested Director.

Section 12: Loans. The corporation shall not loan any money or property to, or guarantee the obligation of, any Director or officer of the corporation. The corporation may advance money to a Director or officer for reasonable business expenses, provided that the Director or officer is entitled to reimbursement.

ARTICLE IX COMMITTEES

Section 1: Establishment. The Board may create one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. Standing committees, committees which include a majority of the Directors, and any other committees meeting the requirements of the Ralph M. Brown Act shall be subject to the open meeting requirements of the Ralph M. Brown Act. Appointments to committees of the Board shall be by majority vote of the Directors then in office. The Board may appoint one or more Directors as alternate members of such committee, who may replace any absent member at any meeting. Any such committee shall have all the authority of the Board, to the extent provided in the Board resolution, except that no committee may do the following:

- A. Take any final action on any matter that, under the California Nonprofit Mutual Benefit Corporation Law, also requires approval of the members or approval of a majority of all members;
- B. Fill vacancies on the Board or any committee of the Board;
- C. Fix compensation of the Directors for serving on the Board or any committee;
- D. Amend or repeal Bylaws or adopt new Bylaws;
- E. Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;
- F. Create any other committees of the Board or appoint the members of committees of the Board; or
- G. Expend corporate funds to support a nominee for Director if more people have been nominated for Director than can be elected; or
- H. With respect to any assets held in charitable trust, approve any contract or transaction between this corporation and one or more of its Directors or between this corporation and an entity in which one or more of its Directors have a material financial interest, subject to the approval provisions of Corporations Code §5233(d)(3).

Section 2: Executive Committee. Pursuant to Article VII of these Bylaws, the Board shall appoint two or more Directors, including the officers, to serve as the executive committee of the Board. The executive committee, unless limited by a resolution of the Board, shall have and may exercise all the authority of the Board in the management of the business and affairs of the corporation between meetings of the Board; provided, however, that the executive committee shall not have the authority of the Board in reference to those matters enumerated in Article VII. All actions of the executive committee shall be reported to and ratified by the Board at the next duly scheduled Board meeting. As a standing committee, the Executive Committee shall be subject to the provisions of the Ralph M. Brown Act.

Section 3: Nominating Committee. Not later than ninety (90) days prior to the annual meeting, the Executive Committee shall appoint a nominating committee composed of at least three members. The nominating committee shall be an ad hoc committee charged with proposing candidates to fill vacancies on the Board.

Section 4: Finance Committee. The Board shall appoint two or more Directors to serve as the finance committee. The finance committee shall be charged with preparing and submitting the annual budget to the Board, and shall have such other duties related to the Corporation's finances as the Board or these Bylaws may require.

Section 5: Meetings and Actions of Committees. Meetings and actions of committees shall be governed by, held, and taken under the provisions of these Bylaws concerning meetings and other Board actions, except that the time for general meetings of committees and calling of special meetings of committees may be set either by Board resolution, or if none, by resolution of the committee. Notice of committee meetings will be given in accordance with the provisions of the Ralph M. Brown Act. Minutes of each meeting shall be kept and shall be filed with the corporate records in accordance with the provisions of the California Public Records Act. The Board may adopt rules for governance of any committee as long as the rules are consistent with these Bylaws. If the Board has not adopted rules, the committee may do so.

ARTICLE X INDEMNIFICATION AND INSURANCE

Section 1: Indemnification.

- A. To the fullest extent permitted by law, this corporation shall indemnify its Directors and officers, and may indemnify employees and other persons described in the Corporations Code, including persons formerly occupying such positions, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in the Corporations Code, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in the Corporations Code. "Expenses," as used in these Bylaws, shall have the same meaning as in the Corporations Code.
- B. On written request to the Board by any person seeking indemnification under the Corporations Code, the Board shall promptly decide under that code whether the applicable standard of conduct set forth has been met, and if so the Board shall authorize indemnification.
- C. To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under these Bylaws in defending any proceeding covered by these Bylaws shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the corporation for those expenses.

Section 2: Insurance. This corporation shall have the right, and shall use its best efforts, to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees and other agents, to cover any liability asserted against or incurred by any

officer, Director, employee, or agent in such capacity or arising from the officer's, Director's, employee's, or agent's status as such.

ARTICLE XI RECORDS

Section 1: Maintenance. This corporation shall keep all of the following records, either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the two:

- A. Adequate and correct books and records of account;
- B. Minutes of the proceedings of its members, Board and committees; and
- C. A record of each member's name, address, and class of membership.

Section 2: Inspection by Directors. Every Director shall have the absolute right, at any reasonable time, to inspect the corporation's books, records, and documents of every kind, and to inspect the physical properties of the corporation. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of books, records, and documents of every kind.

Section 3: Inspection by Members. Every member shall have the right to inspect corporate books and records for reasons reasonably related to the requesting members' interest in the corporation pursuant to Corporations Code §8333. Members who make a written request received by the Corporation within sixty (60) days following the conclusion of any annual, regular, or special meeting of the members have the right to receive a report of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of membership abstaining or withheld from voting pursuant to Corporations Code §8325.

Section 4: Articles and Bylaws. This corporation shall keep, at its principal office, the original or a copy of the Articles of Incorporation and Bylaws, as amended to the current date, that shall be open to inspection by members at all reasonable times during office hours.

Section 5: Annual Reports. The Secretary of the corporation shall prepare and submit, or cause to be prepared and submitted, the following annual reports. The Secretary shall keep, or cause to be kept, copies of all annual reports with the corporation's records.

- A. DBPBID Annual Report. The DBPBID annual report will be prepared and submitted in accordance with the provisions of Streets and Highways Code §36650 and the DBPBID Management District Plan.
- B. DBA Annual Report. The DBA annual report shall be prepared within 120 days after the end of the corporation's fiscal year. This corporation shall annually notify each member of their right to receive a copy of the financial report under this section. On written request by a member, the Board shall promptly cause the most recent annual report to be sent to the requesting member. If the Board approves, the corporation

may send the report and accompanying material sent pursuant to this section by electronic transmission. This section shall not apply if the corporation receives less than \$10,000 in gross revenues or receipts during the fiscal year. The report shall contain the following information in appropriate detail:

1. A balance sheet as of the end of the fiscal year, an income statement, and statement of cashflows for the fiscal year, accompanied by an independent accountant's report, or if none, by the certificate of an authorized officer of the corporation that they were prepared without audit from the corporation's books and records;
2. A statement of the place where the names and addresses of current members are located; and
3. Any other information required by these Bylaws or the Board.

Section 6: Annual Statement. As part of the annual report to all members, or as a separate document if no annual report is issued, the corporation shall annually prepare and mail, deliver or send by electronic transmission to its members and furnish to its Directors a statement of any transaction or indemnification of the kinds in subparagraph B below within 120 days after the end of the corporation's fiscal year.

- A. The statement shall include:
 1. A brief description of the transaction;
 2. The names of interested persons involved and their relationship to the corporation;
 3. The nature of interested persons in the transaction;
 4. The amount of the interested persons' interest, except that in a partnership in which such person is a partner, only the partnership interest need be stated.
- B. Transactions included in the statement shall be those transactions:
 1. To which the corporation or its subsidiary was a party;
 2. Which involved more than \$50,000 or was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000; and
 3. In which either of the following interested persons had a direct or indirect material financial interest (a mere common Directorship is not a material financial interest):
 - a. Any Director or officer of the corporation;
 - b. Any holder of more than 10 percent of the voting power of the corporation.

Section 7: Membership List.

- A. Unless the corporation provides a reasonable alternative as provided below, any member may do either or both of the following for a purpose reasonably related to the member's interest as a member:
 1. Inspect and copy records containing member's names, addresses, and voting rights during usual business hours on 5 days' prior written demand on the

corporation, which must state the purpose for which the inspection rights are requested; or

2. Obtain from the secretary of the corporation, on written demand and tender of a reasonable charge, a list of names, addresses, and voting rights of members who are entitled to vote for Directors as of the most recent record date for which that list has been compiled, or as of the date, after the date of demand, specified by the member. The demand shall state the purpose for which the list is requested. The secretary shall make this list available to the member on or before the later of 10 days after the demand is received or the date specified in the demand as the date as of which the list is to be compiled.
- B. The corporation may, within 10 business days after receiving a demand under this section, make a written offer of an alternative method of reasonable and timely achievement of the proper purpose specified in the demand without providing access to or a copy of the membership list. Any rejection of this offer must be in writing and must state the reasons the proposed alternative does not meet the purpose of the demand.
- C. If the corporation reasonably believes that the information will be used for a purpose other than the one reasonably related to a person's interest as a member, or if it provides a reasonable alternative under this section, it may deny the member access to the membership list.
- D. Any inspect and copying under this section may be made in person or by the member's agent or attorney. The right of inspection includes the right to copy and make extracts. This right of inspection extends to the records of any subsidiary of the corporation.

Section 8: Accounting Records and Minutes. On written demand of the corporation, any member may inspect, copy, and make extracts of the accounting books and records and the minutes of the proceedings of the members, the Board of Directors, and committees of the Board at any reasonable time for a purpose reasonably related to the member's interest as a member. Any such inspection and copying may be made in person or by the member's agent or attorney. This right of inspection extends to the records of any subsidiary of the corporation.

ARTICLE XII OPERATIONS AND ADMINISTRATION

Section 1: Fiscal Year. The fiscal year of the corporation shall begin on January 1 and end on December 31 of each year.

Section 2: Executive Director/Chief Executive Officer. The Board may employ an Executive Director/Chief Executive Officer who shall:

- A. Serve as the executive officer of the corporation;

- B. Be charged with the general supervision and management of the corporation's affairs and staff;
- C. Advise and attend all meetings of the Board of Directors and Executive Committee;
- D. Serve as an ex-officio member of all committees; and
- E. Act as the corporation's agent for service of process.

Section 3: Funds. All funds of the corporation shall be deposited in such banks, trust companies, or other reliable depositories as the Board from time to time may determine. All checks, drafts, endorsements, notes and evidence of indebtedness of the corporation shall be signed by such officers or agents of the corporation and in such manner as the Board may determine from time to time. Endorsements for deposits to the credit of the corporation shall be made in such manner as the Board may determine from time to time.

Section 4: Contracts. The President or any other officer or agent specifically authorized by the Board may, in the name of and on behalf of the corporation, enter into those contracts or execute and deliver those instruments that are specifically authorized by the Board. The Board may authorize an officer or the President/Chief Executive Officer to sign contracts as needed. Without the express and specific authorization of the Board, no officer or agent may enter into any contract or execution or deliver any instrument in the name of or on behalf of the corporation.

Section 5: Brown Act Compliance. To the extent that Government Code §54952(c) shall require the corporation to be subject to the open meeting requirements of the Ralph M. Brown Act, then the Board will comply with the provisions of Government Code §54950 through and including §54961. To the extent that any provisions of these Bylaws are inconsistent with the Ralph M. Brown Act, the provisions of said Act shall prevail. In the event the corporation does not meet the requirements of Government Code §54952(c), then the Board will not be required to meet the requirements of the Brown Act.

ARTICLE XIII AMENDMENT

Section 1: Bylaw Amendments. Subject to the members' rights and the limitations set forth below, the Board may, by a vote of the majority of directors then in office, adopt, amend, or repeal Bylaws unless doing so would:

- A. Materially and adversely affect the members' rights as to voting, dissolution, redemption, or transfer;
- B. Increase or decrease the number of members authorized in total or for any class;
- C. Effect an exchange, reclassification, or cancellation of all or part of the memberships;
or
- D. Authorize a new class of membership.

Section 2: Changes to Number of Directors. Once members have been admitted to the corporation, the Board may not, without the members' approval:

- A. Fix or change the authorized number of Directors;
- B. Fix or change the minimum or maximum number of Directors;
- C. Change from a fixed number of Directors to a variable number of Directors or vice versa.

CERTIFICATE OF SECRETARY

I, , certify as follows:

- 1. I am the duly elected and acting Secretary of Downtown Berkeley Association, a California Nonprofit Mutual Benefit Corporation;
- 2. That these Bylaws, consisting of 21 pages, inclusive, are the Bylaws of the corporation as adopted by the Board of Directors on _____, 2011;
- 3. That these Bylaws have not been amended or modified since that date.

Daniel Rabin, Secretary