

BYLAWS OF LAKESHORE AVENUE BUSINESS IMPROVEMENT DISTRICT

A California Nonprofit Mutual Benefit Corporation

Preamble

Developed by a coalition of property and business owners on Lakeshore Avenue in Oakland, California, the Lakeshore Avenue Business Improvement District, or "BID," is a benefit assessment district established to improve and convey special benefits to properties located along the business district. The BID provides improvements and activities, including security, maintenance, marketing and economic development, above and beyond those currently provided by the City of Oakland.

The BID encompasses all properties fronting approximately three blocks of Lakeshore Avenue bounded by Lake Park Avenue to the west and Mandana Boulevard to the east. This area includes all properties within these boundaries on Lakeshore Avenue. The BID also includes 770 Wesley Way.

Subject to earlier dissolution upon approval of the membership, the BID is intended to have a five-year life beginning January 1, 1998 and ending on December 31, 2002.

ARTICLE I

Name and Principal Office

1.1 Name.

The name of this corporation is Lakeshore Avenue Business Improvement District.

1.2 Principal Office.

The principal office for the transaction of the activities, affairs, and business of the corporation ("Principal Office") is located at 4393 Bridgeview Drive, Oakland, California 94602. The business address is P.O.Box 16268, Oakland, California 94610. The board of directors ("Board") may change the principal office from one location to another. Any change of location of the principal office shall be noted by the secretary on these bylaws opposite this Section, or this Section may be amended to state the new location.

1.3 Other Offices.

The Board may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to conduct its activities.

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ARTICLE II

General Purpose

2.1 General Purpose.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the Nonprofit Mutual Benefit Corporation Law.

ARTICLE III

Membership

3.1 Classes and Qualifications of Membership.

This corporation shall have three classes of members: (i) BID property owners, (ii) BID merchants, and (iii) representatives of community groups. Any person dedicated to the purposes of this corporation shall be eligible for membership upon nomination by two BID property owners and upon approval of the membership application by the Board and the payment of such dues and fees as the Board may fix from time to time.

3.2 Voting Rights.

Members in good standing who are BID property owners shall have the right to vote, 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, on any special assessments of BID property owners, and on any election to disestablish the BID or dissolve the corporation. For regular business requiring a vote, including the election of the Board, property owners will be entitled to one vote for each parcel within the BID owned by them. In addition, those members shall have all rights afforded members under the California Nonprofit Mutual Benefit Corporation Law. If the corporation is dissolved, those members shall receive a pro rata distribution of all assets, exclusive of those held in charitable trust, remaining after payment or provision for payments of the obligations and debts of the corporation and provision for any other payment required under applicable law.

3.3 Other Persons Associated with the Corporation.

The corporation may refer to persons or entities associated with it as "members" even though such persons or entities are not voting members as set for in Section 3.2 of these bylaws, and no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Corporations Code unless that person or entity shall have qualified for such a voting membership under Section 3.2 of these bylaws. References in these bylaws to members shall mean members as defined in Section 5056 of the California Corporations Code, that is, the members of the class set forth in Section 3.2 of these bylaws. By amendment of its articles of incorporation or of these bylaws, the corporation may grant some or all of the rights

of a member to any person or entity that does not have the right to vote on any of the matters specified in Section 3.2 of these bylaws, but no such person or entity shall be a member within the meaning of Section 5056 of the California Corporations Code.

3.4 Dues and Fees.

Each voting and nonvoting member must pay, within the time and on the conditions set by the board, the dues and fees in amounts to be fixed from time to time by the Board.

3.5 Assessments.

Each BID property owner must pay assessments within the time, in the amounts, and on the conditions set by the Oakland City Council and collected by Alameda County.

3.6 Good Standing.

Those members who have paid the required dues, fees, and assessments in accordance with these bylaws and who are not suspended shall be members in good standing.

3.7 Termination of Membership

A membership shall terminate on occurrence of any of the following events:

- a. Resignation of a member, on reasonable notice to the corporation;
- b. Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;
- c. Failure of a member to pay dues, fees, or assessments as set by the Board within thirty (30) days after they become due and payable; or failure to satisfy membership qualifications;
- d. Occurrence of any event that renders a member ineligible for membership, or failure to satisfy membership qualifications; or
- e. Expulsion of the member under Section 3.9 of 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 rules of conduct of the corporation, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the corporation.

3.8 Suspension of Membership.

A member may be suspended, under Section 3.9 of 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 purposes and interests of the corporation. A person whose membership is suspended shall not be a member during the period of suspension.

3.9 Procedure for Expulsion or Suspension.

If grounds appear to exist for expulsion or suspension of a member under Section 3.7 or 3.8 of these bylaws, the procedure set forth below shall be followed:

a. The member shall be given fifteen (15) days' prior notice of the proposed expulsion or suspension and the reasons for the proposed expulsion or suspension. Notice shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be sent by certified mail return receipt requested 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 (5) days before the effective date of the proposed expulsion. 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 expulsion or suspension should take place.

c. The board, committee, or person shall decide whether or not the member should be expelled, suspended, or sanctioned in some other 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 (1) year after the date of the expulsion, suspension, or termination.

3.10 Reapplication after Termination.

A former member who has voluntarily terminated his or her membership may be readmitted on the same terms and in the same manner as an original applicant. A former member whose membership is terminated involuntarily by the Board may apply for readmission on the same terms and in the same manner as an original applicant provided that two (2) years have elapsed since the date of termination.

3.11 Membership Meetings.

Meetings of the members shall be held at any place within or outside California designated by the Board or by written consent of all persons entitled to vote at the meeting,

given before or after the meeting. All meetings of the members shall be conducted in accordance with Robert's Rules of Order.

3.12 Annual Meetings.

An annual members' meeting shall be held each year in the second quarter of the corporation's fiscal year on such date and at such time as fixed by the Board of Directors. Notification of members shall be as provided in Section 3.16 of these bylaws. At this meeting, directors shall be elected and any other proper business may be transacted, subject to Sections 3.15 through 3.17 of these bylaws. At each annual meeting beginning in 1999, voting members will be asked to vote on the continuance or dissolution of the corporation. At any annual meeting, voting members may be asked to vote on disestablishment of the BID to be effective as of the end of the first month following the next anniversary date of the formation of the BID, provided that a petition signed by at least four voting members in good standing has been submitted to the entire membership at least thirty days prior to the annual meeting. If a majority of the voting members in good standing vote for disestablishment of the BID, a petition must be filed with the City Council in accordance with the provisions of Section 14.2 below.

3.13 Special Meetings.

Special meetings of the members shall be called as follows:

a. A special meeting for any lawful purpose other than voting on disestablishment may be called at any time by the Board or by the President, or by five (5) percent or more of the members. A special meeting called by any person (other than the Board) entitled to call a meeting shall be called by written request, specifying the general nature of the business proposed to be transacted, and submitted to the President or any Vice President or the Secretary of the corporation. The officer receiving the request shall cause notice to be given promptly to the members entitled to vote, in accordance with Sections 3.14 through 3.16 of these bylaws, stating that a meeting will be held at a specified time and date fixed by the Board, provided, however, that the meeting date shall be at least thirty-five (35) but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, 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 the general nature of which was set forth in the notice of the meeting, may be transacted at a special meeting.

b. If at least four voting members in good standing have timely submitted a prior written request to the President, Vice President, or Secretary for disestablishment of the BID in accordance with the provisions of Section 36650 of the California Streets and Highways Code, a special meeting of the members shall be called by said officer to be held within the first thirty days after the anniversary date of the establishment of the BID. The officer receiving the

request shall cause notice to be given promptly to the members entitled to vote, in accordance with Section 3.14 through 3.16 of these bylaws, stating that a meeting will be held at a specified time and date to vote on disestablishment of the BID. The meeting date must be at least thirty-five (35) days but no more than ninety (90) days after receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, the persons requesting the meeting may give the notice.

3.14 Notice Requirements.

Whenever members are required or permitted to take any action at a meeting, written notice of the meeting shall be given, in accordance with Section 3.15 of these bylaws, to each member entitled to vote at that meeting. The notice shall specify the place, date and hour of the meeting and (1) for a special meeting, the general nature of the business to be transacted, and that no other business may be transacted, or (2) for the annual meeting, those matters that the Board, at the time notice is given, intends to present for action by the members, but any proper matter may be presented at the meeting. 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.

3.15 Notice of Certain Agenda Items.

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:

- a. Removing a director without cause;
- b. Filling vacancies on the Board;
- c. Amending the articles of incorporation;
- d. 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;
- e. Electing to wind up and dissolve the corporation;
- f. Electing to disestablish the BID under the provisions of Section 36650 of the California Streets and Highways Code; or
- g. Approving a plan of distribution of assets, other than money, not in accordance with liquidation rights of any class or classes as specified in the articles or bylaws, when the corporation is in the process of winding up.

3.16 Manner of Giving 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 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 appearing 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 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 telegraphic 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. An affidavit of mailing of any notice of any members' meeting, or the giving of such notice by other means, may be executed by the Secretary of the corporation, and if so executed, shall be filed and maintained in the corporation's minute book.

3.17 Quorum.

Fifty-one percent (51%) of the voting power shall constitute a quorum for the transaction of business at any meeting of members. 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. Notwithstanding the foregoing, any action taken on the continuance of the BID, on the dissolution of the BID, or on additional assessments to members must be approved by at least two-thirds of the members required to constitute a quorum. Furthermore, any action taken on disestablishment of the BID in accordance with Section 36650 of the California Streets and Highways Code must be approved by BID property owners who pay 50% or more of the assessments levied. See Section 3.13b above and Article 14 below.

3.18 Adjournment and Notice of Adjourned Meeting.

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 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.

3.19 Eligibility to Vote.

Subject to the provisions of the California Nonprofit Mutual Benefit Corporation Law, members entitled to vote at any meeting of members shall be members in good standing as of the record date determined under Section 3.25 of these Bylaws.

3.20 Manner of Casting Votes.

Voting may be by voice or ballot, except that any election of directors must be by ballot if demanded by any member at the meeting before the voting begins. Each member entitled to vote shall be entitled to cast one (1) vote on each matter submitted to a vote of the members,

3.21 Approval by Majority Vote

If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote and voting on any matter, shall be 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, the articles of incorporation, or these bylaws.

3.22 Written Waiver of Notice or Consent.

The transactions of any members' meeting, however called or noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present either in person or by proxy, and (ii) either before or after the meeting, each member entitled to vote, who is not present in person or by proxy, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes. The waiver of notice, consent, or approval need not specify either the business to be transacted or the purpose of any meeting of members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Sections 3.15, the waiver of notice, consent, or approval shall state the general nature of the proposal. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes.

3.23 Waiver by Attendance.

A member's attendance at a meeting shall also constitute a waiver of notice of and presence at that meeting, unless the member objects at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. Also, attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting but not so included, if that objection is expressly made at the meeting.

3.24 Action without a Meeting by Unanimous Written Consent.

Any action required or permitted to be taken by the members may be taken without a meeting, if all members consent in writing to the action. The written consent or consents shall be filed with the minutes of the proceedings of the members. The action by written consent shall have the same force and effect as the unanimous vote of the members.

3.25 Record Date for Notice, Voting, Written Ballots, and Other Actions.

For purposes of determining the members entitled to notice of any meeting, entitled to vote at any meeting, or entitled to exercise any rights with respect to any lawful action, the Board may fix in advance a record date. The record date so fixed for notice of a meeting shall be not more than ninety (90) nor less than ten (10) days before the date of the meeting. The record date so fixed for voting at a meeting or for any other action shall be not more than sixty (60) days before the date of the meeting or before the date of said action. If not otherwise fixed by the Board, the record date for determining members entitled to receive notice of a meeting of members shall be the business day next preceding the day on which notice is given or, if notice is waived, the business day next preceding the day on which the meeting is held, and the record date for determining members to vote at the meeting shall be the day on which the meeting is held. If not otherwise fixed by the Board, 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. 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.

3.26 Proxies.

Each person 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 person and filed with the Secretary of the corporation. A proxy shall be deemed signed if the member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or the member's attorney-in-fact. If the corporation has one hundred (100) or more members, any form of proxy distributed to ten (10) or more members shall afford an opportunity on the proxy to specify a choice between approval and disapproval of each matter

or a group of related matters and to provide, subject to reasonable specified conditions, that when the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with that specification. In any election of directors, any form of proxy that a member marks "withhold," or marks otherwise 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. Any revocable proxy covering matters for which a vote of the members is required, including the following matters, shall not be valid unless the proxy sets forth the general nature of the matter to be voted on:

- a. Amendments to the articles of incorporation;
- b. Amendments to the articles or bylaws changing proxy rights;
- c. Removal of directors without cause;
- d. Filling vacancies on the Board;
- e. The sale, lease, exchange, conveyance, transfer, or other disposition of all or substantially all of the corporate assets, unless the transaction is in the usual and regular course of the corporation's activities;
- f. The principal terms of a merger or the amendment of a merger agreement;
- g. The election to dissolve the corporation;
- h. Contracts or transactions between the corporation and one or more directors or between the corporation and an entity in which the director has a material financial interest; or
- i. A plan of distribution of assets other than money to members when the corporation is in the process of winding up, when the distribution is not in accordance with liquidation rights of any class or classes.

A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect until (a) revoked by the member executing it before the vote is cast under that proxy (i) by a writing delivered to the corporation stating that the proxy is revoked, (ii) by a subsequent proxy executed by that member and presented to the meeting, or (iii) as to any meeting, by the member's personal attendance and voting at the meeting, or (b) written notice of the death or incapacity of the maker of the proxy is received by the corporation before the vote under that proxy is counted, provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of a proxy shall be three (3) years from the date of execution. The revocability of a proxy which states on its face that it is irrevocable shall be governed by Section 7613 of the California Corporations Code.

ARTICLE IV

The Board of Directors

4.1 General Corporate Powers of the Board of Directors.

Subject to the provisions and limitations of the California Nonprofit Mutual Benefit Corporation Law and any other applicable laws, and subject to any limitations in the articles of incorporation and bylaws regarding actions that require the approval of the members, the corporation's activities and affairs shall be managed, and all corporate power shall be exercised, by or under the Board's direction.

4.2 Specific Powers of the Board of Directors.

Without prejudice to the general powers set forth in Section 4.1 above of these bylaws, but subject to the same limitations, the directors shall have the power to:

a. Appoint and remove at the pleasure of the Board all the corporation's officers, agents, and employees; prescribe powers and duties for them that are consistent with the law, with the articles of incorporation, and with these bylaws; and fix their compensation and require from them security for faithful performance of their duties.

b. Change the Principal Office or the principal business office in California 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 within or outside California; and designate any place within or outside California for holding any meeting of members,

c. Adopt and use the corporate seal; prescribe the forms of membership certificates consistent with the provisions of Section 7313 of the California Corporations Code; and alter the forms of the seal and certificates,

d. Borrow money and incur indebtedness on behalf of the corporation 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 evidences of debt and securities, and

e. Approve payment of all bills and statements submitted to the corporation, or delegate the authority for such approval to a person or committee selected by the Board.

4.3 Number of Directors.

The Board shall consist of nine (9) directors until changed by amendment of these bylaws. Six (6) directors shall be elected by the voting members for two-year terms. Two (2)

directors shall be designated by the non-voting class of members consisting of the BID merchants and shall serve for a one-year term. One (1) director shall be designated by the non-voting class of members consisting of representatives of community groups and shall serve for a one-year term.

4.4 Election, Designation, and Term of Office

Three (3) of the six (6) directors elected by the voting members shall be elected at each annual meeting of members to hold office for two years. The two (2) directors designated by the BID merchants and the one (1) director designated by the representatives of the community groups shall be designated at each annual meeting of members to hold office until the next annual meeting. No director shall serve more than three (3) consecutive full terms. If any directors are not elected at any annual meeting, they may be elected at any special members' meeting held for that purpose. Each such director, including a director elected to fill a vacancy or elected at a special members' meeting, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.

Not later than sixty (60) days prior to the annual meeting of members, the President shall appoint a nominating committee composed of at least three (3) voting members for the purpose of proposing directors to fill expiring terms and vacancies. The nominating committee shall make its report to the President at least thirty (30) days prior to the annual meeting. The President shall cause the report of the nominating committee to be published to all voting members within thirty (30) days of receipt of the report, but in no event less than thirty (30) days prior to the annual meeting of members. Additional nominations may be made from the floor at the annual meeting. Any additional nominees must be present to accept the nomination. If the number of nominees does not exceed the number of directors to be elected, the President may declare the election of the nominees by acclamation, subject to the approval of the members in attendance. If the number of nominees exceeds the number of directors to be elected, balloting shall be by written ballot. In the event of an election by written ballot, the President shall appoint three (3) voting members as tellers of election to count the ballots. Any question of validity of any ballot shall be resolved by a majority vote of the tellers. When all of the ballots have been counted, the tellers shall report the results to the President, who shall announce the results both at the annual meeting and by written notice to each voting member.

4.5 Vacancies on the Board.

A vacancy on the Board shall exist on the occurrence of the following: (i) the death or resignation of any director; (ii) the declaration by resolution of the Board of a vacancy in the office of a director who has been declared of unsound mind by an order of court or convicted of a felony; (iii) the vote of the members to remove any director(s); (iv) the increase of the authorized number of directors; or (v) the failure of the members, at any meeting of members at which any directors are to be elected, to elect the number of directors required to be elected at that meeting. In addition, if any director accrues three (3) unexcused absences from regular

meetings of the board within a twelve-month period, a majority of the remaining members of the Board shall have the option of immediately terminating that director's term.

4.6 Resignations.

Any director may resign by giving written notice to the President or the Secretary. The resignation shall be effective when the notice is given unless it specifies a later time for the resignation to become effective. If a director's resignation is effective at a later time, the Board may elect a successor to take office when the resignation becomes effective.

4.7 Filling Vacancies.

Except for vacancies created by removal of a director by the members, vacancies on the Board may be filled by a majority of the directors then in office, whether or not less than a quorum, or by a sole remaining director. The members may fill any vacancy or vacancies not filled by the directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

4.8 Director's Meetings.

Meetings of the Board shall be held at least once a month at such date, time and place as has been designated by resolution of the Board. All regular monthly meetings of the Board shall be open to the public and shall be conducted according to Robert's Rules of Order.

4.9 Annual Meetings.

Immediately after each annual meeting of members, the Board shall hold a regular meeting for purposes of organization, election of offices, and the transaction of other business. Notice of this meeting is not required.

4.10 Special Meetings.

Other meetings of the Board may be held at such time and place as the Board may fix from time to time. Special meetings of the Board for any purpose may be called at any time by the President, Vice-President, Secretary, or by any two directors.

4.11 Notice of Meetings.

Notice of the time and place of directors' meetings shall be given to each director by one of the following methods: (i) by personal delivery of written notice; (ii) by first class mail, postage prepaid; (iii) by telephone, either directly to the director or to a person at the director's place of business who would reasonably be expected to communicate the notice promptly to the director; or (iv) by facsimile, electronic mail, or telegram, charges prepaid. All such notices shall be given or sent to each director at his or her business address as shown on the records of

the corporation. Notices sent by first-class mail shall be deposited in the United States mails at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile, electronic mail, or telegram shall be delivered, telephoned, telefaxed, emailed, or given to the telegraph company at least forty-eight (48) hours before the time set for the meeting. The notice shall state the time of the meeting, and the place if the place is other than the Principal Office. Neither the business to be transacted nor the purpose of any regular or special meeting of the Board need be specified in the notice of meeting.

4.12 Quorum.

A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn. Every action taken or decision made by a quorum shall be the act of the Board, subject to the more stringent provisions of the California Nonprofit Mutual Benefit Corporation Law, including, without limitation, those provisions relating to (i) approval of contracts or transactions between the corporation and one or more directors or between the corporation and any entity in which a director has a material financial interest; (ii) creation of and appointments to committees of the Board; and (iii) indemnification of directors. A meeting at which more than a quorum is initially present may continue to transact business, despite the withdrawal of directors, if any action taken or decision made is approved by at least a quorum.

4.13 Waiver of Notice.

Notice of a meeting need not be given to any director who, either before or after the meeting, signs a waiver of notice, a written consent to the holding of the meeting, or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings. Notice of a meeting need not be given to any director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

4.14 Adjournment.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another place and time.

4.15 Notice of Adjourned Meeting.

Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of adjournment.

4.16 Action Without a Meeting.

Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with the minutes of the proceedings of the Board.

4.17 Compensation and Reimbursement.

Directors may receive such compensation, if any, for their services as directors, and such reimbursement of expenses, as may be determined by Board resolution to be just and reasonable.

ARTICLE V

Officers

5.1 Officers of the Corporation.

The officers of the corporation shall be the President, Vice President, Secretary, and Treasurer. In addition, the Board may appoint an Executive Director, who shall not be a voting member. The BID may also have, at the discretion of the Board, one or more additional Vice Presidents and such other officers as it may deem appropriate.

5.2 Election of officers.

The officers of the corporation shall be chosen annually by the Board and shall serve at the pleasure of the Board, subject to the rights, if any, of any officer under any contract of employment.

5.3 Removal of Officers.

Any officer may be removed, with or without cause, by the Board.

5.4 Resignation of Officers.

Any officer may resign at any time by giving written notice to the corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contracts to which the officer is a party.

5.5 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 in these bylaws for regular appointments to that office, provided, however, that vacancies need not be filled on an annual basis.

5.6 President.

The President shall be the chief executive officer of the corporation and shall supervise, direct, and control the corporation's activities, affairs, and officers. The President shall preside at all meetings of the members of the corporation and shall chair the Board. The President shall have such other powers and duties as the Board or bylaws may prescribe. No person except the President, the Executive Director, or a person designated by the President shall make public statements on behalf of the BID unless such authority is specifically granted by the Board.

5.7. Vice President.

In the absence or disability of the President, the Vice President shall perform all duties of the President, The Vice President shall have such other powers and perform such other duties as the Board or the bylaws may prescribe.

5.8 Secretary.

The Secretary shall keep or cause to be kept, 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 members' meetings. The minutes of meetings shall include the time and place of holding, whether the meeting was annual, regular, or special and, if special, how authorized, the notice given, the names of those present at Board meetings, and the number of members present or represented at members' meetings. The Secretary shall keep or cause to be kept, at the Principal Office in California, a copy of the articles of incorporation and bylaws, as amended to date, and a record of the corporation's members, showing each member's name and address. The Secretary shall give, or cause to be given, notice of all meetings of members, of the Board, and of Committees of the Board required by these bylaws to be given. The Secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the bylaws may prescribe.

5.9 Treasurer.

The Treasurer shall be the chief financial officer of the BID and shall keep and maintain, or cause to be kept and maintained, 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 by law, by these bylaws, or by the Board to be given. The books of account shall be open to inspection by any

director at all reasonable times. The Treasurer shall be responsible for the collection of fees, dues, and assessments and shall deposit the same in the name of the corporation in such banks, trust companies or other depositories as the Board shall select. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the corporation with such depositories as the board may designated, shall disburse the corporation's funds as the Board may order, shall render to the President and to the Board, when requested, an account of all transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as the Board or the bylaws may prescribe.

5.10 Executive Director.

The Executive Director shall be the general manager and chief administrator whose actions are authorized by the Board. The Executive Director shall retain all operating records of the BID not held by the Secretary or the Treasurer. As noted above in Section 5.06, no person except the President, the Executive Director, or a person designated by the President shall make public statements on behalf of the BID unless such authority is specifically granted by the Board.

5.11 Compensation.

Officers may receive such compensation, if any, for their services and such reimbursement of expenses, as the Board may determine by resolution to be just and reasonable.

ARTICLE VI

Contracts and Checks

6.1 Contracts.

Subject to the terms of Section 3.2 above granting members the right to vote on the disposition of the assets of the corporation, on any merger, and on any election to dissolve the corporation, the Board may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific circumstances.

6.2 Checks and Other Instruments.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or agent and in such manner as shall from time to time be determined by resolution of the board of directors.

ARTICLE VII

Records

7.1 Maintenance of Corporate Records.

The corporation shall keep at its Principal Office adequate and correct books and records of accounts, written minutes of the proceedings of its members and of the Board, a copy of the articles of incorporation and bylaws, and a record of each member's name and address.

7.2 Inspection by Members

Subject to Section 8330 et seq. of the California Corporations Code and 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:

a. Inspect and copy the records of members' names, addresses, and voting rights during usual business hours on five (5) days' prior written demand on the corporation, which demand must state the purpose for which the inspection rights are requested; or

b. 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 the election of 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 ten (10) days after (i) the demand is received, or (ii) the date specified in the demand as of the date as of which the list is to be compiled.

The corporation may, within ten (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 that the proposed alternative does not meet the proper purpose of the demand. If the corporation reasonably believes that the information will be used for a purpose other than 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. Any inspection and copying under this Section may be made in person or by the member's agent or attorney. In each instance where any attorney or other agent shall be the person who seeks the right to inspection, the demand for inspection shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to do so on behalf of the member. The right of inspection includes the right to copy and make extracts. Any right of inspection extends to the records of any subsidiary of the corporation.

On written demand on a 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, and the 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, Any right of inspection extends to the records of any subsidiary of the corporation.

7.3 Maintenance and Inspection of Articles and Bylaws.

The corporation shall keep at its Principal office, or if its principal office is not in California, at its principal business office in this state, the original or a copy of the articles of incorporation and bylaws, as amended to date, which shall be open to inspection by the members at all reasonable times during office hours.

7.4 Inspection by Directors.

Every director shall have the absolute right at any reasonable time to inspect the corporation's books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. 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 documents.

ARTICLE VIII

Annual Reports and Statements

8.1 Annual Report.

An annual report shall be prepared within one hundred twenty (120) days after the end of the corporation's fiscal year, That report shall contain the following information in an appropriate detail:

a. A balance sheet as of the end of the fiscal year, and an income statement and statement of changes in financial position for the fiscal year, accompanied by any report on them by independent accountants, or, if there is no such report, by the certificate of an authorized officer of the corporation that they were prepared without audit from the books and records of the corporation.

b. The statement of the place where the names and addresses of the current members are located.

c. Any information that is required by Section 10.2 below.

The corporation shall notify each member annually of the member's right to receive a financial report under this Section. Except as provided below, on written request by a member,

the Board shall promptly cause the most recent annual report to be sent to the requesting member. This Section shall not apply if the corporation receives less than Ten Thousand Dollars (\$10,000.00) in gross revenues or receipts during the fiscal year.

8.2 Annual Statement of Certain Transactions and Indemnifications.

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 or deliver to its members and furnish to its directors a statement of any transaction or indemnification of the following kind within 120 days after the end of the corporation's fiscal year:

a. Unless approved by members under Section 7233(a) of the California Corporations Code, any transactions to which the corporation, its parent, or its subsidiary is a party, which involved more than Fifty Thousand Dollars (\$50,000.00) or was one of a number of transactions with the same person involving, in the aggregate, more than Fifty Thousand Dollars (\$50,000.00), and 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): (i) any director or officer of the corporation, its parent, or its subsidiary; or (ii) any holder of more than ten (10) percent of the voting power of the corporation, its parent, or its subsidiary.

The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction, and, when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

b. A brief description of the amounts and circumstances of any loans, guaranties, indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000.00) paid during the fiscal year to any officer or director of the corporation under Sections 10.1 through 10.3 of these bylaws, unless the loan, guaranty, indemnification, or advance has already been approved by the members under Section 5034 of the California Corporations Code, or the loan or guaranty is not subject to the provisions of subdivision (a) of Section 7235(a) of that Code.

ARTICLE IX

Indemnification

9.1 Right of Indemnity.

To the fullest extent permitted by law, this corporation shall indemnify its executive director, board of directors, officers, employees, and other persons described in Section 7237(a) of the California Corporations Code, including persons formerly occupying any such position,

against all expenses, judgments, fines, settlements, and any other amounts actually and reasonably incurred by them in connection with any "proceeding" as that term is used in that section, 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 that section. "Expenses" as used in this bylaw shall have the same meaning as in Section 7237(a) of the California Corporations Code.

9.2 Approval of Indemnity.

On written request to the Board by any person seeking indemnification under Section 7237(b) or Section 7237(c) of the California Corporations Code, the Board shall promptly determine under Section 7237(e) of the California Corporations Code whether the applicable standard of conduct set in Section 7237(b) or Section 7237(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to that proceeding, the Board shall promptly call a meeting of members. At that meeting, the members shall determine under Section 7237(e) whether the applicable standard of conduct set forth in Section 7237(b) or Section 7237(c) has been met and, if so, the members present at the meeting in person or by proxy shall authorize indemnification.

9.3 Advancement of Expenses.

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 Section 9.1 and 9.2 of 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 determined that the person is entitled to be indemnified by the corporation for those expenses.

ARTICLE X

Insurance

10.1 Maintenance of Insurance.

The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its executive director, officers, directors, employees, and other agents, against any liability asserted against or incurred by any office, director, employee, or agent in such capacity or arising out of the officer's, directors, employees, or agent's status as such.

ARTICLE XI

Construction and Definitions

11.1 Construction and Definitions.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these bylaws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular includes the plural and the plural includes the singular, and the term "person" includes both a legal entity and a natural person.

ARTICLE XII

Amendments

12.1 Amendment by Board.

Subject to the rights of members provided below, the Board may adopt, amend, or repeal bylaws unless the action 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.

Once members have been admitted to the corporation, the Board may not, without the approval of two-thirds of the members, specify or change any bylaw provision that would:

- a. Fix or change the authorized number of directors;
- b. Fix or change the minimum or maximum number of directors; or
- c. Change from a fixed number of directors to a variable number of directors or vice versa.

If any provision of these bylaws requires the vote of a larger proportion of the Board than otherwise required by law, such provision may not be altered, amended, or repealed except by that greater vote. Without the approval of two-thirds of the members, the Board may not

adopt, amend, or repeal any bylaw that would:

- a. Increase or extend the terms of directors;
- b. Allow any director to hold office by designation or selection rather than by election by a member or members;
- c. Increase the quorum for members' meetings;
- d. Repeal, restrict, create, expand, or otherwise change proxy rights; or
- e. Authorize cumulative voting.

12.2 Amendments by Members.

New bylaws may be adopted or these bylaws may be amended or repealed by approval of the members, provided, however, that any such adoption, amendment, or repeal also requires approval by the members of a class if that action would:

- a. Materially and adversely affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer in a manner different from the way in which the action affects another class;
- b. Materially and adversely affect that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;
- c. Increase or decrease the number of memberships authorized for that class;
- d. Increase the number of memberships authorized for another class;
- e. Effect an exchange, reclassification, or cancellation of all or part of the memberships of that class; or
- f. Authorize a new class of memberships.

Any provision of these bylaws that requires the vote of a larger proportion of the members than otherwise is required by law may not be altered, amended, or repealed except by a vote of that greater number. No amendment may extend a director's term beyond that for which the director was elected.

ARTICLE XIII

Fiscal Year

13.1 Fiscal Year.

The fiscal year of the corporation shall be January 1 through December 31.

ARTICLE XIV

Property and Business Improvement District Law of 1994

14.1 Conformity with Business Improvement District Law

Subject to the terms of Section 14.2 below, all provisions of these Bylaws are intended to conform to the provisions of the Property and Business Improvement District Law of 1994, codified at California Streets and Highways Code Sections 36600 et seq., as said sections may be amended from time to time.

14.2 Disestablishment of the BID

The BID may be disestablished upon the written petition to the Oakland City Council signed by a majority of the BID voting members in good standing. In any calendar year, said petition must be filed with the City Council within the first thirty days following the anniversary date of the establishment of the BID. The procedure for calling a special meeting of the membership to vote on disestablishment is described above under Section 3.13b of these Bylaws.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of _____, a California nonprofit mutual benefit corporation, that the above bylaws, consisting of twenty-four (24) pages, are the bylaws of this corporation as adopted by the board of directors effective as of _____, 19_____, and that they have not been amended or modified since that date.

Executed on _____, 19____, at _____, California.

, Secretary