

**BYLAWS  
OF  
OLD TOWN BUSINESS IMPROVEMENT CORPORATION**

**ARTICLE I**

**DEFINITIONS**

Section 1. Definitions in General. The following terms have the meanings assigned to them in this Section 1 whenever used in these Bylaws:

(i) “Assessed Property” means any parcel of real property located within the Service District Area that is subject to local taxation in accordance with the Code of Virginia Section 15.2-2403.5, other than any parcel of real property that is utilized by its owners primarily for their own residential purposes (as defined herein), owned by the federal, state or local government, or owned by Washington Metropolitan Area Transit Authority.

(ii) “Assessed Value” means the value of Real Property established by the City’s Office of Real Estate Assessments from year to year for the purpose of imposing real property taxes on the Real Property and in effect as of the first day of each fiscal year of the Corporation.

(iii) “BID” means Business Improvement Service District within the meaning contemplated by the Service District statutes.

(iv) “BID Assessment” means an additional ad valorem assessment levied by the City on Real Property within the BID Assessment Area payable by the Owners of Commercial Real Property in the BID Assessment Area.

(v) “BID Assessment Area” shall have the meaning set forth in Section 2. of this Article I.

(vi) “BID Assessment Rate” means the rate at which the BID Assessment for any Real Property is determined from time to time as determined by the City.

(vii) “BID Plan” means the description provided pursuant the Code of Virginia Section 15.2-2402, as approved by the City Council from time to time.

(viii) “Board” means the duly elected board of directors of the Corporation as provided for in Article VI of the Bylaws.

(ix) “Board Member” means a member of the Board.

(x) “City” means the governmental body of the City of Alexandria, Virginia, as recognized by Virginia.

(xi) “City Council” means the City Council of the City of Alexandria, Virginia, the duly elected, governing body of the City.

(xii) “Commercial Real Property” means Real Property other than Residential Real Property and Exempt Real Property as further defined in the Code of Virginia Section 58.1-3221.3, and shown on Real Property Tax Statements as provided by the City. Commercial Real Property shall be deemed to include, among other commercial uses, transient accommodations, such as but not limited to hotels, motels and extended stay facilities.

(xiii) “Commercial Tenant” means a Person who is lessee, or other lawful occupant with a City of Alexandria Business License, of Commercial Real Property located within the BID Assessment Area who is not an Owner and who conducts a lawful commercial use as defined in the City Zoning Ordinance.

(xiv) “Corporation” means the Old Town Business Improvement Corporation.

(xv) “Director/Directors” means one or more duly elected or appointed Board Members.

(xvi) “Exempt Owner” means a Person who owns Exempt Real Property, including but not limited to the City, the Commonwealth of Virginia, the Washington Metropolitan Area Transit Authority, and the United States of America.

(xvii) “Exempt Real Property” means Real Property within the boundaries of the BID Assessment Area that is exempt from paying real property taxes to the City according to applicable law including but not limited to the Ordinance.

(xviii) “Member/Members” means all Commercial Tenants and Owners.

(xix) “Old Town Business Improvement Service District” shall mean the Old Town Business Improvement Service District established pursuant to the Ordinance.

(xx) “Officer/Officers” means any of the duly elected officers of the Corporation in accordance with the provisions of Article VIII of the Bylaws.

(xxi) “Operating Budget” means the budget of the Corporation prepared in accordance with the provisions of Section 2 of Article IX of the Bylaws.

(xxii) “Ordinance” means the Ordinance of the City Council establishing the Old Town Business Improvement Service District, approved by the City Council on [REDACTED].

(xxiii) “Owner” means a Person that is an owner of Commercial Real Property.

(xxiv) “Person” means any individual, sole proprietorship, partnership, society, association, joint venture, stock company, corporation, limited liability company, estate, receiver, trustee, assignee, fiduciary, governmental entity (whether local, regional, state or federal) and any representative of such governmental entity serving in his or her official capacity on behalf of the governmental entity, or any combination of any of the foregoing.

(xxv) “Real Property” means one or more defined interests, benefits or rights inherent

in the ownership of real property within the boundaries of the BID Assessment Area that appear as a single tax parcel represented by a single real property code (RPC) or by multiple real property codes for a single development as established and fixed by the City.

(xxvi) “Residential Owner” means a Person who owns Residential Real Property.

(xxvii) “Residential Real Property” means Real Property that is designed exclusively for residential occupancy, including single-family detached dwelling units, single-family attached dwelling units, rental apartments, timeshare/partial interest accommodations or condominium units registered with the Commonwealth of Virginia and restricted to residential use and occupancy. Transient accommodations, such as but not limited to hotels, motels and extended stay facilities shall be deemed Commercial Real Property and not Residential Real Property.

(xxviii) “Service District Law” means the provisions of the Code of Virginia, Chapter 24 of Section 15.2, as amended from time to time.

(xxix) “Voting Member” means an Owner or Commercial Tenant, which by his/her/its ownership of Commercial Real Property, is a member of the Corporation, and has registered pursuant to Section 7(d).

Section 2. BID Assessment Area.

(a) For purposes of these Bylaws, “BID Assessment Area” shall mean the land area located within the boundaries fixed by the Ordinance establishing the Old Town Business Improvement Service District, and which boundaries are depicted on Exhibit “A” attached hereto

(b) The BID Assessment Area shall be the area subject to the BID Assessment.

(c) The Corporation may expand the geographic scope of the BID Assessment Area only as provided in the Service District Law.

**ARTICLE II**

**OFFICES**

The Corporation may have such office(s) at such place(s), within the BID Assessment Area, as the Board from time to time determines or as the activities of the Corporation from time to time require.

**ARTICLE III**

**ACTIVITIES; RESTRICTIONS**

Section 1. Activities.

(a) The Corporation is organized, and shall be operated, exclusively as an organization described in Section 501(c)(6) of the Internal Revenue Code and which is exempt from federal income taxation under Section 501(a) of such Code. The purposes and objectives of the Corporation are to operate the Old Town Business Improvement Service District established by the City Council pursuant to the Ordinance in accordance with the Service District Law. Without limiting the generality of the foregoing, the Corporation shall:

(i) Promote the common business interests of businesses located in the BID Assessment Area.

(ii) Undertake and carryout any business improvement district activity as defined in or contemplated by the Service District Law or the Ordinance, including, without limitation, any special service or activity conducted and designed to improve the business climate in the BID Assessment Area.

(b) The Corporation is further authorized to have and exercise any and all purposes, powers or privileges now or hereafter conferred by the laws of the Virginia upon corporations formed under the Virginia Nonstock Corporation Act, as amended from time to time, but only to the extent that the exercise of such purposes, powers and privileges are not precluded by the Service District Law, the Ordinance, or by any contractual arrangements with the City.

Section 2. Restrictions on Activities.

(a) The Corporation is not organized for profit, and it shall have no capital stock and shall not be authorized to issue capital stock. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, Officers, or other private persons, except that the Corporation shall be empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the exempt purposes of the Corporation.

(b) The Corporation shall not, directly or indirectly, participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office. In addition, the Corporation shall not engage in (i) the financial support of political activities and candidates, or (ii) the promotion of one business to the exclusion of others.

(c) Notwithstanding any provision herein to the contrary, the Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(6) of such Code.

(d) For all purposes of these Bylaws, references to the "Internal Revenue Code" are references to the Internal Revenue Code of 1986, as amended, and references to sections of the Internal Revenue Code are to the provisions of such Code as those provisions are now enacted or to corresponding provisions of any future United States internal revenue law.

**ARTICLE IV**

## **MEMBERSHIP**

Section 1.     Description of Members. The Corporation is a membership corporation. The Members shall consist of all Owners and Commercial Tenants within the geographic area of the BID, and any other Residential Owner or Exempt Owner who become Members pursuant to a separate agreement with the BID.

Section 2.     Annual Meetings.

(a) All annual meetings of the Corporation after the first annual meeting shall be held during the last quarter of each fiscal year of the Corporation at such date and time and at such place as is designated from time to time by the Board and stated in the notice of the meeting delivered to the Members, provided that the first annual meeting of the Corporation may occur at a time fixed by the Board first named in the Articles of Incorporation.

(b) At each annual meeting, the Voting Members shall elect Directors and transact such business as may properly be brought before the meeting, provided that at the first annual meeting the Voting Members shall specifically select those Directors to be elected by the Voting Members as provided in Article VI, Section 1 (e).

Section 3.     Special Meetings. Unless otherwise provided by the Service District Law, the Ordinance, the Articles of Incorporation, or these Bylaws, special meetings of the Members for any purpose or purposes may be called by the Chairman, any Vice Chairman, the Secretary, or by the Board, or by a petition signed by at least two-fifths (2/5) of the Voting Members.

Section 4.     Notice of Annual and Special Meetings. Except as otherwise provided by the Service District Law, the Ordinance, the Articles of Incorporation, or these Bylaws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be prepared by the Corporation's Secretary and shall be delivered not less than ten (10) days or more than twenty-one (21) days before the date of such meeting.

Section 5.     Presiding Officers; Order of Business.

(a) Meetings of the Corporation shall be presided over by the Chairman, or, if the Chairman is not present, by any Vice Chairman, or if a Vice Chairman is not present, by such person who is chosen by the Board, or, if none, by a chairperson to be chosen at the meeting by a majority of the Voting Members present in person or by proxy. The secretary of meetings shall be the Secretary of the Corporation, or, if the Secretary is not present, an Assistant Secretary, or if an Assistant Secretary is not present, such person as may be chosen by the Board, or, if none, by such person which is chosen by the chairperson at the meeting.

(b) At all meetings of the Corporation, the provisions of Roberts Rules of Order shall be used to govern the conduct of any such meeting, subject to the provisions of these Bylaws.

(c) The following order of business, unless otherwise ordered at the meeting by the chairperson thereof, shall be observed as far as practicable and consistent with the purposes of the meeting:

- (1) Call of the meeting to order;
- (2) Presentation of proof of mailing, electronic mailing, or personal delivery certification, of notice of the meeting and, if the meeting is a special meeting, the call thereof;
- (3) Presentation of proxies;
- (4) Determination and announcement that a quorum is present;
- (5) Reading and approval (or waiver thereof) of the minutes of the previous meeting;
- (6) Reports, if any, of Officers;
- (7) Consideration of the specific purpose or purposes for which the meeting has been called;
- (8) Election of the Board, in the event such meeting is an annual meeting of the Members;
- (9) Transaction of such other business as may properly come before the meeting; and
- (10) Adjournment.

Section 6. Quorum; Adjournments.

(a) A quorum at meetings of the Corporation shall consist of two-fifths (2/5ths) of the votes entitled to be cast at any meeting by the Voting Members registered pursuant to Section 7(c) whether represented in person or by proxy.

(b) If a quorum is not present at any meeting of the Corporation, the Voting Members attending such meeting shall have the power to adjourn the meeting, if the time and place thereof are announced at the meeting at which the adjournment is taken, until a quorum is present.

(c) Even if a quorum is present at any meeting of the Corporation, the Voting Members attending such meeting shall have the power to adjourn the meeting from time to time for good cause, without notice of the adjourned meeting, if the time and place thereof are announced at the meeting at which the adjournment is taken, until a date which is not more than thirty (30) days after the date of the original meeting.

(d) Any business, which might have been transacted at a meeting of the Corporation

as originally and duly called, may be transacted at any meeting held after adjournment as provided in this Section at which reconvened meeting a quorum is present. Anything in paragraph (b) of this Section to the contrary notwithstanding, if any adjournment is for more than thirty (30) days, or if after any adjournment a new date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Person then a Member.

Section 7. Number of Votes.

(a) At any meeting of the Corporation, every Voting Member must be present in person or by proxy to vote. A Voting Member may execute a proxy naming his/her duly authorized agent as his/her proxy and attorney-in-fact to vote his/her interest at any annual or special meeting of the Corporation. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise specifically provided in the proxy. If authorized by a majority of the Board, Member voting on any matter pertaining to the Corporation may be conducted by virtue of mail ballots.

(b) The Corporation shall have two classes of voting membership, and a Member may qualify for both classes subject to the requirements below.

(i) Commercial Tenant Members. Commercial Tenant Members shall be all commercial tenants within the BID Assessment Area. All Commercial Tenant Members whether in person or by proxy shall be entitled to one (1) vote.

(ii) Owner Members. Owner Members shall be all Owners. Each Owner Member present, in person or by proxy, with respect to each non-exempt real property within the BID Assessment Owner owned by such owner, the number of votes equal to the greater of 1 or the quotient obtained by dividing the Assessed Value by 1,000,000 and rounded to the nearest whole number, but in no case shall an Owner Member have less than one (1) vote. Any Residential Owner or Exempt Owner may become an Owner Member pursuant to a separate agreement with the Corporation.

(c) Membership in the Corporation shall be automatic, but may be subject to registration or application as determined by the Board. Such membership shall continue until, and thereupon automatically terminate, at such time as such Member's ownership or tenancy, as the case may be, within the BID Assessment Area is terminated, or, in any instance, the termination or dissolution of the Corporation.

(d) The Board shall develop a voting application form to be completed by Members as a condition of the exercise of their voting rights and to become a Voting Member pursuant to terms and conditions adopted by the Board, but subject to the Service District Law, the Ordinance, the Articles of Incorporation and these Bylaws. Moreover, Voting Members may also execute proxies naming a Person as a designated agent and attorney-in-fact to cast the votes of such Voting Member at any meeting of the Corporation.

(e) In no event shall the total number of votes assigned to any Voting Member, or to any number of Voting Members under common ownership or control, exceed thirty percent (30%) of the total number of votes that may be cast by all Voting Members. Ownership or control shall mean the

possession of the power to cause directly or indirectly the direction of the management and the policies of a Voting Member.

(f) If a Voting Member is delinquent in the payment of BID Assessments with regard to a particular Real Property on the date of a meeting of the Corporation, such Owner shall not be entitled to vote at that Corporation meeting.

Section 8. Voting. Except as otherwise provided by the Service District Law, the Ordinance, or the Articles of Incorporation, and subject to Section 9 of this Article IV, all matters submitted for a vote by the Voting Members shall be determined by a majority of the votes of the Voting Members present in person or by proxy at a meeting at which a quorum exists. The number of votes of a Voting Member shall be determined as provided in this Article IV, Section 7. Voting may occur in person at a meeting or by proxy given in accordance with these Bylaws.

Section 9. Action by Consent. Any action required or permitted to be taken at any meeting of the Corporation may be taken by the Voting Members without a meeting, without prior notice and without a vote, if a written consent in lieu of such meeting, which consent sets forth the action so taken, is signed before or after such action by all of the Voting Members with respect to the subject matter thereof. Any such written consent may be signed in counterpart format.

## **ARTICLE V**

### **BID Assessments**

#### **Section 1. Determination of BID Assessments.**

(a) The BID Assessment for each Real Property shall be determined annually by the City Council based upon the then current real property assessment records of the City.

(b) The amount of BID Assessment Rate and the formula for determining the BID Assessment may be amended from time to time, but only once annually, by the affirmative vote of at least three-fifths (3/5) of the Board at a meeting called for such purpose. If approved by the Board, then the amended BID Assessment Rate or any change in the formula for determining the BID Assessment shall be presented to the City Council at the time that the Operating Budget is presented to the City Council in accordance with the provisions of Section 2 of Article IX of these Bylaws, Service District Law, and the Ordinance

#### **Section 2. Payment of BID Assessments; Remedies.**

(a) Within ninety (90) days prior to the beginning of each fiscal year of the Corporation, the Corporation shall work with the City Assessors office to provide to the City a preliminary BID Assessment roll noting the Real Property (as identified on the real property tax rolls of the City), the name of the Owner thereof, and the amount of the BID Assessment for the coming fiscal year of the Corporation for the Owner with regard to that Real Property.

(b) Each Owner shall be required by the City to pay its BID Assessment with regard



to Real Property in two (2) equal installments, with each installment due and payable with the payment of the applicable installment of Real Property taxes to the City.

(c) If any Owner requests a special capital improvement or service of a nature above the level of improvements or services provided generally by the BID and the Board of Director's concurs by an affirmative vote of a majority of the Board Members, any such Owner shall be specially charged in accordance with such reasonable provisions as the Board may determine, to reflect the benefit received by any such Owner from such special capital improvement or service. Such special charge shall constitute the personal obligation of the Owner involved and shall be payable directly to the Corporation. Such special charges shall not be construed as a BID assessment. The contract for any such special capital improvement or service, to the extent its value is in excess of one thousand dollars (\$1,000.00), shall be approved by a majority vote of the disinterested Board Members.

## **ARTICLE VI**

### **DIRECTORS**

#### **Section 1. General Powers; Number; Tenure.**

(a) The business and affairs of the Corporation shall be managed under the direction of its Board, which may exercise all powers of the Corporation and perform or authorize the performance of all lawful acts and things. The Board shall have all the powers and authorities granted under the law of Virginia, except to the extent specifically precluded by the Service District Law or the Ordinance.

(b) The number of Directors of the Corporation, which shall be fixed by resolution of the Board from time to time, shall be no less than twenty-one (21) and no more than twenty-five (25).

(c) Notwithstanding anything else herein, the Directors named in the Articles of Incorporation, if any, shall serve until the first meeting of the Voting Members ("First Board"). For the avoidance of doubt, the First Board shall have the same powers as possessed by the Board after the first meeting of the Voting Members. The first meeting of the Voting Members shall be held no later than one hundred twenty (120) days after the date upon which the BID has been approved by the City Council by the adoption of the Ordinance

(d) Directors shall be separated into the following classes: Class 1 Directors shall have initial terms of one (1) year, with subsequent terms being equal to two (2) years, and Class 2 Directors shall have initial terms of two (2) years, with subsequent terms also being equal to two (2) years.

(e) At the first meeting of the Voting Members and each annual meeting thereafter, the Voting Members shall elect to the Board, representatives of the Voting Members, the following:

(i) At least fifty percent (50%) of the Board shall consist of Owners and at least forty percent (40%) of the Board shall consist of Commercial Tenants. These Directors shall meet other minimum requirements as follows, although one (1) Director

may account for more than one of the below distinctions.

(ii) Directors shall have staggered terms as follows: Class 1 Directors, consisting of at least ten (10) persons, shall have initial terms of one (1) year, with subsequent terms being equal to two (2) years; and Class 2 Directors, consisting of at least eleven (11) persons, shall have initial terms of two (2) years, with subsequent terms also being equal to two (2) years.

(iii) Seven (7) Directors must be from an address west of Washington Street, three (3) Directors must be from an address on Washington Street, and five (5) Directors must be from an address east of Washington Street.

(iv) The Directors shall consist of at minimum two (2) Owners of Real Property that is predominately retail, four (4) Owners of Real Property that is predominately used for office space, two (2) Owners of Real Property that is predominately used as a hotel or temporary lodging, and two (2) Owners of Real Property having an Assessed Value of less than \$2 million. Additionally, at least three (3) Directors shall be retail or ground floor personal service Commercial Tenants, at least four (4) Directors shall be office tenants or professional service Commercial Tenants, at least two (2) Directors shall be restaurant Commercial Tenants, and at least one (1) of these Directors shall be a retail Commercial Tenant not on King Street or Washington Street but otherwise within the BID Assessment Area.

(v) If a Person ceases to qualify as a Commercial Tenant or Owner while serving as a Director, such Person shall be ineligible to continue to serve as a Director and his or her position as Director shall be deemed vacant as of the date that Person is no longer qualified

(f) The Nominating Committee, if then in existence, or if not in existence the Board, shall, subject to Section 1(c) of this Article VI, nominate a slate of candidates for Class 1 Directors and another slate of candidates for Class 2 Directors for the first election of Directors by the Voting Members. The term of the Persons first elected as Directors shall commence on the date of the first meeting of Members. Thereafter, only one slate of nominees proposed for election as Directors shall be prepared annually to replace the outgoing Class of Directors. Voting Members may nominate additional candidates for election as Directors at any meeting at which Directors will be elected. At each annual meeting of the Members following the first annual meeting, the Voting Members shall elect the succeeding class of Directors to the Board, and each such Director so elected shall serve a term of two (2) years or until his/her successor has been appointed and qualified. For Directors elected after the first annual meeting, the term of the newly elected Directors to the Board shall commence on July 1st following the annual meeting and shall run for two (2) years, expiring on June 30th. In the event that a Person is elected to a position as a Director to fill a vacancy pursuant to Section VI(2), the term of that Director shall commence on the date of election and shall continue through the unexpired term of his/her predecessor in office. A Person that is a Director need not be a resident of the City or the BID. So long as a Person continues to qualify for his or her position as a Director, that Person may be elected or selected for continuous and successive terms as a Director.

Section 2.     Vacancies. Any Director position to be filled by reason of an increase in the number of Directors or for any other reason, including a vacancy, shall be filled by nomination of a qualified Member by the Executive Committee and subject to a 3/5's vote of the Board at any regular or special meeting of the.

Section 3.     Removal; Resignation.

(a)     Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, any Director may be removed, for cause, by a vote of a majority of the Board.

(b)     Any Director may resign at any time by giving written notice to the Board, the Chairman, any Vice Chairman, or the Secretary of the Corporation. Unless otherwise specified in such written notice, a resignation shall take effect upon delivery thereof to the Board or the designated Officer. A resignation need not be accepted in order for it to be effective.

(c)     To the extent that a Director is serving in a representative capacity for an Owner, the loss of employment or affiliation with any such Owner may constitute cause for removal from the Board.

Section 4.     Place of Meetings. The Board may hold both regular and special meetings at such place, as the Board from time to time deems advisable.

Section 5.     Annual Meeting. The annual meeting of the Board shall be held in the last quarter of each fiscal year of the Corporation, on such date as may be determined by the Board, which shall furnish written notice of such date, time and location to all Directors then seated on the Board.

Section 6.     Regular Meetings. Regular meetings of the Board shall be held quarterly in each fiscal year upon fifteen (15) days' notice to each Director at such time and place as from time to time may be determined by the Board and specified in the notice.

Section 7.     Special Meetings. Special meetings of the Board may be called by the Chairman or by any Vice Chairman, or by a majority of the Directors upon two (2) days' notice to each Director if such notice is delivered personally or sent by electronic mail ("e-mail") or facsimile and posted on the website of the Corporation ("Website") or upon five (5) days' notice if sent by mail.

Section 8.     Quorum. A majority of the number of Directors then in office shall constitute a quorum for the transaction of business at each and every meeting of the Board, including meetings of the Board pursuant to Section VI (10), and the act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board, except as may otherwise specifically be provided by the Service District Law, the Ordinance, the Articles of Incorporation, or these Bylaws. If a quorum is not present at any meeting of the Board, the Directors present may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 9.     Voting

(a)     Except as provided for in (b) below of this Section, a majority vote of Board Members present at a meeting shall be required to be deemed an action by the Board.

(b) Notwithstanding anything to the contrary in Section 8(a) above, the Board may only amend these Bylaws, the BID Plan and the BID Assessment by a three-fifths (3/5) vote of the Directors present and voting at a meeting of the Board; provided that, any amendment to these Bylaws must be presented to the Voting Members for ratification at the next annual meeting and must be adopted by majority vote of the Voting Members. Any amendment to the BID Plan and the BID Assessment approved by the Board may require subsequent approval of the City Council.

Section 10. Action by Consent. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting and without prior notice if a written consent in lieu of such meeting is obtained from all the Directors then in office, and which consent (i) sets forth that the Director executing the counterpart of the consent has consented to take action without a meeting, (ii) sets forth the action so taken, and (iii) is signed either before or after such action by all Directors then in office. Any such written consent may be signed in counterpart format.

Section 11. Meetings/Actions by Telephone.

(a) Meetings by Telephone. The Board may participate in meetings by means of conference telephone or similar communications equipment, whereby all Directors participating in the meeting have the opportunity to hear each other at the same time and participate, and participation in any such meeting shall constitute presence in person by such Director at such meeting.

(b) Method of Voting. During a meeting pursuant to Article VI(10)(a) the Board may cast their votes orally or by proxy given by a Board Member to another Board Member. A written record shall be made of all actions taken at any meeting conducted by means of a conference telephone or similar communications equipment. All quorum and voting conditions set forth in these Bylaws shall apply.

Section 12. Managing Agent. The Board may hire a managing agent to perform any or all of the Board's nonfiduciary duties at a commercially reasonable rate and upon such terms and conditions as the Board deems appropriate and advisable. Notwithstanding the foregoing, a managing agent shall not be a Voting Member or an affiliate of a Voting Member, but the managing agent may be a property manager or asset manager of one or more of the properties located within the BID Assessment Area. The managing agent may hire employees to perform any or all of the Board's nonfiduciary duties at a commercially reasonable rate and upon such terms and conditions as the Board deems appropriate and advisable.

Section 13. Open Meetings. All meetings of the Corporation, the Board, its Executive Committee, the BID Advisory Committee, and any advisory committees that may be established from time to time shall be open to, and may be attended by, any Member of the Corporation. Notice for meetings pursuant to Article VI, Section 10 shall be posted on the Website pursuant to the notice requirements provided herein. Notwithstanding the foregoing, the Board, its Executive Committee and any advisory committee may meet in executive session regarding matters of a sensitive or proprietary nature such as, but not limited to matters involving personnel matters, in which case Persons not otherwise members of such body may be excluded from the meeting of that body as to such matters.

## **ARTICLE VII**

### **EXECUTIVE COMMITTEE; ADVISORY COMMITTEES**

#### **Section 1. Executive Committee.**

(a) The Board may designate three (3) or more Directors to constitute an Executive Committee, one of whom shall be the Chairman. The Chairman shall be the chairperson of the Executive Committee. Each member of the Executive Committee shall continue as a member thereof until the expiration of his/her term as a Director, or until his/her earlier resignation from the Executive Committee, in either case unless sooner removed as a member of the Executive Committee or as a Director by any means authorized by these Bylaws.

(b) The Executive Committee shall have and may exercise all of the rights, powers and authority of the Board, except as expressly limited by the Virginia Nonstock Corporation Act or by resolution of the Board.

(c) The Executive Committee shall fix its own rules of procedure and shall meet at such time and at such place or places as may be provided by its rules. The chairperson of the Executive Committee, or, in the absence of a chairperson, a member of the Executive Committee chosen by a majority of the members present, shall preside at meetings of the Executive Committee, and another member thereof chosen by the Executive Committee shall act as Secretary. A majority of the Executive Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the members thereof shall be required for any action of the Executive Committee. The Executive Committee shall keep minutes of its meetings and deliver such minutes to the Board.

#### **Section 2. BID Advisory Committee**

(a) The Board shall establish a BID Advisory Committee that includes no less than three (3) and no more than five (5) members. The BID Advisory Committee shall represent (i) Residential Owners in, adjacent to, and around the BID Assessment Area, (ii) Exempt Owners, and/or their representatives or tenants, and (iii) arts, cultural, and historic organizations within the BID Assessment Area that have a mission-related interest in the BID Assessment Area.

(b) The purpose of the BID Advisory Committee shall be to provide input and recommendations to the Board regarding the activities and services within the BID Assessment Area. All formal decisions and determinations made by the BID Advisory Committee shall be non-binding on the Corporation.

(c) The BID Advisory Committee shall fix its own rules of procedure and shall meet at such time and at such place or places as may be provided by its rules. The chairperson of the BID Advisory Committee, or, in the absence of a chairperson, a member of the BID Advisory Committee chosen by a majority of the members present, shall preside at meetings of the BID Advisory Committee, and another member thereof chosen by the BID Advisory Committee shall act as Secretary. A majority of the BID Advisory Committee shall constitute a quorum for the transaction of business, and the affirmative

vote of a majority of the members thereof shall be required for any action of the BID Advisory Committee. The BID Advisory Committee shall keep minutes of its meetings and deliver such minutes to the Board.

Section 3. Other Advisory Committees.

(a) The Board may establish one or more other advisory committees to the Board, and may designate any number of persons, including Directors, to be members of any advisory committee so formed by the Board (each advisory committee hereinafter referred to as an “Advisory Committee”). The Board shall appoint a person to be chairperson of an Advisory Committee and such person shall be a then seated Director.

(b) The purpose of an Advisory Committee shall assist and consult with the Board at such times and in such manner as the Board may determine in furtherance of the purposes and objectives of the Corporation. All formal decisions and determinations made by an Advisory Committee shall be non-binding on the Corporation but, however, shall be submitted to the Board for its approval, and, if approved by the Board, such decision or determination shall become the action of the Board.

(c) Each Advisory Committee shall fix its own rules of procedure and shall meet at such time and at such place or places as may be provided by its rules. The chairperson of each Advisory Committee, or, in the absence of a chairperson, a member of the Advisory Committee chosen by a majority of the members present, shall preside at meetings of the Advisory Committee, and another member thereof chosen by the Advisory Committee shall act as Secretary. A majority of the Advisory Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the members thereof shall be required for any action of the BID Advisory Committee. The BID Advisory Committee shall keep minutes of its meetings and deliver such minutes to the Board.

Section 3. Nominating Committee. Pursuant and subject to Sections 1(c) and 1(d) of Article VI, the Nominating Committee shall determine the number of those Directors in the applicable Class of Directors to be elected at a meeting of the Members and the slate of candidates for election to the Board. The Nominating Committee shall consist of the Chairman of the Corporation, at least three (3) other Directors, and any other persons designated by the Board. The Nominating Committee shall make its determinations by majority vote and shall submit to the entire Board a written list of the slate of candidates for election to the Board at the next Board meeting or the next annual meeting of the Members, as applicable. Any Member of the Corporation may nominate any other Member of the Corporation to the Nominating Committee to be included in the slate.

Section 4. Other Committees. The Board may create and appoint such other committees as it may deem advisable and with such authority as the Board may determine.

Section 5. Other Provisions Regarding Committees.

(a) The Board shall have the power at any time to fill vacancies in, change the membership of, or discharge any committee.

(b) Unless prohibited by law, the provisions of Section 10 (“Action by Consent”) and

Section 11 (“Meetings by Telephone or Similar Communications”) of Article VI shall apply to all committees from time to time created by the Board.

## **ARTICLE VIII**

### **OFFICERS**

Section 1. Positions. The Officers of the Corporation shall be chosen by the Board and shall consist of a Chairman, one or more Vice Chairmen, a Secretary and a Treasurer. The Chairman shall also serve as the chairperson of the Board. The Board may also choose one or more Assistant Secretaries and/or Assistant Treasurers and such other Officers and/or agents as the Board from time to time deems necessary or appropriate. All Officers of the Corporation shall exercise such powers and perform such duties as from time to time shall be determined by the Board.

Section 2. Term of Office; Removal. Each member of the Executive Committee shall continue as a member thereof until the expiration of his/her term as a Director, or until his/her earlier resignation from the Executive Committee. Notwithstanding the foregoing, any Officer of the Corporation may be removed, with or without cause, at any time by the Board. Vacancies in any office may be filled for the unexpired portion of the term by the Board.

Section 3. Chairman. The Chairman shall be chair of all board meetings and be subject to the direction of the Board, shall have general charge of the activities, affairs and property of the Corporation and general supervision over its other Officers, employees, and agents. In general, the Chairman shall perform all duties incident to the office of Chairman of a nonprofit corporation and shall direct the staff to carry out the orders and resolutions of the Board. The Chairman shall be a Director.

Section 4. Vice Chairmen. In the absence or disability of the Chairman, the Vice Chairman, or in the event there is more than one, the Vice Chairmen in the order designated, or in the absence of any designation, in the order of their election, shall perform the duties and exercise the powers of the Chairman. The Vice Chairmen shall assist the Chairman and shall perform such other duties and have such other powers as from time to time may be directed by the Board.

Section 5. Secretary. The Secretary shall attend all meetings of the Members and of the Board and shall record all votes and the proceedings of all meetings in a book to be kept for such purposes. The Secretary also shall perform like duties for the Executive Committee or other committees, if required by any such committee. The Secretary shall give (or cause to be given) notice of all annual, regular and/or special meetings of the Members and the Board and shall perform such other duties as from time to time may be provided by the Board or by the Chairman. The Secretary shall have custody of the seal of the Corporation, shall have authority (as shall any Assistant Secretary) to affix the same to any instrument requiring it, and to attest the seal by signature. The Board may give general authority to Officers other than the Secretary or any Assistant Secretary to affix the seal of the Corporation and to attest the affixing thereof by signature. The Secretary shall maintain a current record of Members of the Corporation, and the Secretary, working with other Officers and agents of the Corporation, shall determine the number of votes to be allocated to Voting Members pursuant to these Bylaws. The Secretary may utilize the staff of the Corporation, should the Corporation have staff, to carry out responsibilities of this position at the Secretary’s discretion.

Section 6. Assistant Secretary. The Assistant Secretary, if any (or in the event there is more than one, the Assistant Secretaries in the order designated, or in the absence of any designation, in the order of their election), in the absence or disability of the Secretary, shall perform the duties and exercise the powers of the Secretary. The Assistant Secretary(ies) shall perform such other duties and have such other powers as from time to time may be provided by the Board.

Section 7. Treasurer. The Treasurer shall have the custody of and responsibility for the Corporation's funds and evidences of indebtedness, shall keep books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such accounts (including, without limitation, checking, savings and money market accounts) and in such depositories as from time to time may be ordered by the Board; provided, however, that any such account may only be maintained in a federally insured financial institution doing business in the BID Assessment Area. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board or by the Chairman if such expenditure authority has been delegated by the Board to the Chairman. The Treasurer shall keep full and accurate records and accounts of the assets, liabilities, receipts and disbursements and other transactions of the Corporation in books belonging to the Corporation and shall render to the Chairman and the Board, at regular meetings of the Board or whenever any of them may so require, an account of all transactions and the financial condition of the Corporation. If required by the Board, the Treasurer shall, at the Corporation's expense, provide a fidelity bond to the Corporation in such amount, form and security as may be specified by the Board for the faithful performance of the duties of the office of Treasurer and for restoration to the Corporation of all of its books, records, money, vouchers and any and all other property in the Treasurer's possession or under the Treasurer's control on the date of the Treasurer's death, resignation or removal from office.

Section 8. Assistant Treasurer. The Assistant Treasurer, if any (or in the event there is more than one, the Assistant Treasurers in the order designated, or in the absence of any designation, in the order of their election), in the absence or disability of the Treasurer, shall perform the duties and exercise the powers of the Treasurer. The Assistant Treasurer(s) shall perform such other duties and have such other powers as from time to time may be provided by the Board.

Section 9. Compensation. No Director, committee member or Officer shall receive any compensation or other remuneration for serving in such capacity; provided, however, that the actual and reasonable out-of-pocket expenses of Directors, committee members or Officers incurred in attending any meetings of the Corporation or in performing such person's duties in connection with the Corporation shall, upon the majority vote of the Board, be reimbursed to any such Director, committee member or Officer. Notwithstanding the foregoing, any Director, committee member or Officer who constitutes an employee of the Corporation may be paid reasonable compensation for services rendered.

## **ARTICLE IX**

### **RECORDS; INSPECTION; ANNUAL REPORT**



Section 1. Books and Records.

(a) The books and records of the Corporation, including, without limitation, minutes of meetings of the Members, and the Board, the financial records of the Corporation, and the names and addresses of the then current Members, shall be available for examination by any Voting Member and the members or representatives of the City Council during business hours that shall be set and announced for general knowledge. Upon reasonable request, a copy of the books, records and minutes of the Corporation shall be furnished to any Voting Member or members or representatives of the City Council.

(b) Notwithstanding the foregoing, the books, records and minutes of the Corporation may be withheld from examination by any Person referred to in Section 1(a) of this Article IX if the requested documents concern: (i) personnel matters; (ii) communications with legal counsel or attorney work product; (iii) transactions currently in negotiation and agreements containing confidentiality requirements; (iv) pending litigation; (v) pending matters involving formal proceedings for enforcement of the provisions of the Articles of Incorporation, Bylaws or if applicable, the rules and regulations promulgated pursuant thereto; or (vi) any disclosure of information that would constitute a violation of law.

(c) As a condition to furnishing copies of the books, records or minutes of the Corporation, the Corporation shall be entitled to charge and collect an amount equal to its costs in furnishing the requested documents, which costs shall reflect the actual cost of materials and labor incurred by the Corporation in undertaking the requested document copying and production.

Section 2. Operating Budget/Business Plan.

(a) Within a reasonable time after the establishment of the BID by the Ordinance, and no later than December 15 of each succeeding fiscal year of the Corporation, the Board shall furnish to all Members, by first class mail, electronic mail, or by personal delivery, a business plan for the Corporation related to administrating the BID and operation of Corporation and an operating budget of the Corporation outlining the Board's then current projections of revenues and operating expenses of the Corporation for the next succeeding fiscal year, including implementation of the proposed business plan. The Board shall also deliver to the Members, from time to time as circumstances warrant, a supplement to the then current operating budget and/or business plan outlining any material changes during the applicable fiscal year. The Board shall also update each operating budget and business plan and/or each supplement thereto from time to time to the extent the Board receives information requiring material changes to any such business plan, operating budget or any such supplement.

(b) The Board shall adopt and approve the business plan and operating budget for the coming fiscal year, or any supplement thereto, of the Corporation no later than January 31 of the then current fiscal year with regard to the proposed business plan and operating budget for the forthcoming fiscal year. The Board may elect to receive comments from Owners and Commercial Tenants and other interested parties orally or in writing at any time prior to adoption or approval of the business plan and operating budget or supplemental thereto.

(c) On behalf of the Corporation, the Board shall have the exclusive power and authority to adopt and approve the business plan, operating budget, or any supplement thereto, of the Corporation. The adoption and approval of a business plan, an operating budget or any supplement thereto shall not require any approval of the Voting Members. Each business plan, operating budget or supplement thereto adopted and approved by the Board shall be effective upon adoption and approval by the Board subject to consent by the City Council as provided in Subsection (d) below of this Section.

(d) Promptly after the approval and adoption of a business plan and operating budget of the Corporation for a fiscal year or supplement thereto, the Chairman shall forward the business plan, operating budget, or supplement thereto to the City for further consideration and consent by the City Council.

## **ARTICLE X**

### **ANNUAL REPORT**

Section 1. Filing Requirements. The Corporation shall file its first annual report with the Members and with the City Council, within sixty (60) days after the commencement of its second full fiscal year after the establishment of the Corporation following the adoption of the Ordinance. Thereafter, the Corporation shall file each annual report with the Members and with the City Council, within ninety (90) days after the commencement of then current fiscal year.

Section 2. Contents of Annual Report. Each annual report of the Corporation shall include:

(i) A financial statement for the preceding fiscal year of the Corporation, including a balance sheet, statement of income and loss, and such other information as may be reasonably necessary to reflect the actual financial performance of the Corporation. These financial statements shall be certified by the Treasurer. The Corporation's financial statement shall be prepared under its method of accounting (which may be either the cash or accrual method as determined by the Board) in accordance with generally accepted accounting principles consistently applied.

(ii) A narrative statement or chart showing the results of operations of the Corporation for the applicable fiscal year in comparison to the stated goals and objectives of the Corporation.

(iii) Review of implementation of the approved business plan and supplements thereto.

(iv) Such additional information as may be required by the Ordinance.

Section 3. Disclosure of Annual Report. The Corporation shall furnish a copy of each annual report to the City Council, and to all then current Members. Such reports may be sent by first class mail, electronic transmission, or by personal delivery.

## **ARTICLE XI**

### **NOTICES**

Section 1. Form; Delivery. Any notice required or permitted to be given to any Director or Officer and to any Member shall be given in writing, and furnished either personally (with written certification of delivery in the case of notice furnished to a Member), by first-class mail with postage prepaid, or by e-mail, addressed to the recipient at his or her address, or e-mail address, as it appears in the records of the Corporation and shall be posted on the Website. Notices required for meetings of the Board and the Executive Committee must be posted on the Website and may be in the form of e-mail and will be deemed properly served. Personally delivered notices shall be deemed to be given at the time they are delivered to the recipient, and mailed notices shall be deemed to be given at the time they are deposited in the United States mail. Notice delivered using e-mail shall be deemed given at the time delivered at such address.

Section 2. Waiver; Effect of Attendance. Whenever any notice is required to be given by the Service District Law, the Ordinance, the Articles of Incorporation, or these Bylaws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be the equivalent of the giving of such notice. In addition, any Director or committee member who attends a meeting of the Board or a committee thereof shall be deemed to have had timely and proper notice of the meeting, unless such Director or committee member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called or convened.

## **ARTICLE XII**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

#### **Section 1. Indemnification.**

(a) To the maximum extent permitted by law, every Person who serves or has served as a Member, Director, Officer, employee, agent, advisor, consultant or in any other capacity to or of the Corporation shall be indemnified by the Corporation for any judgment or award obtained against him or her and for all expenses and costs actually and necessarily incurred by him or her, including reasonable attorneys' fees, in connection with the defense of any claim, action, suit or proceeding in which he or she is made a party by reason of serving or having served in any of the foregoing capacities with the Corporation. In the event any such claim, action, suit or proceeding is instituted against any such Person, the Corporation shall have the right to enter into a settlement or compromise in regard thereto as may be deemed advisable by the Board.

(b) The right of indemnification provided herein shall be in addition to, and not in lieu of, any rights which any such Person may be entitled to by contract or as a matter of law. Notwithstanding the foregoing, a Person shall be entitled to indemnification only so long as such Person acted in good faith in a manner reasonably believed to be in or not opposed to the best interest of the Corporation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which a party has been judged to be liable for fraudulent, willful or wanton conduct or misconduct, breach of the Corporation's governing documents or gross negligence, or with respect to any criminal action or proceeding.

(c) The indemnity set forth in this Section shall be paid only to the extent of the assets of the Corporation and any such indemnification obligation shall be without recourse to any of the

assets of the Members.

Section 2. No Liability. No Member, Director or Officer, or any Person affiliated with them, shall be personally liable to the Corporation or to any Member for loss or damage caused by any act or omission, except to the extent that any such loss or damage is caused by such party's fraudulent, willful or wanton conduct or misconduct, breach of the Service District Law, the Ordinance, the Articles of Incorporation, and these Bylaws, or gross negligence.

Section 3. Insurance. The Corporation shall maintain insurance on behalf of any Person who is or was a Director or Officer of the Corporation, or for the employee, partner, agent or advisor of any Director or Officer, for a liability asserted against him and incurred by any such party in any such capacity or arising out of such party's status as such, irrespective of whether the Corporation would have the power to indemnify such party against such liability under this Article XII.

### **ARTICLE XIII**

#### **BYLAWS**

Section 1. Amendments.

(a) By the Board. The Board shall have the power to adopt amendments to these Bylaws by the affirmative vote of at least three-fifths (3/5) of the Board at a special meeting called for such purpose. Any such amendment must thereafter be duly ratified by a majority of the votes of the Voting Members present in person or by proxy at the next annual meeting. The number of votes of a Voting Member shall be determined as provided in Article IV, Section 7. Any amendment to these Bylaws shall comply with the applicable provisions of the Service District Law, and with the Ordinance, in each case as the same may be amended.

(b) By the Voting Members. Any Voting Member may propose an amendment to these Bylaws. In the event that such proposed amendment shall be submitted for consideration at an annual meeting the Voting Member submitting such amendment must provide a written proposal of such amendment to the Board no later than March 1st of the then applicable fiscal year. For an amendment to be deemed adopted it must be approved by a majority of the Voting Members.

### **ARTICLE XVI**

#### **GENERAL PROVISIONS**

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the same fiscal year as used by at the City, currently the twelve (12) month period commencing July 1 and ending June 30 of each year.

Section 2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its incorporation and the words "Corporate Seal," "Nonstock" and "Commonwealth of Virginia."

Section 3. Conflicts. To the extent that any provision of these Bylaws conflicts with either the provisions of the Service District Law or the Ordinance, the applicable provision of the Service District Law or the Ordinance, as applicable, shall control. If there is a conflict between the provisions of the Service District Law and the provisions of the Ordinance, the provisions of the Service District Law shall control.

Section 4. Contracts. The Board may authorize any of its Officers to enter into, execute and deliver any contract, lease or other instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances or transactions.

Section 5. Checks. All checks, drafts, orders for the payment of money, notes and other similar financial instruments shall be signed in the name of and on behalf of the Corporation by any Officer designated by the Board, or by any senior staff person so authorized and designated by the Board from time to time.

Section 6. Interpretation. Any reference in these Bylaws to the term "law" shall be a reference to the laws of the Commonwealth of Virginia, including the Service District Law, the Virginia Nonstock Corporation Act, and to the extent applicable the Ordinance. These Bylaws are intended to be in compliance with the Service District Law, and the regulations promulgated thereunder, and the Ordinance, and shall be construed in a manner consistent with the Service District Law, and, to the extent applicable, the provisions of the Ordinance.

Section 7. Gender References. All references in these Bylaws to the masculine gender shall include the feminine and neuter genders, and vice versa, as context may require.

The undersigned hereby certifies that the foregoing constitute and are a true and correct copy of the Bylaws of Old Town Business Improvement Corporation, and that such Bylaws, have been approved in the manner required by Section 1 of Article XV of such Bylaws as of [            ].

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[     ], as Secretary

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