

BY-LAWS
OF
DOWNTOWN MOBILE DISTRICT MANAGEMENT CORPORATION
An Alabama Nonprofit Corporation

As Amended and Restated Effective April 14, 2020

ARTICLE I
Organizational Matters

1.1 Name. The name of the corporation is Downtown Mobile District Management Corporation (the “Corporation”).

1.2 Applicable Organizational Law. The Corporation is an Alabama nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Sections 10-3A-1 *et seq.*, *Code of Alabama* (1975) (the “Alabama Nonprofit Corporation Act”) and Act No. 2004-382 of the Legislature of the State of Alabama (the “Self-Help Business Improvement District Act”).

1.3 Purposes. The Corporation is organized exclusively to promote social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”).

(a) In furtherance of such purpose, the Corporation is organized and will be primarily operated as follows:

(i) The Corporation is organized as a district management corporation representing real property owners within a self-help business improvement district which shall be located within the City of Mobile, Alabama (the “District”), and established pursuant to the Self-Help Business Improvement District Act and an ordinance to be hereafter adopted by the City of Mobile as required by the Self-Help Business Improvement District Act (the “Business Improvement District Ordinance”).

(ii) The purpose of the Corporation is to assist the City of Mobile, the County of Mobile, the property owners within the District and the public in promoting economic growth and development, employment and general welfare within, and preserving and enhancing the function and appearance of, that certain geographical area comprising the District, as shall be more particularly described in the Business Improvement District Ordinance.

(iii) The Corporation will execute self-help programs to improve the local business climate and provide administrative and other supplemental services to benefit businesses, employees, residents and consumers within the District.

(b) Notwithstanding any provision of the Articles of Incorporation or these By-Laws to the contrary, the Corporation shall not be operated or carry on any activities, and no part or portion of the assets or net earnings of the Corporation shall be used, for any purposes not permitted for an organization exempt from federal income taxation under Section 501(c)(4) of the Code or the corresponding provisions of any subsequent federal law.

(c) The Corporation is not organized for pecuniary profit and shall not be operated for the primary purpose of carrying on a trade or business for a profit.

1.4 Principal Office. The principal office of the Corporation shall be located in Mobile, Alabama, at such place as shall be designated by the Board of Directors from time to time.

1.5 Registered Office. The registered office of the Corporation maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II **Members**

2.1 Who Shall Be Members. The following shall be entitled to designate one owner or other representative who shall be a member of the Corporation:

(1) The owner or owners of each parcel of real property located in the District that is not exempt from the special assessment levied pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance; and

(2) The owner or owners of each parcel of real property located in the District that is exempt from the special assessment levied pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance but who voluntarily pay such special assessment.

The member designated by the owner or owners of each parcel of real property described in this Section (a "Parcel") shall represent all of the owner or owners of such Parcel.

2.2 Term of Membership. A member shall cease to be a member of the Corporation at such time as either (a) the member is no longer an owner or a representative of the owner(s) of any Parcel; (b) the owner(s) of any Parcel has/have revoked the member's designation as a member of the Corporation; or (c) the Parcel with respect to which the member has been designated becomes exempt from the special assessment levied pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance.

2.3 Manner of Designating Member or Revoking Designation of Member.

(a) Designation of Member. The owner(s) of each Parcel shall designate one owner or other representative to be a member of the Corporation by delivering to the Corporation, by first class mail, commercial delivery service or personal delivery, a writing signed by all owners of the Parcel stating the name and address of the person whom the owner(s) is/are designating to be a member of the Corporation.

(b) Revoking Designation of Member. The owner(s) of any Parcel may revoke its/their prior designation of a member and thereby remove such person as a member of the Corporation by delivering to Corporation, by first class mail, commercial delivery service or personal delivery, a writing signed by all owners of the Parcel stating the name and address of the member being removed. The owner(s) may also designate in such writing an owner or other representative to replace the removed member by stating the name and address of the person who shall be a member of the Corporation in the place of the removed member.

2.4 Annual Meeting of the Members. The Corporation shall hold a meeting of the members at least once per year for the election of directors and the transaction of other business as may properly come before the members. The meeting shall be open to all members of the general public.

2.5 Special Meetings of the Members. Special meetings of the members may be called at any time by the President and Chief Executive Officer, by the Chairman of the Board, or by the Board of Directors. Special meetings of the members may also be called by members having one-twentieth of the total number of votes entitled to be cast at such meeting. These members may, in writing addressed to the Secretary of the Corporation, demand the call of a special meeting specifying the day, month and purpose thereof. The Secretary of the Corporation upon receiving the written demand shall promptly give notice of such meeting, or if the Secretary shall fail to do so within five (5) business days thereafter, any member signing such demand may give such notice.

2.6 Place and Time of Meetings. Meetings of members shall be held at such place in Mobile, Alabama, as is convenient to persons concerned with the operation of the District and at such hour as may be fixed in the notice of the meeting.

2.7 Notice of Annual and Special Meetings.

(a) The place, date and hour of the annual meeting shall be appropriately advertised within the District.

(b) Written notice of each annual meeting and any special meeting of the members stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by first class mail to each member. If mailed, such notice shall be deemed to be delivered when deposited in

the United States mail addressed to the member at his address as it appears on the records of the Corporation, with postage thereon prepaid.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member.

2.8 Waivers of Notice.

(a) Whenever notice is required to be given to any member under the Alabama Nonprofit Corporation Act, the Articles of Incorporation or these By-Laws, a waiver thereof in writing signed by the member entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

(b) The attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

(c) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members need be specified in any written waiver of notice.

2.9 Action of Members. The vote of a majority of the members present in person or represented by proxy at a meeting of the members following notice as provided in Section 2.7 shall be the act of the members.

2.10 Proxies. At all meetings of members, a member may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

2.11 Vote. Every member shall be entitled to one (1) vote upon each matter submitted to a vote at a meeting of the members.

ARTICLE III Board of Directors

3.1 Power of Board of Directors. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

3.2 Members of Board of Directors. A majority of the members of the Board of Directors shall be owners, or designated representatives of owners, of a fee or undivided fee interest in real property located in the District.

3.3 Number of Directors. The Board of Directors shall consist of no fewer than twelve (12) members and no greater than twenty (20) members, such number to be fixed from time to time by resolution of the Board of Directors. Unless otherwise required by law or the Articles of Incorporation, a director need not be a member of the Corporation. The number of directors may be increased or decreased by amendment of the By-Laws, provided, however, that in no case shall the number of directors be less than three (3).

3.4 Classes of Directors. The members of the Board of Directors shall be divided into three (3) classes: Class A, Class B and Class C. The number of directors in each such class shall be and shall remain as equal in number as is possible.

3.5 Election and Term of Office. Following the expiration of the terms of the initial directors, directors shall be elected by the members at each annual meeting of the members in accordance with the Articles of Incorporation, these By-Laws and applicable law. Each director shall be elected for a term of office to expire at the third succeeding annual meeting of the members after their election or until their earlier resignation, removal or death, except as provided in the following Section of this Article. Nominations for election to the Board of Directors shall be made by a nominating committee appointed by the Board of Directors, or if no nominating committee has been appointed, by the full Board of Directors. All nominees for election to the Board of Directors must meet the requirements of the Business Improvement District Ordinance and applicable law.

3.6 Increase in Number of Directors; Vacancies.

(a) In the case of any increase in the number of members of the Board of Directors, the members of the Corporation shall elect the additional director or directors at any annual or special meeting. Upon the election of a director to a newly created vacancy, such director shall be assigned to one of the classes described in Section 3.4, and such director's term shall end at the same time as the term of other directors in the class to which such director is assigned. The number of directors in each class shall be and shall remain as equal in number as is possible.

(b) In the case of any vacancy or vacancies occurring on the Board of Directors as a result of death, resignation or removal, the vacancy or vacancies shall be filled by the remaining members of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

3.7 Removal of Directors. Any director may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of all of the members of the Corporation, provided that written notice of such removal is given to any director so removed.

3.8 Resignation. Any director may resign at any time by delivering written notice to the Chairman of the Board. Such resignation shall take effect at the time specified in the notice and no acceptance of resignation shall be necessary to make it effective.

3.9 Quorum of Directors and Action of Directors. One-third (1/3) of the members of the Board of Directors shall constitute a quorum at a meeting of the directors, and the vote of a majority of the directors present at the meeting at which a quorum is present shall be the act of the Board of Directors. If less than a quorum is present at a meeting, a majority of the directors so present may adjourn the meeting from time to time until a quorum is present.

3.10 Meetings of the Board of Directors.

(a) The Board of Directors shall hold an annual meeting immediately following the annual meeting of the members for the purpose of electing officers and transacting such other business that may properly come before the meeting.

(b) Regular meetings of the Board of Directors shall be held at such times and places within Mobile, Alabama, as may be fixed by the Board. Special meetings of the Board may be held at any time whenever called by the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President and Chief Executive Officer of the Corporation, or any two directors.

(c) As provided in the Business Improvement District Ordinance and applicable Alabama law, Municipal representatives designated by the Mayor of the City of Mobile and by its City Council shall be authorized to attend and participate in annual, regular and special meetings of the Board of Directors, but shall not vote on any matters considered by the Board of Directors.

3.11 Informal Action by Directors. Any action required or permitted to be taken by the Board of Directors at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing, and the writing is filed with the minutes of the proceedings of the Board of Directors.

3.12 Meetings by Conference Telephone. One or more directors may participate in a meeting of the Board of Directors by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and such participation shall constitute presence in person at the meeting.

3.13 Compensation of Directors. The Corporation shall not pay any compensation to directors for services rendered to the Corporation, except that directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board of Directors.

3.14 Honorary Directors.

(a) The Board of Directors may elect past members who have made significant contributions to the Corporation and who retain an interest in the goals of the Corporation as Honorary members of the Board of Directors.

(b) Honorary Directors may attend and speak at meetings of the Board of Directors, serve on committees, and participate in all programs of the Corporation in an advisory capacity, but shall not be entitled to vote on any matters which come before the Board of Directors and shall not be considered in determining a quorum.

ARTICLE IV Officers, Agents and Employees

4.1 Officers. The Board of Directors shall elect or appoint a President and Chief Executive Officer, a Secretary and a Treasurer, and it may, if it so determines, choose a Chairman of the Board and one or more Vice-Chairmen of the Board. The Board may also elect or appoint one or more other officers and may give any of them such further designation or alternate titles as it considers desirable. Any two or more offices may be held by the same person, except for the offices of President and Chief Executive Officer and Secretary.

4.2 Term of Office, Vacancies and Removal. Each officer shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified or until his earlier resignation or removal. All officers shall be elected or appointed at the annual meeting of the Board of Directors. The Board of Directors may fill any vacancies resulting from resignation or removal of any officer. An officer appointed or elected to fill a vacancy shall hold office for the unexpired term of his predecessor in office, and until his successor is elected and qualified. The Board of Directors may remove any officer with or without cause at any time.

4.3 Resignation. Any officer may resign at any time by giving written notice to the Corporation. Unless otherwise specified in the written notice, the resignation shall be effective upon delivery to the Corporation.

4.4 Powers and Duties of Officers. Subject to the control of the Board of Directors, all officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the Corporation as may be provided by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices.

(a) **Chairman of the Board.** The Chairman of the Board, if any, shall be subject to the direction of the Board of Directors, and shall perform such executive, supervisory, and management functions and duties as may be assigned to him or her from time to time by the Board of Directors. The Chairman of the Board shall preside at all meetings of the Board of Directors and the Executive Committee, if any.

(b) President and Chief Executive Officer. The President and Chief Executive Officer shall serve as the chief executive officer of the Corporation. The President and Chief Executive Officer shall perform all duties customary to that office and shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board of Directors.

(c) Vice-Chairman. In the absence of the Chairman of the Board or in the event of his inability or refusal to act, the Vice-Chairman shall perform the duties of the Chairman of the Board, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board. The Vice-Chairman shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe by standing or special resolution.

(d) Secretary. The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board of Directors, shall give or cause to be given all notices in accordance with these By-Laws or as required by law, and, in general, shall perform all duties customary to the office of Secretary. The Secretary shall have custody of the corporate seal of the Corporation, if any; and he or she shall have authority to affix the same to any instrument requiring it; and, when so affixed, it may be attested by his or her signature. The Board of Directors may give general authority to any officer to affix the seal of the Corporation, if any, and to attest the affixing by his signature.

(e) Treasurer. The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Corporation. He or she shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, the Treasurer shall render a statement of accounts. He shall at all reasonable times exhibit the books and accounts to any officer or director of the Corporation, and shall perform all duties incident to the office of Treasurer, subject to the supervision of the Board of Directors, and such other duties as shall from time to time be assigned by the Board of Directors. The Treasurer shall, if required by the Board of Directors, give such bond or security for the faithful performance of his duties as the Board of Directors may require, for which he shall be reimbursed.

4.5 Compensation of Officers. The Corporation shall not pay any compensation to officers, other than the President and Chief Executive Officer, for services rendered to the Corporation, except that officers may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board of Directors.

4.6 Agents and Employees. The Board of Directors may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board of Directors. The Board may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

ARTICLE V
Committees

5.1 General Provisions. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more standing committees as it may deem necessary or appropriate to carry out the purposes of the Corporation. Each committee shall consist of two (2) or more directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such Committee shall have the power or authority to (a) amend or restate the Articles of Incorporation, (b) elect, appoint, or remove any member of such committee or any director or officer of the Corporation, (c) amend, alter, or repeal any action or resolution of the Board of Directors unless by its terms it provides that it may be amended, altered or repealed by such committee (d) adopt an agreement of merger or consolidation, (e) recommend to the members or authorize the sale, lease or exchange of all or substantially all of the Corporation's property and assets, (f) adopt a plan for the distribution in liquidation of the assets of the Corporation, or (g) recommend to the members or effect a dissolution of the Corporation.

5.2 Committee Rules of Conduct. Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. Each committee shall otherwise conduct its business in the same manner as the Board of Directors conducts its business under Article III of these By-Laws.

5.3 Quorum of Members of Committee and Action of Members of Committee. In the absence of a contrary provision by the Board of Directors or in rules adopted by a committee, a majority of the entire authorized number of members of each committee shall constitute a quorum for the transaction of a business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee.

5.4 Informal Action by Members. Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of proceedings of such committee.

5.5 Meetings by Conference Telephone. Any one or more members of a committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear

each other. Participation in a meeting by such means shall constitute presence in person at the meeting.

5.6 Service of Committees. Each committee of the Board of Directors shall serve at the pleasure of the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not alone relieve any director of his duty under law to the Corporation.

5.7 Records. Minutes shall be kept of each meeting of each committee. Copies of the minutes of each such meeting shall be filed with the corporate records and supplied to each member of the Board of Directors.

ARTICLE VI **Annual Budget**

6.1 Annual Budget. The officers of the Corporation shall submit a detailed annual budget for approval by its board of directors including proposed expenditures and proposed sources of funding, which may include voluntary donations. The budget shall explain how it contributes to goals and objectives for the District.

6.2 Procedure for Approving Budget. The budget shall be introduced, approved, amended and adopted by resolution passed by not less than a majority of the full membership of the Board of Directors. The procedure for passing a budget shall be as follows:

- (a) Introduction and preliminary approval of the budget.
- (b) Public advertising of the budget.
- (c) Public hearing relating to the budget.
- (d) Amendments to the budget and public hearings relating to those amendments.
- (e) Adoption of the budget.
- (f) No budget shall be adopted until a public hearing has been held thereon and all persons having an interest therein have been given an opportunity to present objections.

6.3 Amendment of the Budget. The Board of Directors may amend the budget during or after the public hearing. No amendment to the budget by the Board of Directors shall be effective until taxpayers and all persons having an interest therein have been granted a public hearing thereon, if the amendment does or provides for any of the following:

- (a) Adds a new item in an amount in excess of ten (10) percent of the total amount as stated in the approved budget.

(b) Increases or decreases any item within the budget by more than ten (10) percent of the amount stated in the approved budget for the item.

(c) Increases the amount needed to be raised by special assessment by more than 10 percent of the total special assessment revenues stated in the approved budget.

6.4 Expenditure of Funds Consistent With Budget. No funds received by the Corporation from assessments on the real property located in the District shall be expended except in accordance with the budget adopted or amended pursuant to the provisions of this Article and the Self-Help Business Improvement District Act.

6.5 Conformity with Self-Help Business Improvement District Act. The provisions of this Article conform to the provisions of Section 12 of the Self-Help Business Improvement District Act. The provisions of this Article shall not be amended in any manner that is inconsistent with the Self-Help Business Improvement District Act.

ARTICLE VII **Annual Reports and Audits**

7.1 Annual Report. Within ninety (90) days after the close of each fiscal year, the Corporation shall make an annual report of its activities for the preceding fiscal year to the governing body of the City of Mobile. Each annual report shall include, at a minimum:

(a) A financial statement for the preceding fiscal year, including a balance sheet, statement of income and loss and such other information as is reasonably necessary to reflect the Corporation's actual performance, certified by the Treasurer of the Corporation; and

(b) The budget for the current fiscal year.

7.2 Delivery of Copies of Annual Report. A copy of each annual report shall be sent to the Mayor and the City Council of the City of Mobile, to the County Commission of Mobile County, and to all property owners of the District, in each case by first class mail or personal delivery.

7.3 Annual Audit. Within ninety (90) days after the close of each fiscal year, the Corporation shall cause an annual audit of its books, accounts and financial transactions to be made and filed with the City of Mobile and for that purpose the Corporation shall engage a certified public accountant. The annual audit shall be completed and filed with the governing body of the City of Mobile within four (4) months after the close of the fiscal year of the Corporation and a certified duplicate copy of the audit shall be filed with the Mayor and the finance director or other financial control officer of the City of Mobile.

7.4 Conformity with Self-Help Business Improvement District Act. The provisions of this Article conform to the provisions of Section 18 of the Self-Help Business Improvement District Act. The provisions of this Article shall not be amended in any manner that is inconsistent with the Self-Help Business Improvement District Act.

ARTICLE VIII
Exculpation; Indemnification by the Corporation

8.1 Pursuant to Section 10-11-1, *et. seq.*, *Code of Alabama* (1975), all noncompensated officers of the Corporation shall be immune from suit and not subject to civil liability arising from the conduct of the affairs of the Corporation except when the act or omission of such officer, which gives rise to a cause of action, amounts to willful or wanton misconduct or fraud, or gross negligence. For purposes of this Section, the term “officer” shall include the Corporation’s officers, directors and trustees, and the members of any other governing body of the Corporation.

8.2 Actions by Third Parties. The Corporation shall indemnify any person who is made a party or is threatened to be made a party to any threatened or pending action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a member of the Board of Directors or an officer of the Corporation, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

8.3 Actions by or in Name of Corporation. The Corporation shall indemnify any person who is made a party or is threatened to be made a party to any threatened or pending action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a member of the Board of Directors or an officer of the Corporation, against expenses (including attorney’s fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

8.4 Expenses in Successful Defense. To the extent that any member of the Board of Directors or officer has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in the preceding two Sections of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified by the Corporation against expenses

(including attorney's fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

8.5 Subject to Determination by Independent Legal Counsel. Any indemnification under the preceding three Sections of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the person to be indemnified has met the applicable standard of conduct set forth in the first two Sections of this Article. Such determination shall be made by independent legal counsel in a written opinion.

8.6 Payment in Advance. Expenses (including attorney's fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding if authorized by the Board of Directors of the Corporation upon receipt of an agreement by or on behalf of the director or officer whose expenses are to be paid to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Article.

8.7 Provisions Not Exclusive. The indemnification provided by this Article shall not be deemed exclusive of, and shall be in addition to, any other rights to which any director or officer seeking indemnification may be entitled under any statute, rule of law, provisions of the Articles of Incorporation, By-Laws, agreement, vote of members or disinterested members of the Board of Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board of Directors or officer of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

8.8 Insurance. By action of the Board of Directors, notwithstanding any interest of the members of the Board of Directors in the action, the Corporation may purchase and maintain insurance, in such amounts as the Board of Directors deems appropriate, on behalf of any person who is or was a member of the Board of Directors or an officer, employee, or agent of the Corporation against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Corporation would have the power or would be required to indemnify him against such liability under the provisions of this Article or of the Alabama Nonprofit Corporation Act.

ARTICLE IX **Miscellaneous Provisions**

9.1 Fiscal Year. The fiscal year of the Corporation shall begin on July 1 and shall end on the succeeding June 30.

9.2 Corporate Seal. The corporate seal shall be circular in form, shall have the name of the Corporation inscribed thereon and shall contain the words "Corporate Seal" and "Alabama" and the year the Corporation was formed in the center, or shall be in such other form as may be approved from time to time by the Board of Directors.

9.3 Checks, Notes, Contracts. The Board of Directors shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts, or other orders for payment of money; to sign acceptances, notes, or other evidences of indebtedness; to enter into contracts; or to execute and deliver other documents and instruments.

9.4 Books and Records. The Corporation shall keep at its office correct and complete books and records of account, the activities and transactions of the Corporation, minutes of the proceedings of the Board of Directors and any committee of the Corporation, and a current list of the members, directors and officers of the Corporation and their residence addresses. Any of the books, minutes and records of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

9.5 Amendment of By-Laws. The power to amend the By-Laws or to repeal the By-Laws and adopt new By-Laws shall be vested exclusively in the Board of Directors.

9.6 Captions. The captions herein are inserted only as a matter of convenience, and in no way define, describe, or limit the scope or meaning of these By-Laws or the intent of any provision hereof.

9.7 Compliance; Severability. These By-Laws are intended to comply with the Alabama Nonprofit Corporation Act, the Self-Help Business Improvement District Act and all other applicable provisions of federal, state, or local law, including, without limitation, all laws applicable to organizations that are tax-exempt under Section 501(c)(4) of the Code. In the event that any provision of these By-Laws conflicts with or does not comply with any such law, or is determined to be invalid or unenforceable to any extent, such offending provision shall be modified to the least extent possible, up to and including removal thereof, in order to cause these By-Laws to comply with applicable law and to be valid and enforceable, and all other provisions of these By-Laws shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9.8 Suggestions. The Corporation shall receive written suggestions from businesses in the District at any time.

ARTICLE X

Dissolution or Withdrawal of Designation as District Management Corporation

10.1 Dissolution or Withdrawal of Designation as District Management Corporation. Upon dissolution, or upon withdrawal of the Corporation's designation as the district management corporation pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance, all interests in and title to funds held by or for the Corporation, and all property of the Corporation shall be transferred and assigned to a successor district management corporation established pursuant to such Act, or if no successor district management organization exists, to the general fund of the City of Mobile, for use in funding the programs as the Board of Directors of the Corporation shall direct and designate.

ARTICLES OF INCORPORATION
OF
DOWNTOWN MOBILE DISTRICT MANAGEMENT CORPORATION

BE IT KNOWN THAT the undersigned, acting as incorporator of Downtown Mobile District Management Corporation, a nonprofit corporation formed pursuant to the Alabama Nonprofit Corporation Act, Sections 10-3A-1, *et seq.*, *Code of Alabama* (1975) (the “Alabama Nonprofit Corporation Act”) and Act No. 2004-382 of the Legislature of the State of Alabama (the “Self-Help Business Improvement District Act”), does hereby adopt the following Articles of Incorporation:

Article I
Name

The name of the corporation is Downtown Mobile District Management Corporation (the “Corporation”).

Article II
Period of Duration

The period of duration of the Corporation is perpetual unless and until it is hereafter lawfully dissolved.

Article III
Purposes

A. The Corporation is organized exclusively to promote social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”). In furtherance of such purpose, the Corporation is organized and will be primarily operated as follows:

(1) The Corporation is organized as a district management corporation representing real property owners within a self-help business improvement district which shall be located within the City of Mobile, Alabama (the “District”), and established pursuant to the Self-Help Business Improvement District Act and an ordinance to be hereafter adopted by the City of Mobile as required by the Self-Help Business Improvement District Act (the “Business Improvement District Ordinance”).

(2) The purpose of the Corporation is to assist the City of Mobile, the County of Mobile, the property owners within the District and the public in promoting economic growth and development, employment and general welfare within, and preserving and enhancing the function and appearance of, that certain geographical area comprising the District, as shall be more particularly described in the Business Improvement District Ordinance.

(3) The Corporation will execute self-help programs to improve the local business climate and provide administrative and other supplemental services to benefit businesses, employees, residents and consumers within the District.

B. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not be operated or carry on any activities, and no part or portion of the assets or net earnings of the Corporation shall be used, for any purposes not permitted for an organization exempt from federal income taxation under Section 501(c)(4) of the Code or the corresponding provisions of any subsequent federal law.

C. The Corporation is not organized for pecuniary profit and shall not be operated for the primary purpose of carrying on a trade or business for a profit.

Article IV **Powers**

A. As a means of accomplishing the purposes of the Corporation, the Corporation shall have all of the common law and statutory powers of a nonprofit corporation organized under the Alabama Nonprofit Corporation Act pursuant to the provisions of the Self-Help Business Improvement District Act, including, without limitation, the power to:

(1) Adopt by-laws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) Employ persons as may be required, and fix and pay their compensation from funds available to the Corporation;

(3) Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money;

(4) Make and execute agreements which may be necessary or convenient to the exercise of the powers and functions of the Corporation, including contracts with any person, firm, corporation, governmental agency or other entity;

(5) Administer and manage corporate funds and accounts and pay corporate obligations;

(6) Borrow money from private lenders or from governmental entities;

(7) Enforce the conditions of any loan, grant, sale or lease made by the Corporation;

(8) Provide security, sanitation and other services to the District supplemental to those provided by the City of Mobile;

(9) Advertise the District and the businesses included within the District;

(10) Recruit new businesses to fill vacancies in the District;

(11) Organize and promote special events in the District;

(12) Provide special parking arrangements or management of ongoing parking programs for the District;

(13) Participate in other governmental programs for which the Corporation is qualified and which are included in the Corporation's self-help business improvement plan prepared pursuant to the Self-Help Business Improvement District Act.

(14) Undertake other activities or initiatives within the District as the Board of Directors of the Corporation deems appropriate and which are not inconsistent with these Articles of Incorporation.

B. The specific powers described herein are not intended to limit or restrict in any manner the general powers of the Corporation; provided, however, that the powers of the Corporation shall be exercised solely and exclusively to advance the purposes of the Corporation as described in these Articles of Incorporation and in such manner as is not prohibited by the Self-Help Business Improvement District Act or the Business Improvement District Ordinance.

C. Notwithstanding any other provision of these Articles of Incorporation, the Corporation's powers may not be exercised in any manner not permitted for an organization exempt from federal income taxation under Section 501(c)(4) of the Code or the corresponding provisions of any subsequent federal law.

Article V **Limitations Concerning Use of Funds**

A. No funds received by the Corporation from assessments on the real property located in the District shall be expended except in accordance with the budget adopted or amended pursuant to the provisions of the Self-Help Business Improvement District Act.

B. No part of the net earnings of the Corporation shall inure to the benefit of or be distributed to the Corporation's directors, officers, or other private persons, and no private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation; provided, however, that persons rendering services to the Corporation to enable it to carry out the purposes for which it is organized may be paid reasonable

compensation for such services and may be reimbursed for expenses actually incurred in the performance of such services, as approved by the Board of Directors.

C. The Corporation shall not have or issue any shares of stock and shall not pay any dividends.

D. The Corporation shall not make loans to any of its officers or directors.

Article VI **Membership**

The following shall be entitled to designate one owner or other representative who shall be a member of the Corporation:

(1) The owner or owners of each parcel of real property located in the District that is not exempt from the special assessment levied pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance; and

(2) The owner or owners of each parcel of real property located in the District that is exempt from the special assessment levied pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance but who voluntarily pay such special assessment.

The member designated by the owner or owners of each such parcel of real property shall represent all of the owner or owners of such parcel. Such designation shall be made, and may be revoked, as provided in the By-Laws of the Corporation. The voting rights and other rights and privileges of the members shall be as provided in the By-Laws of the Corporation.

Article VII **Board of Directors**

A. A Board of Directors shall manage the property, business and affairs of the Corporation. The number of directors shall be fixed by the By-Laws of the Corporation, and may be increased or decreased from time to time by amendment of the By-Laws, but in no case shall the number be less than three (3).

B. The initial Board of Directors shall consist of sixteen (16) members. The names and addresses of the initial directors and their initial terms of office are set forth in Section F of this Article. Upon the expiration of each director's initial term of office set forth in Section F of this Article, his or her successor shall be elected by a majority vote of the members of the Corporation present after notice by first class mail, and shall hold office for a term of three (3) years. Vacancies on the Board of Directors resulting from death, resignation or removal shall be filled by the affirmative vote of a majority of the remaining members of the Board of Directors for the unexpired portion of the term.

C. A majority of the members of the Board of Directors must be owners, or designated representatives of owners, of a fee or undivided fee interest in real property located in the District.

D. Municipal representatives designated by the Mayor of the City of Mobile, and by its City Council shall be authorized to attend and participate in regular and called meetings of the Board of Directors of the Corporation, but shall not vote on any matters considered by the Board of Directors.

E. A director shall not receive any compensation for his or her service as a director, but shall be entitled to receive reimbursement for expenses actually incurred in the performance of his or her duties as approved by the Board of Directors.

F. The names, addresses and terms of office of the initial members of the Board of Directors are as follows:

<u>Name</u>	<u>Address</u>	<u>Initial Term</u>
Brian Metcalfe	Metcalfe & Company, Inc. P. O. Box 2903 Mobile, AL 36652	1 Year
John Klotz	The Three Fifty Corporation 959 Dauphin Street Mobile, AL 36604	1 Year
Zemmie Murray	Richard Murray & Co. P. O. Box 30 Mobile, AL 36601	1 Year
Joe Mareno	Mobile Area Chamber of Commerce P. O. Box 2187 Mobile, AL 36652-2187	1 Year
Dr. George Sinclair	Government Street Presbyterian Church 300 Government Street Mobile, AL 36602	1 Year <u>2006</u>
Rudy Baugh	Regions Bank P. O. Drawer 2527 Mobile, AL 36622	2 Years

John Peebles	Peebles & Cameron P. O. Box 1766 Mobile, AL 36633	2 Years
Bill Monahan	300 East Delwood Drive Mobile, AL 36606	2 Years
David Constantine	Lyons, Pipes & Cook, PC P. O. Box 2727 Mobile, AL 36652	2 Years
Kenneth E. Coleman	Alabama Power Company P. O. Box 2247 Mobile, AL 36652	2 Years
Lee Moncrief	Wachovia P.O. Box 1508 Mobile, AL 36633	2 Years <u>2007</u>
Joe Toole	The Retirement Systems of Alabama P. O. Box 302150 Montgomery, AL 36130	3 Years
Scott Gonzalez	Three Georges Southern Chocolates P. O. Box 2206 Mobile, AL 36652	3 Years
Ruby Moore	Spot of Tea 310 Dauphin Street Mobile, AL 36602	3 Years
Howard Bronson	Mobile Register P. O. Box 2488 Mobile, AL 36652	3 Years
Dee Gambill	AmSouth Bank P. O. Box 1628 Mobile, AL 36633	3 Years <u>2008</u>

Article VIII
By-Laws

The initial By-Laws of the Corporation shall be adopted by a majority vote of the initial members of the Board of Directors of the Corporation. The power to amend the By-Laws or to repeal the By-Laws and adopt new By-Laws shall be vested exclusively in the Board of Directors of the Corporation.

Article IX
Public Meetings and Suggestions

A. The Corporation shall hold a general membership and public meeting at least once per year, appropriately advertised in the District at a place convenient to persons concerned with the operation of the District.

B. The Corporation shall receive written suggestions from businesses in the District at any time.

Article X
Dissolution or Withdrawal of Designation as District Management Corporation

Upon dissolution, or upon withdrawal of the Corporation's designation as the district management corporation pursuant to the Self-Help Business Improvement District Act and the Business Improvement District Ordinance, all interests in and title to funds held by or for the Corporation, and all property of the Corporation shall be transferred and assigned to a successor district management corporation established pursuant to such Act, or if no successor district management organization exists, to the general fund of the City of Mobile, for use in funding the programs as the Board of Directors of the Corporation shall direct and designate.

Article XI
Liability

Pursuant to Section 10-11-1, *et. seq.*, *Code of Alabama* (1975), all noncompensated officers of the Corporation shall be immune from suit and not subject to civil liability arising from the conduct of the affairs of the Corporation except when the act or omission of such officer, which gives rise to a cause of action, amounts to willful or wanton misconduct or fraud, or gross negligence. For purposes of this Article, the term "officer" shall include the Corporation's officers, directors and trustees, and the members of any other governing body of the Corporation.

Article XII
Registered Office and Agent

The mailing address of the initial registered office of the Corporation and the name of the initial registered agent of the Corporation at such address is:

Lee Moncrief
Post Office Box 112
Mobile, Alabama 36601

The location of the initial registered office of the Corporation is:

205 Government Street
Mobile, Alabama 36644

Article XIII
Incorporator

The name and address of the incorporator of the Corporation is:

Leah P. Ladd
Armbrecht Jackson LLP
Post Office Box 290
Mobile, Alabama 36601

Article XIII
Amendment of Articles of Incorporation

The power to amend the Articles of Incorporation shall be vested exclusively in the Board of Directors of the Corporation.

IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation on this 3rd day of May, 2005.

INCORPORATOR:



Leah P. Ladd

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Leah P. Ladd, whose name is signed to the foregoing Articles of Incorporation, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 3rd day of May, 2005.

Wayne S. Green
NOTARY PUBLIC

[AFFIX SEAL]

My Commission Expires: May 27, 2008

This instrument prepared by:

Leah P. Ladd
ARMBRECHT JACKSON LLP
Post Office Box 290
Mobile, Alabama 36601
(251) 405-1300

CERTIFIED TRUE COPY
Probate Court of Mobile Co., AL
Don Davis, Judge

Signature: [Signature]
Joe McFarquhar, Jr. Chief Clerk

Date: 3 May 2005

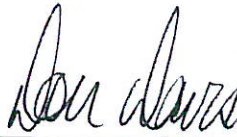
State of Alabama-Mobile County
I certify this instrument was filed on:
May 3, 2005 @ 10:16:29 AM
S.R. FEE \$2.00
RECORDING FEES \$26.00
TOTAL AMOUNT \$28.00

2005030799
Don Davis, Judge of Probate

STATE OF ALABAMA
PROBATE COURT OF MOBILE COUNTY
Incorporation/Amendment/Dissolution Certificate

I, **Don Davis**, as Probate Judge in and for Mobile County, Alabama, do hereby certify that the forgoing Articles, duly signed and verified pursuant to the provisions of Alabama Statute, have been received and recorded in this office and are found to comply with law in such matters. Accordingly, the undersigned Probate Judge, by the authority so vested, hereby issues this Certificate.

Given under My Hand and Official Seal of the Probate Court of Mobile County, Alabama this **Tuesday, May 03, 2005**



Don Davis, Probate Judge
Mobile County, Alabama

Recorded at Book: 5769
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Clerk: PCRC04

