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Form **990**
 Department of the Treasury
 Internal Revenue Service

Return of Organization Exempt From Income Tax
 Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)
 The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No 1545-0047
2009
Open to Public Inspection

A For the 2009 calendar year, or tax year beginning 09-01-2009 and ending 08-31-2010

- B** Check if applicable:
 Address change
 Name change
 Initial return
 Terminated
 Amended return
 Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization
 Berkeley Repertory Theatre
 Doing Business As
 Number and street (or P O box if mail is not delivered to street address) Room/suite
 999 Harrison Street
 City or town, state or country, and ZIP + 4
 Berkeley, CA 94710

D Employer identification number
 94-1679756
E Telephone number
 (510) 647-2900
G Gross receipts \$ 11,995,851

F Name and address of principal officer
 Susan Medak
 999 Harrison Street
 Berkeley, CA 94710

H(a) Is this a group return for affiliates? Yes No
H(b) Are all affiliates included? Yes No
 If "No," attach a list (see instructions)
H(c) Group exemption number ▶

I Tax-exempt status 501(c) (3) (insert no) 4947(a)(1) or 527

J Website: ▶ www.berkeleyrep.org

K Form of organization Corporation Trust Association Other ▶ **L Year of formation** 1968 **M State of legal domicile** CA

Part I Summary

1 Briefly describe the organization's mission or most significant activities
 THE THEATRE PRODUCES PREMIERS OF NEW WORK AND MAJOR PRODUCTIONS FROM AN INTERNATIONAL REPERTOIRE

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets

3 Number of voting members of the governing body (Part VI, line 1a)	3	33
4 Number of independent voting members of the governing body (Part VI, line 1b)	4	31
5 Total number of employees (Part V, line 2a)	5	356
6 Total number of volunteers (estimate if necessary)	6	1,000
7a Total gross unrelated business revenue from Part VIII, column (C), line 12	7a	14,548
b Net unrelated business taxable income from Form 990-T, line 34	7b	0

		Prior Year	Current Year
Revenue	8 Contributions and grants (Part VIII, line 1h)	5,964,568	3,126,539
	9 Program service revenue (Part VIII, line 2g)	6,676,771	8,447,821
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	93,814	32,038
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	51,476	38,302
	12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	12,786,629	11,644,700
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1–3)	29,519	34,740
	14 Benefits paid to or for members (Part IX, column (A), line 4)		0
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	6,438,185	6,459,872
	16a Professional fundraising fees (Part IX, column (A), line 11e)	78,453	50,355
	b Total fundraising expenses (Part IX, column (D), line 25) ▶ 838,320		
	17 Other expenses (Part IX, column (A), lines 11a–11d, 11f–24f)	5,513,166	6,567,363
18 Total expenses Add lines 13–17 (must equal Part IX, column (A), line 25)	12,059,323	13,112,330	
19 Revenue less expenses Subtract line 18 from line 12	727,306	-1,467,630	

		Beginning of Current Year	End of Year
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	30,730,495	34,367,634
	21 Total liabilities (Part X, line 26)	9,596,710	14,781,710
	22 Net assets or fund balances Subtract line 21 from line 20	21,133,785	19,585,924

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

Signature of officer: _____ Date: 2011-04-19
 Susan Medak Managing Director
 Type or print name and title

Paid Preparer's Use Only

Preparer's signature: BARBARA CYPHERS Date: _____ Check if self-employed
 Preparer's identifying number (see instructions)
 Firm's name (or yours if self-employed), address, and ZIP + 4: Armanino McKenna LLP, 12667 Alcosta Boulevard Suite 500, San Ramon, CA 945834427
 EIN: _____ Phone no: (925) 790-2600

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

Part III Statement of Program Service Accomplishments

1 Briefly describe the organization's mission

Berkeley Repertory Theatre seeks to set a national standard for ambitious programming, engagement with its audiences and leadership within the community in which it resides. We endeavor to create a diverse body of work that expresses a rigorous, embracing aesthetic and reflects the highest artistic standards, and seek to maintain an environment in which talented artists can do their best work. We strive to engage our audiences in an ongoing dialogue of ideas, and encourage lifelong learning as a core community value. Through productions, outreach and education, Berkeley Rep aspires to use theatre as a means to challenge, thrill and galvanize what is best in the human spirit.

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No
 If "Yes," describe these new services on Schedule O

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No
 If "Yes," describe these changes on Schedule O

4 Describe the exempt purpose achievements for each of the organization's three largest program services by expenses. Section 501(c)(3) and 501(c)(4) organizations and section 4947(a)(1) trusts are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code) (Expenses \$ 10,240,106 including grants of \$) (Revenue \$ 7,596,495)

Berkeley Repertory Theatre presented 410 performances of 12 shows for an audience of more than 167,000 attendees. Berkeley Rep produced the world premier of Green Day's AMERICAN IDIOT, which brought in the biggest advance sale in the Theatre's 41-year history, the biggest day at the box office, 18 of the top 20 days ever, and extended its run for five weeks. Berkeley Rep produced the West Coast premiere of TINY KUSHNER by legendary playwright Tony Kushner, which became the Theatre's second transatlantic transfer when it played at London's Tricycle Theatre in September 2010. The Theatre also produced three other world premieres: CONCERNING STRANGE DEVICES FROM THE DISTANT WEST, a commission from Naomi Iizuka, GIRLFRIEND, a musical by Todd Almond and Matthew Sweet that earned a one-week extension, and Lisa Kron's IN THE WAKE, which transferred to New York and became a finalist for the Susan Smith Blackburn Prize. It also participated in the nationwide premier of THE LARAMIE PROJECT TEN YEARS LATER. As a result, Berkeley Rep shared in several significant awards: AMERICAN IDIOT earned two Tony Awards, a Grammy Award, A Drama Desk Award, an Outer Critics Circle Award, and other honors. During the run of COMING HOME, Berkeley Rep's audiences donated more than \$7,500 to the hurricane relief effort in Haiti. Local media celebrated Berkeley Rep's success with several front-page stories, and the New York Times declared that "Berkeley Rep is on fire." Projects developed at the Theatre were named among the year's best by the Associated Press, LA Times, NY Times, The New Yorker, USA Today, and other prominent publications, and the San Francisco Chronicle asserted that "the rise of Berkeley Rep" was the Top Theatre Story of the Decade.

4b (Code) (Expenses \$ 667,045 including grants of \$ 34,740) (Revenue \$ 386,833)

At the Berkeley Rep School of Theatre, artists of all ages and abilities are offered the opportunity to experience the craft and artistry of theatre and to actively engage with their own creativity while making meaningful connections. The only requirement is an active mind open to imagination, collaboration, hard work, and lots of fun. Eighteen theatre arts education programs served nearly 23,000 students. The Berkeley Rep School of Theatre is committed to working with local schools to reinforce arts education as a community value and as an integral part of our cultural fabric. Free and low-cost dynamic workshops for elementary, middle, and high schools are offered in all nine Bay Area counties. Using theatre arts techniques that encourage teamwork and ensemble-building, outreach programs reinforce California State Board of Education content standards in the fields of English language arts, history-social science, mathematics, physical education, and visual and performing arts.

4c (Code) (Expenses \$ including grants of \$) (Revenue \$ 186,057)

In the summer when our mainstage season is dark, Berkeley Rep has the opportunity to develop work in our theatre spaces and to offer more experimental special event performances to our audience. Continuing our interests in developing new work, nurturing new artists and creating professional development opportunities for our fellows, Berkeley Rep hosted a summer new works festival. The 2010 Fireworks Festival was held in June and July and was produced by our graduating artistic fellow. This year's festival focused on developing and presenting the work of local solo artists Dan Hoyle and Wes Nisker, and also featured workshops and performances by the nationally known artists David Sedans and John Leguizamo, who has now taken that show to Broadway. At other times, Berkeley Rep opens its doors to organizations and individuals from the community for a wide range of events. Various facilities and spaces are available to accommodate events of all sizes and types, and non-profit rates are available for qualifying community organizations. Berkeley Rep provided facilities to playwrights, lecturers from Lawrence Berkeley National Labs, Berkeley High School teachers, Theatre Bay Area and Theatre Communication Group conference, schools for benefits featuring interviews with well-known authors, dance and other performance events. Each year Berkeley Rep has been one of the venues for the Jewish Film Festival. The Berkeley Fire Department holds its annual badge ceremony in Berkeley Reps theatre and courtyard.

4d Other program services (Describe in Schedule O)
 (Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses \$ 10,907,151

Part IV Checklist of Required Schedules

Table with 3 main columns: Question, Yes, No. Rows 1-20 covering various organizational requirements and reporting obligations.

Part IV Checklist of Required Schedules *(continued)*

21	Did the organization report more than \$5,000 of grants and other assistance to governments and organizations in the United States on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i>	21		No
22	Did the organization report more than \$5,000 of grants and other assistance to individuals in the United States on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i>	22	Yes	
23	Did the organization answer "Yes" to Part VII, Section A, questions 3, 4, or 5, about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i>	23	Yes	
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer questions 24b-24d and complete Schedule K. If "No," go to line 25</i>	24a		No
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d		
25a	Section 501(c)(3) and 501(c)(4) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i>	25a		No
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i>	25b		No
26	Was a loan to or by a current or former officer, director, trustee, key employee, highly compensated employee, or disqualified person outstanding as of the end of the organization's tax year? <i>If "Yes," complete Schedule L, Part II</i>	26		No
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor, or a grant selection committee member, or to a person related to such an individual? <i>If "Yes," complete Schedule L, Part III</i>	27		No
28	Was the organization a party to a business transaction with one of the following parties? (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions)			
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28a		No
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>	28b		No
c	An entity of which a current or former officer, director, trustee, or key employee of the organization (or a family member) was an officer, director, trustee, or owner? <i>If "Yes," complete Schedule L, Part IV</i>	28c		No
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i>	29	Yes	
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i>	30		No
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i>	31		No
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i>	32		No
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i>	33		No
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Parts II, III, IV, and V, line 1</i>	34		No
35	Is any related organization a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2</i>	35		No
36	Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i>	36		No
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI</i>	37		No
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11 and 19? Note. All Form 990 filers are required to complete Schedule O	38	Yes	

Part V Statements Regarding Other IRS Filings and Tax Compliance

		Yes	No
1a	Enter the number reported in Box 3 of Form 1096, <i>Annual Summary and Transmittal of U.S. Information Returns</i> . Enter -0- if not applicable		
	1a 124		
b	Enter the number of Forms W-2G included in line 1a Enter -0- if not applicable		
	1b 0		
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?	Yes	
2a	Enter the number of employees reported on Form W-3, <i>Transmittal of Wage and Tax Statements</i> filed for the calendar year ending with or within the year covered by this return		
	2a 356		
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns? Note: If the sum of lines 1a and 2a is greater than 250, you may be required to e-file this return (see instructions)	Yes	
3a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	Yes	
b	If "Yes," has it filed a Form 990-T for this year? If "No," provide an explanation in Schedule O	Yes	
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?		No
b	If "Yes," enter the name of the foreign country <input type="checkbox"/> _____ See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts		
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?		No
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?		No
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T, Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction?		
6a	Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible?		No
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		
7	Organizations that may receive deductible contributions under section 170(c).		
a	Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?	Yes	
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?	Yes	
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?		No
d	If "Yes," indicate the number of Forms 8282 filed during the year		
	7d		
e	Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?		No
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?		No
g	For all contributions of qualified intellectual property, did the organization file Form 8899 as required?		No
h	For contributions of cars, boats, airplanes, and other vehicles, did the organization file a Form 1098-C as required?	Yes	
8	Sponsoring organizations maintaining donor advised funds and section 509(a)(3) supporting organizations. Did the supporting organization, or a donor advised fund maintained by a sponsoring organization, have excess business holdings at any time during the year?		
9	Sponsoring organizations maintaining donor advised funds.		
a	Did the organization make any taxable distributions under section 4966?		
b	Did the organization make a distribution to a donor, donor advisor, or related person?		
10	Section 501(c)(7) organizations. Enter		
a	Initiation fees and capital contributions included on Part VIII, line 12	10a	
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities	10b	
11	Section 501(c)(12) organizations. Enter		
a	Gross income from members or shareholders	11a	
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them)	11b	
12a	Section 4947(a)(1) non-exempt charitable trusts. Is the organization filing Form 990 in lieu of Form 1041?	12a	
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year	12b	

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Section A. Governing Body and Management

Table with 3 columns: Question, Yes, No. Rows include: 1a Enter the number of voting members of the governing body (33); 1b Enter the number of voting members that are independent (31); 2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? (No); 3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? (No); 4 Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed? (Yes); 5 Did the organization become aware during the year of a material diversion of the organization's assets? (No); 6 Does the organization have members or stockholders? (No); 7a Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body? (No); 7b Are any decisions of the governing body subject to approval by members, stockholders, or other persons? (No); 8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following: 8a The governing body? (Yes); 8b Each committee with authority to act on behalf of the governing body? (Yes); 9 Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O (No).

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

Table with 3 columns: Question, Yes, No. Rows include: 10a Does the organization have local chapters, branches, or affiliates? (No); 10b If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?; 11 Has the organization provided a copy of this Form 990 to all members of its governing body before filing the form? (Yes); 11A Describe in Schedule O the process, if any, used by the organization to review the Form 990; 12a Does the organization have a written conflict of interest policy? If "No," go to line 13 (Yes); 12b Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts? (Yes); 12c Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done (Yes); 13 Does the organization have a written whistleblower policy? (Yes); 14 Does the organization have a written document retention and destruction policy? (No); 15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision? 15a The organization's CEO, Executive Director, or top management official (Yes); 15b Other officers or key employees of the organization (Yes); 16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? (Yes); 16b If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements? (Yes).

Section C. Disclosure

Table with 2 columns: Question, Answer. Rows include: 17 List the States with which a copy of this Form 990 is required to be filed (CA); 18 Section 6104 requires an organization to make its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply: [X] Own website, [] Another's website, [X] Upon request; 19 Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public. See Additional Data Table; 20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization: Suzanne Pettigrew, Controller, 999 Harrison Street, Berkeley, CA 94710, (510) 647-2900.

1b Total	800,877	0	156,596
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2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 in reportable compensation from the organization **▶6**

	Yes	No
3 Did the organization list any former officer, director or trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>		No
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>	Yes	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		No

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization

(A) Name and business address	(B) Description of services	(C) Compensation
Oliver & Company 1300 South 51st St Richmond, CA 94804	General Contractor/Equipment Installatio	374,160
Senovva 731 Ceres Ave Los Angeles, CA 90021	Video Technician	145,500
Bay Area Arts Marketing 1461 15th Street San Francisco, CA 94103	Telemarketing/Telefunding	121,435
Wishful Dnking Joint Venture 860 Spruce Street Berkeley, CA 94707	Theatrical Producer	107,143

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization **▶4**

Part VIII Statement of Revenue

			(A)	(B)	(C)	(D)	
			Total revenue	Related or exempt function revenue	Unrelated business revenue	Revenue excluded from tax under sections 512, 513, or 514	
Contributions, gifts, grants and other similar amounts	1a	Federated campaigns 1a					
	b	Membership dues 1b					
	c	Fundraising events 1c	289,312				
	d	Related organizations 1d					
	e	Government grants (contributions) 1e	222,900				
	f	All other contributions, gifts, grants, and similar amounts not included above 1f	2,614,327				
	g	Noncash contributions included in lines 1a-1f \$ <u>213,251</u>					
	h	Total. Add lines 1a-1f		3,126,539			
Program Service Revenue	2a	Admissions	711,110	6,216,705	6,216,705		
	b	Co-Production Revenue	711,110	1,164,667	1,164,667		
	c	other program Revenue	711,110	401,180	401,180		
	d	tuition/education	711,110	386,833	386,833		
	e	Concessions	711,110	286,593		472	
	f	All other program service revenue		-8,157		51,930	
	g	Total. Add lines 2a-2f		8,447,821			
			Business Code				
Other Revenue	3	Investment income (including dividends, interest and other similar amounts)		34,084		34,084	
	4	Income from investment of tax-exempt bond proceeds					
	5	Royalties		62,490		62,490	
	6a	Gross Rents	(i) Real	90,469			
			(ii) Personal	17,251			
			b Less rental expenses	123,055			
			c Rental income or (loss)	-32,586			
	d	Net rental income or (loss)		-64,577		-37,854	
	7a	Gross amount from sales of assets other than inventory	(i) Securities	95,194			
			(ii) Other				
b Less cost or other basis and sales expenses			97,240				
c Gain or (loss)			-2,046				
d	Net gain or (loss)		-2,046		-2,046		
8a	Gross income from fundraising events (not including \$ <u>289,312</u> of contributions reported on line 1c) See Part IV, line 18 a						
b	Less direct expenses b						
c	Net income or (loss) from fundraising events		0				
9a	Gross income from gaming activities See Part IV, line 19 a						
b	Less direct expenses b						
c	Net income or (loss) from gaming activities						
10a	Gross sales of inventory, less returns and allowances a						
		b Less cost of goods sold b					
		c Net income or (loss) from sales of inventory					
	Miscellaneous Revenue	Business Code					
11a	Other special events	900,099	40,389		40,389		
b							
c							
d	All other revenue						
e	Total. Add lines 11a-11d		40,389				
12	Total revenue. See Instructions		11,644,700	8,169,385	14,548	334,228	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns.

All other organizations must complete column (A) but are not required to complete columns (B), (C), and (D).

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.		(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to governments and organizations in the U S See Part IV, line 21				
2	Grants and other assistance to individuals in the U S See Part IV, line 22	34,740	34,740		
3	Grants and other assistance to governments, organizations, and individuals outside the U S See Part IV, lines 15 and 16				
4	Benefits paid to or for members				
5	Compensation of current officers, directors, trustees, and key employees	432,600	162,225	162,225	108,150
6	Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7	Other salaries and wages	4,879,074	4,059,406	539,471	280,197
8	Pension plan contributions (include section 401(k) and section 403(b) employer contributions)	98,925	71,336	19,801	7,788
9	Other employee benefits	609,557	500,980	77,196	31,381
10	Payroll taxes	439,716	358,796	48,523	32,397
11	Fees for services (non-employees)				
a	Management				
b	Legal				
c	Accounting				
d	Lobbying				
e	Professional fundraising See Part IV, line 17	50,355			50,355
f	Investment management fees				
g	Other	858,014	793,487	64,517	10
12	Advertising and promotion	182,712	182,712		
13	Office expenses	619,732	513,363	54,607	51,762
14	Information technology				
15	Royalties	326,764	326,764		
16	Occupancy	694,271	569,100	18,058	107,113
17	Travel	290,563	268,156	15,780	6,627
18	Payments of travel or entertainment expenses for any federal, state, or local public officials				
19	Conferences, conventions, and meetings				
20	Interest	145,427	117,068	18,906	9,453
21	Payments to affiliates				
22	Depreciation, depletion, and amortization	786,342	624,936	107,604	53,802
23	Insurance	212,509	186,798	16,734	8,977
24	Other expenses Itemize expenses not covered above (Expenses grouped together and labeled miscellaneous may not exceed 5% of total expenses shown on line 25 below)				
a	miscellaneous	969,197	734,270	169,406	65,521
b	production materials	643,752	643,752		
c	housing	435,665	435,665		
d	credit card fees and ch	248,069	198,895	34,268	14,906
e	Maintenance	154,346	124,702	19,763	9,881
f	All other expenses				
25	Total functional expenses. Add lines 1 through 24f	13,112,330	10,907,151	1,366,859	838,320
26	Joint costs. Check here <input type="checkbox"/> if following SOP 98-2 Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation				

Part X Balance Sheet

		(A)		(B)
		Beginning of year		End of year
Assets	1 Cash—non-interest-bearing	233,044	1	1,241,159
	2 Savings and temporary cash investments	3,666,591	2	1,738,459
	3 Pledges and grants receivable, net	4,643,289	3	2,743,681
	4 Accounts receivable, net	334,377	4	13,539
	5 Receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L		5	
	6 Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B). Complete Part II of Schedule L		6	
	7 Notes and loans receivable, net		7	
	8 Inventories for sale or use		8	
	9 Prepaid expenses and deferred charges	1,528,534	9	701,915
	10a Land, buildings, and equipment cost or other basis. Complete Part VI of Schedule D	33,642,135		
	b Less accumulated depreciation	8,436,650	10c	25,205,485
	11 Investments—publicly traded securities	618,048	11	2,596,187
	12 Investments—other securities. See Part IV, line 11	52,768	12	17,447
	13 Investments—program-related. See Part IV, line 11		13	
	14 Intangible assets		14	
	15 Other assets. See Part IV, line 11	102,558	15	109,762
16 Total assets. Add lines 1 through 15 (must equal line 34)	30,730,495	16	34,367,634	
Liabilities	17 Accounts payable and accrued expenses	1,042,667	17	786,912
	18 Grants payable		18	
	19 Deferred revenue	4,591,860	19	3,207,484
	20 Tax-exempt bond liabilities		20	
	21 Escrow or custodial account liability. Complete Part IV of Schedule D		21	
	22 Payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		22	
	23 Secured mortgages and notes payable to unrelated third parties	3,543,255	23	10,166,867
	24 Unsecured notes and loans payable to unrelated third parties		24	
	25 Other liabilities. Complete Part X of Schedule D	418,928	25	620,447
	26 Total liabilities. Add lines 17 through 25	9,596,710	26	14,781,710
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.			
	27 Unrestricted net assets	13,397,583	27	12,936,397
	28 Temporarily restricted net assets	5,499,760	28	4,399,396
	29 Permanently restricted net assets	2,236,442	29	2,250,131
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 30 through 34.			
	30 Capital stock or trust principal, or current funds		30	
	31 Paid-in or capital surplus, or land, building or equipment fund		31	
	32 Retained earnings, endowment, accumulated income, or other funds		32	
33 Total net assets or fund balances	21,133,785	33	19,585,924	
34 Total liabilities and net assets/fund balances	30,730,495	34	34,367,634	

Part XI Financial Statements and Reporting

		Yes	No
1	Accounting method used to prepare the Form 990 <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O		
2a	Were the organization's financial statements compiled or reviewed by an independent accountant? . . .		No
2b	Were the organization's financial statements audited by an independent accountant?	Yes	
2c	If "Yes," to 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O	Yes	
2d	If "Yes" to line 2a or 2b, check a box below to indicate whether the financial statements for the year were issued on a consolidated basis, separate basis, or both <input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separated basis		
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		No
3b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits . . .		

SCHEDULE A
(Form 990 or 990EZ)

Public Charity Status and Public Support

OMB No 1545-0047

2009

Open to Public Inspection

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.

Department of the Treasury
Internal Revenue Service

Name of the organization
Berkeley Repertory Theatre

Employer identification number

94-1679756

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions

The organization is not a private foundation because it is (For lines 1 through 11, check only one box)

- 1 A church, convention of churches, or association of churches **section 170(b)(1)(A)(i).**
- 2 A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E)
- 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**
- 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state

- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II)
- 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)** (Complete Part II)
- 8 A community trust described in **section 170(b)(1)(A)(vi)** (Complete Part II)
- 9 An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See **section 509(a)(2).** (Complete Part III)
- 10 An organization organized and operated exclusively to test for public safety See **section 509(a)(4).**
- 11 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2) See **section 509(a)(3).** Check the box that describes the type of supporting organization and complete lines 11e through 11h
 a Type I b Type II c Type III - Functionally integrated d Type III - Other
- e By checking this box, I certify that the organization is not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2)
- f If the organization received a written determination from the IRS that it is a Type I, Type II or Type III supporting organization, check this box
- g Since August 17, 2006, has the organization accepted any gift or contribution from any of the following persons?
 (i) a person who directly or indirectly controls, either alone or together with persons described in (ii) and (iii) below, the governing body of the the supported organization?
 (ii) a family member of a person described in (i) above?
 (iii) a 35% controlled entity of a person described in (i) or (ii) above?
- h Provide the following information about the supported organization(s)

	Yes	No
11g(i)		
11g(ii)		
11g(iii)		

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1- 9 above or IRC section (see instructions))	(iv) Is the organization in col (i) listed in your governing document?		(v) Did you notify the organization in col (i) of your support?		(vi) Is the organization in col (i) organized in the U S ?		(vii) Amount of support?
			Yes	No	Yes	No	Yes	No	
Total									

Part II Support Schedule for Organizations Described in IRC 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
 (Complete only if you checked the box on line 5, 7, or 8 of Part I.)

Section A. Public Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
1 Gifts, grants, contributions, and membership fees received (Do not include any "unusual grants.")	5,684,622	5,411,788	7,275,348	5,964,568	3,126,540	27,462,866
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
3 The value of services or facilities furnished by a governmental unit to the organization without charge						
4 Total. Add lines 1 through 3	5,684,622	5,411,788	7,275,348	5,964,568	3,126,540	27,462,866
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						1,785,632
6 Public Support. Subtract line 5 from line 4						25,677,234

Section B. Total Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
7 Amounts from line 4	5,684,622	235,676	7,275,348	5,964,568	3,126,540	27,462,866
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources	187,432	235,676	180,095	200,285	170,768	974,256
9 Net income from unrelated business activities, whether or not the business is regularly carried on	77,964	84,159	115,946		14,548	292,617
10 Other income (Explain in Part IV) Do not include gain or loss from the sale of capital assets	847,567	943,146			40,389	1,831,102
11 Total support (Add lines 7 through 10)						30,560,841
12 Gross receipts from related activities, etc (See instructions)					12	32,919,205

13 First Five Years If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a 501(c)(3) organization, check this box and **stop here**

Section C. Computation of Public Support Percentage

14 Public Support Percentage for 2009 (line 6 column (f) divided by line 11 column (f))	14	84.020 %
15 Public Support Percentage for 2008 Schedule A, Part II, line 14	15	87.040 %

16a 33 1/3% support test—2009. If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization

b 33 1/3% support test—2008. If the organization did not check the box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization

17a 10%-facts-and-circumstances test—2009. If the organization did not check a box on line 13, 16a, or 16b and line 14 is 10% or more, and if the organization meets the "facts and circumstances" test, check this box and **stop here.** Explain in Part IV how the organization meets the "facts and circumstances" test. The organization qualifies as a publicly supported organization

b 10%-facts-and-circumstances test—2008. If the organization did not check a box on line 13, 16a, 16b, or 17a and line 15 is 10% or more, and if the organization meets the "facts and circumstances" test, check this box and **stop here.** Explain in Part IV how the organization meets the "facts and circumstances" test. The organization qualifies as a publicly supported organization

18 Private Foundation If the organization did not check a box on line 13, 16a, 16b, 17a or 17b, check this box and see instructions

Part III Support Schedule for Organizations Described in IRC 509(a)(2)

(Complete only if you checked the box on line 9 of Part I.)

Section A. Public Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
1 Gifts, grants, contributions, and membership fees received (Do not include any "unusual grants.")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 Total. Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b						
8 Public Support (Subtract line 7c from line 6)						

Section B. Total Support

Calendar year (or fiscal year beginning in)	(a) 2005	(b) 2006	(c) 2007	(d) 2008	(e) 2009	(f) Total
9 Amounts from line 6						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						
c Add lines 10a and 10b						
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on						
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part IV.)						
13 Total support (Add lines 9, 10c, 11 and 12)						

14 First Five Years If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a 501(c)(3) organization, check this box and **stop here**

Section C. Computation of Public Support Percentage

15 Public Support Percentage for 2009 (line 8 column (f) divided by line 13 column (f))	15	
16 Public support percentage from 2008 Schedule A, Part III, line 15	16	

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2009 (line 10c column (f) divided by line 13 column (f))	17	
18 Investment income percentage from 2008 Schedule A, Part III, line 17	18	

19a 33 1/3% support tests—2009. If the organization did not check the box on line 14, and line 15 is more than 33 1/3% and line 17 is not more than 33 1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization

b 33 1/3% support tests—2008. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3% and line 18 is not more than 33 1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization

20 Private Foundation If the organization did not check a box on line 14, 19a or 19b, check this box and see instructions

Part IV **Supplemental Information.** Supplemental Information. Complete this part to provide the explanation required by Part II, line 10; Part II, line 17a or 17b; or Part III, line 12. Provide any other additional information. See instructions

SCHEDULE D (Form 990)

OMB No 1545-0047

Supplemental Financial Statements

2009

Open to Public Inspection

Complete if the organization answered "Yes," to Form 990, Part IV, line 6, 7, 8, 9, 10, 11, or 12. Attach to Form 990. See separate instructions.

Department of the Treasury Internal Revenue Service

Name of the organization Berkeley Repertory Theatre

Employer identification number 94-1679756

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows 1-4: Total number at end of year, Aggregate contributions to (during year), Aggregate grants from (during year), Aggregate value at end of year.

- 5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control?
6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds may be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit?

Part II Conservation Easements. Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

- 1 Purpose(s) of conservation easements held by the organization (check all that apply): Preservation of land for public use, Protection of natural habitat, Preservation of open space, Preservation of an historically important land area, Preservation of a certified historic structure.

2 Complete lines 2a-2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year

- a Total number of conservation easements
b Total acreage restricted by conservation easements
c Number of conservation easements on a certified historic structure included in (a)
d Number of conservation easements included in (c) acquired after 8/17/06

Table with 2 columns: Held at the End of the Year. Rows 2a, 2b, 2c, 2d.

- 3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the taxable year
4 Number of states where property subject to conservation easement is located
5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds?
6 Staff and volunteer hours devoted to monitoring, inspecting and enforcing conservation easements during the year
7 Amount of expenses incurred in monitoring, inspecting, and enforcing conservation easements during the year
8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and 170(h)(4)(B)(ii)?
9 In Part XIV, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets. Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

- 1a If the organization elected, as permitted under SFAS 116, not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education or research in furtherance of public service, provide, in Part XIV, the text of the footnote to its financial statements that describes these items
b If the organization elected, as permitted under SFAS 116, to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items: (i) Revenues included in Form 990, Part VIII, line 1; (ii) Assets included in Form 990, Part X
2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 relating to these items: a Revenues included in Form 990, Part VIII, line 1; b Assets included in Form 990, Part X

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

3 Using the organization's accession and other records, check any of the following that are a significant use of its collection items (check all that apply)

- a** Public exhibition
- b** Scholarly research
- c** Preservation for future generations
- d** Loan or exchange programs
- e** Other

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIV

5 During the year, did the organization solicit or receive donations of art, historical treasures or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? Yes No

Part IV Escrow and Custodial Arrangements. Complete if the organization answered "Yes" to Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? Yes No

b If "Yes," explain the arrangement in Part XIV and complete the following table

	Amount
1c Beginning balance	
1d Additions during the year	
1e Distributions during the year	
1f Ending balance	

2a Did the organization include an amount on Form 990, Part X, line 21? Yes No

b If "Yes," explain the arrangement in Part XIV

Part V Endowment Funds. Complete if the organization answered "Yes" to Form 990, Part IV, line 10.

	(a) Current Year	(b) Prior Year	(c) Two Years Back	(d) Three Years Back	(e) Four Years Back
1a Beginning of year balance	2,197,109	2,213,034			
b Contributions	14,689	38,633			
c Investment earnings or losses	95,893	-39,558			
d Grants or scholarships					
e Other expenditures for facilities and programs	47,748	15,000			
f Administrative expenses					
g End of year balance	2,259,943	2,197,109			

2 Provide the estimated percentage of the year end balance held as

- a** Board designated or quasi-endowment ▶ 0.860 %
- b** Permanent endowment ▶ 99.140 %
- c** Term endowment ▶ %

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by

	Yes	No
(i) unrelated organizations	3a(i)	No
(ii) related organizations	3a(ii)	No
b If "Yes" to 3a(ii), are the related organizations listed as required on Schedule R?	3b	

4 Describe in Part XIV the intended uses of the organization's endowment funds

Part VI Investments—Land, Buildings, and Equipment. See Form 990, Part X, line 10.

Description of investment	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a Land		2,802,299		2,802,299
b Buildings		28,115,409	6,689,144	21,426,265
c Leasehold improvements				
d Equipment		1,792,030	1,452,300	339,730
e Other		932,397	295,206	637,191
Total. Add lines 1a-1e (Column (d) should equal Form 990, Part X, column (B), line 10(c).)				25,205,485

Part XI Reconciliation of Change in Net Assets from Form 990 to Financial Statements

1	Total revenue (Form 990, Part VIII, column (A), line 12)	1	11,644,700
2	Total expenses (Form 990, Part IX, column (A), line 25)	2	13,112,330
3	Excess or (deficit) for the year Subtract line 2 from line 1	3	-1,467,630
4	Net unrealized gains (losses) on investments	4	73,241
5	Donated services and use of facilities	5	
6	Investment expenses	6	
7	Prior period adjustments	7	
8	Other (Describe in Part XIV)	8	-153,472
9	Total adjustments (net) Add lines 4 - 8	9	-80,231
10	Excess or (deficit) for the year per financial statements Combine lines 3 and 9	10	-1,547,861

Part XII Reconciliation of Revenue per Audited Financial Statements With Revenue per Return

1	Total revenue, gains, and other support per audited financial statements	1	12,011,931
2	Amounts included on line 1 but not on Form 990, Part VIII, line 12		
a	Net unrealized gains on investments	2a	73,241
b	Donated services and use of facilities	2b	
c	Recoveries of prior year grants	2c	
d	Other (Describe in Part XIV)	2d	293,990
e	Add lines 2a through 2d	2e	367,231
3	Subtract line 2e from line 1	3	11,644,700
4	Amounts included on Form 990, Part VIII, line 12, but not on line 1		
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a	
b	Other (Describe in Part XIV)	4b	
c	Add lines 4a and 4b	4c	0
5	Total Revenue Add lines 3 and 4c . (This should equal Form 990, Part I, line 12)	5	11,644,700

Part XIII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return

1	Total expenses and losses per audited financial statements	1	13,406,320
2	Amounts included on line 1 but not on Form 990, Part IX, line 25		
a	Donated services and use of facilities	2a	
b	Prior year adjustments	2b	
c	Other losses	2c	
d	Other (Describe in Part XIV)	2d	293,990
e	Add lines 2a through 2d	2e	293,990
3	Subtract line 2e from line 1	3	13,112,330
4	Amounts included on Form 990, Part IX, line 25, but not on line 1:		
a	Investment expenses not included on Form 990, Part VIII, line 7b	4a	
b	Other (Describe in Part XIV)	4b	
c	Add lines 4a and 4b	4c	0
5	Total expenses Add lines 3 and 4c . (This should equal Form 990, Part I, line 18)	5	13,112,330

Part XIV Supplemental Information

Complete this part to provide the descriptions required for Part II, lines 3, 5, and 9, Part III, lines 1a and 4, Part IV, lines 1b and 2b, Part V, line 4, Part X, Part XI, line 8, Part XII, lines 2d and 4b, and Part XIII, lines 2d and 4b Also complete this part to provide any additional information

Identifier	Return Reference	Explanation
Part V, Line 4	Description of Intended Use of Endowment Funds	The purpose of the endowment funds is to further the charitable and educational purposes of Berkeley Repertory Theatre by providing general support in meeting the operating and program needs of Berkeley Repertory Theatre, as determined by Berkeley Repertory Theatre's Board of Trustees A donor making a contribution to the Endowment Fund may impose specific use restrictions (a "Restricted Purpose") on the donor's contribution, provided that any such restriction must be clearly stated in the donor's gift instrument If at any time in the judgment of the Board of Trustees it is impossible or impracticable to carry out exactly the Restricted Purpose in the manner requested by the donor, a purpose and manner as near as is practicable to the Restricted Purpose shall be determined by the Board of Trustees
Part X	Description of Uncertain Tax Positions Under FIN 48	The Theatre has evaluated its current tax positions and has concluded that as of August 31, 2010, the Theatre does not have any significant uncertain tax positions for which a reserve would be necessary
Part XI, Line 8 - Other Adjustments		Loss on interest rate swap -153472
Part XII, Line 2d - Other Adjustments		Fundraising Expense 81614 Reclass of Rental UBI 150352 Reclass of Advertising UBI 28082 Reclass of Gift Shop UBI 33942
Part XIII, Line 2d - Other Adjustments		Fundraising Expense 81614 Reclass of Rental UBI 150352 Reclass of Advertising UBI 28082 Reclass of Gift Shop UBI 33942

**SCHEDULE G
(Form 990 or 990-EZ)**

**Supplemental Information Regarding
Fundraising or Gaming Activities**

OMB No. 1545-0047

2009

**Open to Public
Inspection**

Complete if the organization answered "Yes" to Form 990, Part IV, lines 17, 18, or 19,
or if the organization entered more than \$15,000 on Form 990-EZ, line 6a.
▶ Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.

Department of the Treasury
Internal Revenue Service

Name of the organization
Berkeley Repertory Theatre

Employer identification number
94-1679756

Part I Fundraising Activities. Complete if the organization answered "Yes" to Form 990, Part IV, line 17.
Form 990-EZ filers are not required to complete this part.

1 Indicate whether the organization raised funds through any of the following activities. Check all that apply.

- a** Mail solicitations
- b** Internet and e-mail solicitations
- c** Phone solicitations
- d** In-person solicitations
- e** Solicitation of non-government grants
- f** Solicitation of government grants
- g** Special fundraising events

2a Did the organization have a written or oral agreement with any individual (including officers, directors, trustees or key employees listed in Form 990, Part VII) or entity in connection with professional fundraising activities? Yes No

b If "Yes," list the ten highest paid individuals or entities (fundraisers) pursuant to agreements under which the fundraiser is to be compensated at least \$5,000 by the organization. Form 990-EZ filers are not required to complete this table.

(i) Name of individual or entity (fundraiser)	(ii) Activity	(iii) Did fundraiser have custody or control of contributions?		(iv) Gross receipts from activity	(v) Amount paid to (or retained by) fundraiser listed in col (i)	(vi) Amount paid to (or retained by) organization
		Yes	No			
Bay Area Arts Marketing	Telefunding		No	150,966	50,355	100,611
Total				150,966	50,355	100,611

3 List all states in which the organization is registered or licensed to solicit funds or has been notified it is exempt from registration or licensing.

CA

Part II Fundraising Events. Complete if the organization answered "Yes" to Form 990, Part IV, line 18, or reported more than \$15,000 on Form 990-EZ, line 6a. List events with gross receipts greater than \$5,000.

		(a) Event #1	(b) Event #2	(c) Other Events	(d) Total Events
		Gala Dinner, Auction & Raffle (event type)	(event type)	(total number)	(Add col (a) through col (c))
Revenue	1 Gross receipts	370,926			370,926
	2 Less Charitable contributions	145,682			145,682
	3 Gross income (line 1 minus line 2)	225,244			225,244
Direct Expenses	4 Cash prizes				
	5 Non-cash prizes	143,630			143,630
	6 Rent/facility costs	33,875			33,875
	7 Food and beverages	25,101			25,101
	8 Entertainment	6,000			6,000
	9 Other direct expenses	16,638			16,638
	10 Direct expense summary Add lines 4 through 9 in column (d) ▶				225,244
11 Net income summary Combine lines 3, column d, and line 10. ▶				0	

Part III Gaming. Complete if the organization answered "Yes" to Form 990, Part IV, line 19, or reported more than \$15,000 on Form 990-EZ, line 6a.

		(a) Bingo	(b) Pull tabs/Instant bingo/progressive bingo	(c) Other gaming	(d) Total gaming
					(Add col (a) through col (c))
Revenue	1 Gross revenue				
Direct Expenses	2 Cash prizes				
	3 Non-cash prizes				
	4 Rent/facility costs				
	5 Other direct expenses				
6 Volunteer labor	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No		
7 Direct expense summary Add lines 2 through 5 in column (d) ▶					
8 Net gaming income summary Combine lines 1, column d, and line 7 ▶					

	Yes	No
9 Enter the state(s) in which the organization operates gaming activities _____		
a Is the organization licensed to operate gaming activities in each of these states?	9a	
b If "No," Explain _____		
10a Were any of the organization's gaming licenses revoked, suspended or terminated during the tax year?	10a	
b If "Yes," Explain _____		
11 Does the organization operate gaming activities with nonmembers?	11	
12 Is the organization a grantor, beneficiary or trustee of a trust or a member of a partnership or other entity formed to administer charitable gaming?	12	

		Yes	No
13 Indicate the percentage of gaming activity operated in			
a The organization's facility	13a		
b An outside facility	13b		
14 Enter the name and address of the person who prepares the organization's gaming/special events books and records			
Name ▶ _____			
Address ▶ _____			
15a Does the organization have a contract with a third party from whom the organization receives gaming revenue?		15a	
b If "Yes," enter the amount of gaming revenue received by the organization ▶ \$ _____ and the amount of gaming revenue retained by the third party ▶ \$ _____			
c If "Yes," enter name and address			
Name ▶ _____			
Address ▶ _____			
16 Gaming manager information			
Name ▶ _____			
Gaming manager compensation ▶ \$ _____			
Description of services provided ▶ _____			
<input type="checkbox"/> Director/officer <input type="checkbox"/> Employee <input type="checkbox"/> Independent contractor			
17 Mandatory distributions			
a Is the organization required under state law to make charitable distributions from the gaming proceeds to retain the state gaming license?		17a	
b Enter the amount of distributions required under state law distributed to other exempt organizations or spent in the organization's own exempt activities during the tax year ▶ \$ _____			

Schedule I (Form 990)

OMB No 1545-0047

Grants and Other Assistance to Organizations, Governments and Individuals in the United States

2009

Complete if the organization answered "Yes," to Form 990, Part IV, line 21 or 22. Attach to Form 990

Open to Public Inspection

Department of the Treasury Internal Revenue Service

Name of the organization Berkeley Repertory Theatre

Employer identification number

94-1679756

Part I General Information on Grants and Assistance

- 1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance?
2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States

Part II Grants and Other Assistance to Governments and Organizations in the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 21 for any recipient that received more than \$5,000. Check this box if no one recipient received more than \$5,000. Use Part IV and Schedule I-1 (Form 990) if additional space is needed.

Table with 8 columns: (a) Name and address of organization or government, (b) EIN, (c) IRC Code section if applicable, (d) Amount of cash grant, (e) Amount of non-cash assistance, (f) Method of valuation (book, FMV, appraisal, other), (g) Description of non-cash assistance, (h) Purpose of grant or assistance.

2 Enter total number of section 501(c)(3) and government organizations
3 Enter total number of other organizations

Part III Grants and Other Assistance to Individuals in the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 22.
Use Schedule I-1 (Form 990) if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of non-cash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of non-cash assistance
SCHOLARSHIPS	59		34,740	FMV	Scholarships are made to students attending Berkeley Repertory Theatre's School of Theatre
See Additional Data Table					

Part IV Supplemental Information. Complete this part to provide the information required in Part I, line 2, and any other additional information.

Identifier	Return Reference	Explanation
Procedure for Monitoring Grants in the U S	Part I, Line 2	Schedule I, Part I, Line 2 All scholarships are made to students attending Berkeley Repertory Theatre's School of Theatre Scholarship funds directly reduce costs of attendance All applicants are asked to submit a financial aid application demonstrating their need A copy of tax return is required Applications remain on file School of Theatre Director, Associate Director, and Administrator evaluate requests and scale award in relation to AGI, adjusting for extenuating circumstances, previous awards, and participation in School of Theatre

Schedule J
(Form 990)

Compensation Information

OMB No 1545-0047

2009

Open to Public Inspection

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

▶ Complete if the organization answered "Yes" to Form 990, Part IV, question 23.

▶ Attach to Form 990. ▶ See separate instructions.

Department of the Treasury
Internal Revenue Service

Name of the organization
Berkeley Repertory Theatre

Employer identification number

94-1679756

Part I Questions Regarding Compensation

Yes No

1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a Complete Part III to provide any relevant information regarding these items

- | | |
|---|--|
| <input type="checkbox"/> First-class or charter travel | <input type="checkbox"/> Housing allowance or residence for personal use |
| <input type="checkbox"/> Travel for companions | <input type="checkbox"/> Payments for business use of personal residence |
| <input type="checkbox"/> Tax idemnification and gross-up payments | <input type="checkbox"/> Health or social club dues or initiation fees |
| <input type="checkbox"/> Discretionary spending account | <input type="checkbox"/> Personal services (e g , maid, chauffeur, chef) |

b If any of the boxes in line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all the expenses described above? If "No," complete Part III to explain

1b

2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all officers, directors, trustees, and the CEO/Executive Director, regarding the items checked in line 1a?

2

3 Indicate which, if any, of the following the organization uses to establish the compensation of the organization's CEO/Executive Director Check all that apply

- | | |
|---|---|
| <input checked="" type="checkbox"/> Compensation committee | <input checked="" type="checkbox"/> Written employment contract |
| <input type="checkbox"/> Independent compensation consultant | <input checked="" type="checkbox"/> Compensation survey or study |
| <input checked="" type="checkbox"/> Form 990 of other organizations | <input checked="" type="checkbox"/> Approval by the board or compensation committee |

4 During the year, did any person listed in Form 990, Part VII, Section A, line 1a with respect to the filing organization or a related organization

a Receive a severance payment or change-of-control payment?

4a

No

b Participate in, or receive payment from, a supplemental nonqualified retirement plan?

4b

Yes

c Participate in, or receive payment from, an equity-based compensation arrangement?

4c

No

If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III

Only 501(c)(3) and 501(c)(4) organizations only must complete lines 5-9.

5 For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of

a The organization?

5a

No

b Any related organization?

5b

No

If "Yes," to line 5a or 5b, describe in Part III

6 For persons listed in form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of

a The organization?

6a

No

b Any related organization?

6b

No

If "Yes," to line 6a or 6b, describe in Part III

7 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III

7

No

8 Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regs section 53 4958-4(a)(3)? If "Yes," describe in Part III

8

No

9 If "Yes" to line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53 4958-6(c)?

9

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use Schedule J-1 if additional space needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions on row (ii) Do not list any individuals that are not listed on Form 990, Part VII

Note. The sum of columns (B)(i)-(iii) must equal the applicable column (D) or column (E) amounts on Form 990, Part VII, line 1a

(A) Name		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported in prior Form 990 or Form 990-EZ
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
Susan Medak	(i)	199,742	0	0	7,350	15,585	222,677	0
	(ii)	0	0	0	0	0	0	0
Tony Taccone	(i)	171,447	0	0	40,225	9,306	220,978	0
	(ii)	0	0	0	0	0	0	0

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 4c, 5a, 5b, 6a, 6b, 7, and 8. Also complete this part for any additional information.

Identifier	Return Reference	Explanation
	Part I, Line 4a	Supplemental executive retirement plan (Rabbi Trust) Tony Taccone - \$34,331

SCHEDULE M (Form 990)

NonCash Contributions

OMB No 1545-0047

2009

Open to Public Inspection

Complete if the organization answered "Yes" on Form 990, Part IV, lines 29 or 30. Attach to Form 990.

Department of the Treasury Internal Revenue Service

Name of the organization Berkeley Repertory Theatre

Employer identification number 94-1679756

Part I Types of Property

Table with 4 columns: (a) Check if applicable, (b) Number of Contributions, (c) Revenues reported on Form 990, Part VIII, line 1g, (d) Method of determining revenues. Rows include Art, Books, Clothing, Cars, Boats, Intellectual property, Securities, Real estate, Collectibles, Food inventory, Drugs, Taxidermy, Historical artifacts, Scientific specimens, Archeological artifacts, and Other (Entertainment, Lodging, Meals, Wine, Watches, Stationery, Fitness club).

29 Number of Forms 8283 received by the organization during the tax year for contributions for which the organization completed Form 8283, Part IV, Donee Acknowledgement 29 1

Table with 3 columns: Question, Yes, No. Rows include 30a (During the year, did the organization receive by contribution any property...), 31 (Does the organization have a gift acceptance policy...), 32a (Does the organization hire or use third parties...), and 33 (If the organization did not report revenues...).

Part II

Supplemental Information. Complete this part to provide the information required by Part I, lines 30b, 32b, and 33. Also complete this part for any additional information.

Identifier	Return Reference	Explanation
Third Party Use	Part I, Line 32b	Cars donated to Berkeley Repertory Theatre are sold by Charitable Auto Resources, Inc for a fee Net proceeds are received by the Theatre

Schedule M (Form 990) 2009

Additional Data

Software ID:
Software Version:
EIN: 94-1679756
Name: Berkeley Repertory Theatre

efile GRAPHIC print - DO NOT PROCESS | **As Filed Data -** | **DLN: 93493109003111**

SCHEDULE O
(Form 990)

Supplemental Information to Form 990

OMB No 1545-0047

2009

Complete to provide information for responses to specific questions on Form 990 or to provide any additional information.
▶ Attach to Form 990.

Open to Public Inspection

Name of the organization
Berkeley Repertory Theatre

Employer identification number
94-1679756

Identifier	Return Reference	Explanation
Form 990, Part VI, Section A, line 4		By-law s were amended and restated Revision approved by the Board of Trustees March 8, 2010 Under new legislation, California AB 1233's amendments permitted a nonprofit to have "a treasurer or a chief financial officer or both " By-law s were changed accordingly Other topics addressed ranged from various officers' titles and responsibilities, indemnification of Trustees, and pow ers that should (or should not) be delegated to the Executive Committee

Identifier	Return Reference	Explanation
Form 990, Part VI, Section B, line 11		In a recent board meeting, the Theatre set forth the follow ing policy regarding the preparation, review and approval of the Form 990 The managing director, in consultation w ith the Board or Finance Committee, as the managing director deems appropriate, is responsible for the timely preparation of the return The Managing Director shall provide the Finance Committee w ith a substantially complete Form 990 sufficiently in advance of the filing deadline to enable a detailed and conscientious review by the members of the Finance Committee Subsequently, the Board w ill be invited to review the Form 990 in its entirety in advance of the filing deadline

Identifier	Return Reference	Explanation
Form 990, Part VI, Section B, line 12c		The organization's conflict of interest policy covers all trustees, the managing director and artistic director No trustee may use his or her position at the organization for personal gain or to benefit another at the expense of the organization, its mission, or its reputation Each trustee must sign an annual conflict of interest disclosure statement affirming they have read the conflict of interest policy, are not aw are of any direct or indirect financial or other material interest that is required to be disclosed, and w ill promptly report any future situation that might consitute a conflict of interest If a conflict of interest fails to be disclosed the board w ill investigate the situation and take appropriate disciplinary and corrective action as necessary

Identifier	Return Reference	Explanation
Form 990, Part VI, Section B, line 15		In Fall 2009, data w as gathered from Theatre Communications Group from theatres of similar size and one step larger and one step smaller, in terms of operating budget Artistic Director data w as distinguished w hen possible from Managing Director data -- it included salary, bonus, contract items like term and termination clauses and perks like sabbaticals and limits on outside projects Berkeley Repertory Theatre deemed our offers to be above the median, probably in the top quartile of the comps -- w e live in one of the highest cost of living areas in the country Board President due diligence w as conducted w ith fellow Board Presidents to ensure our process and terms w ere normal -- not materially different from other theatres The entire Board regularly evaluates the performance of our Directors The Board delegates the authority to negotiate a contract w ith Directors to a committee and in turn the Committee empow ers a person to w ork w ith the Directors one on one What is especially good about our process is that the entire Board does materially control the authority delegated and the limits of the associated contractual terms We did have an executive session of the full Board to discuss, decide, and then document w ith a w ritten contract

Identifier	Return Reference	Explanation
Form 990, Part VI, Section C, line 19		The organization's governing documents and Financial Statements are available upon request

Identifier	Return Reference	Explanation
Form 990, Part XI, Line 2c		The process had not changed from the prior year

Identifier	Return Reference	Explanation
Form 990, Part VI, Section B, Line 14		The organization is planning to implement a document retention and destruction policy in the coming year

AMENDED AND RESTATED BY-LAWS OF

BERKELEY
REPERTORY
THEATRE, INC.

Revision approved by the Board of Trustees
March 8, 2010



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Amended and Restated By-Laws

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**BERKELEY REPERTORY THEATRE, INC.
AMENDED BY LAWS**

A Non-profit Corporation.

**Article I
OFFICES**

1.01 *Corporate Name.* The name of the corporation is The Berkeley Repertory Theatre, Inc., a non-profit public benefit corporation organized and existing as such under the California Nonprofit Public Benefit Corporation Law.

1.02 *Principal Office.* The principal office of the corporation is located at 1125 Addison Street, Berkeley, California in Alameda County.

**Article II
MEMBERS AND HONORARY ADVISORS**

2.01 *No Memberships.* The corporation shall have no members.

2.02 *Honorary and Sustaining Advisors.* The Board of Trustees by majority vote may elect persons to be Honorary or Sustaining Advisors of the corporation, to serve in such capacity without fixed term, at the pleasure of the Board of Trustees. Honorary or Sustaining Advisors shall be persons whose counsel and assistance will be solicited by the Trustees from time to time for the furtherance of the beneficial purposes of the corporation.

2.03 *No Dues, Fees or Assessments.* The offices of Trustees, Officers, and Honorary and/or Sustaining Advisors of the corporation shall all be non-assessable, and no fees or dues of any kind shall be due the corporation from persons holding such positions.

2.04 *Offices Non-Transferable.* The offices of Trustees, Officers, and Honorary and/or Sustaining Advisors of the corporation shall each be non-transferable and non-assignable.

**Article III
TRUSTEES**

3.01 *Number of Trustees.* The corporation shall have thirty-five (35) or forty (40) Trustees, collectively known as the Board of Trustees (the "Board of Trustees"), with the exact number as set by the Board of Trustees.

3.02 *Annual Meeting of Trustees.* The Board of Trustees shall meet annually (the "Annual Meeting") at such time and place as the Trustees may determine by majority vote. Each meeting shall be held for the purposes of electing Trustees and Officers, and for the transaction of such other business properly before the meeting. Such Annual Meeting shall also be a regular meeting of the Board of Trustees for the month in which it is held.

Berkeley Repertory Theatre, Inc.
Amended and Restated By-Laws

3.03 **Notice of Annual Meetings:** Notice of the Annual Meeting, and the date, time, and place thereof, shall be given in writing to each Trustee, either by personal delivery, or by United States mail with postage prepaid, telephone facsimile, or electronic mail, at least ten (10) days before the date fixed for the meeting. If the written notice is sent by mail or telegram or facsimile, or electronic mail, unless given by personal delivery, the notice shall be addressed to the postal or electronic address or telephone fax number of each Trustee as shown in the records of the corporation. The notice shall be deemed given at the time it is deposited in the United States mail, or sent by facsimile machine or electronic mail. The written notice shall be given by the Secretary of the corporation, or any other person designated by the President of the corporation to so act, for the purpose of giving such notice, shall have available at the principal office of the corporation during regular business hours, the corporate records reflecting the addresses and fax numbers of the Trustees.

3.04 **Qualifications of Trustees:** Two (2) Trustees in office at any time shall be the Artistic Director and the Managing Director of the performing company. The remaining members of the Board of Trustees shall be elected pursuant to Section 3.05 of these Amended and Restated By-Laws of Berkeley Repertory Theatre, as may be amended from time to time (the "By-Laws").

3.05 **Election of Trustees:** The election of Trustees by the Board of Trustees shall be held by written or voice vote, unless any Trustee requests that it be done by written ballot.

(a) If the election of Trustees shall not be held at the Annual Meeting of the Trustees, or at any adjournment thereof, the Board of Trustees shall cause the election of Trustees to be held at a special meeting of the Trustees called and held as soon as may be convenient after the Annual Meeting of Trustees.

(b) The Board of Trustees may determine that the election of Trustees be conducted by mail or electronic mail, utilizing written ballots in the manner otherwise established by the Board for such election by mail or electronic mail.

(c) Each Trustee in office shall be entitled to one (1) vote in the election of Trustees. Cumulative voting for the election of Trustees shall not be authorized.

(d) The candidates for Trustee receiving the highest number of votes, up to the number of Trustees to be elected, shall be elected.

3.06 **Powers of Trustees:** Subject to any limitations imposed by the Articles of Incorporation of Berkeley Repertory Theatre, as amended (the "Amended Articles"), these By-Laws, or provisions of applicable law, the Trustees shall exercise the powers of the corporation, control its property, account for its funds, and otherwise conduct its affairs. In exercising such powers, the Trustees may delegate certain of them to such committees as shall be established by these By-Laws, or by the Board of Trustees for such purposes from time to time, subject in all cases to approval by the Board of Trustees of all acts of the corporation as may be recommended by any such committee.

3.07 **Terms of Office of Trustees:**

(a) The Artistic Director and the Managing Director of the performing company shall be appointed Trustees for as long as they serve in their respective positions.

(b) The term of office for the remaining Trustees shall be three (3) years. The effective date for determining length of term when the Trustee is elected at a time other than the Annual Meeting shall be the first Annual Meeting following the election of the Trustee.

(c) Thereafter, the respective terms of office of the Trustees described in Section 3.05 above, after the initial terms of office, shall all be for two consecutive terms of three (3) years each.

(d) Subject to the provisions of Section 3.05 above, each Trustee of the corporation shall hold office until the next Annual Meeting of the Trustees of the corporation at which the term of office of such Trustee expires, or until the expiration of his or her term of office.

(e) A Trustee may be elected to only three (3) consecutive terms of office as Trustee, serving in such office for a maximum of nine (9) years, following which the Trustee shall not be eligible for re-election as a Trustee for a period of at least one (1) year. A Trustee who is serving as an Officer of the corporation at the time his or her term as a Trustee expires shall continue in office as a Trustee until the expiration of his or her office as an Officer.

3.08 ***No Compensation for Trustees.*** Trustees of the corporation shall not receive any compensation for their services as Trustees. The Board of Trustees may authorize the advance or reimbursement to a Trustee of actual reasonable expenses incurred in carrying out his or her duties as a Trustee.

3.09 ***Regular and Special Meetings of Trustees.***

(a) Regular meetings of the Trustees shall be held at least quarterly, at the times and places, within or without the State of California, designated by the person or persons calling the meeting, or, in the absence of such designation, at such other time and/or place provided by the Board of Trustees. In the absence of a designation of place by the person calling the meeting or by the Board of Trustees, regular meetings shall be held at the principal place of business of the corporation.

(b) Special meetings of the Trustees may be called by the President, or, if he or she is absent or is unable to act, by a Vice President; or, by any seven (7) Trustees; and such meetings shall be held at the time and place, within or without the State of California, designated by the person or persons calling the meeting, or in the absence of any other designation of place, at the principal place of business of the corporation.

(c) The Secretary of the corporation, or other person designated by the President, shall deliver a written notice of the time and place of any Special Meeting of the Board of Trustees to each Trustee in the manner specified in Section 3.03 for giving notice of Annual Meetings to the Board of Trustees. Notice of the time and place of adjourned meetings of Trustees need not be given to absent Trustees, if the time and place are fixed at the adjourned meeting.

3.10 ***Transaction of Business at Trustees' Meetings.***

(a) The transactions of any annual, regular or special meeting of the Board of Trustees, however called or noticed or wherever held, are as valid as though the meeting had been duly held after proper notice and call, provided a quorum of Trustees as defined in Section 3.11 of this Article III, below, is present, and provided that either before or after such meeting each of the Trustees not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes of such meeting accurately reflecting the business conducted thereat. The waiver of consent or notice need not specify the purpose of the meeting. All such waivers, consents, or approvals shall be filed with the records of the corporation or made a part of the minutes of the Trustees' meeting in question. Notice of a meeting shall also be deemed given to any Trustee who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

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(b) Except as otherwise provided in these By-Laws, in the Amended Articles, or by law, no business shall be conducted by the Board of Trustees at any meeting at which a quorum is not present, and the only motion which shall be entertained at any such meeting is a motion for adjournment. However, a majority of the Trustees present at such meeting may adjourn it from time to time until the time fixed for the next regular meeting of the Trustees.

(c) Meetings of the Trustees shall be presided over by the President, or in his or her absence by a Vice President, or in the absence of both, by a chair chosen by the majority vote of those Trustees present at such meeting. The Secretary of the corporation shall act as Secretary of the Board of Trustees. If the Secretary is absent, the presiding officer may appoint any person to act as Secretary for the meeting.

(d) Members of the Board of Trustees may participate in a meeting of the Board or a committee of the Board through the use of conference telephone or similar communications equipment, so long as all members participating in such a meeting can hear one another. Participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

3.11 **Quorum of Trustees:** A quorum of the Board of Trustees shall consist of one-half of the Trustees currently in office.

3.12 **Action by Trustees:** Every act or decision done or made by a majority of the Trustees present at a meeting of the Trustees duly held at which a quorum is present, is the act of the Trustees of the corporation, unless by law, or the Amended Articles, or these By-Laws, a greater number is required.

3.13 **Action by Trustees Without Meeting:** Any action required or permitted to be taken by the Board of Trustees under any provision of law may be taken without a meeting of Trustees, if all Trustees shall individually or collectively consent in writing to such action. Such written consent(s) shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such Trustees. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the particular action was taken by unanimous written consent of the Board of Trustees without a meeting, and that these By-Laws authorize the Trustees so to act; and such statement shall be prima facie evidence of such authority.

3.14 **Removal of Trustees:** Any Trustee may be removed from office at any time by a vote of a majority of the Board of Trustees then in office. If any Trustee or Trustees are so removed, new Trustees may be elected at the same meeting of Trustees. If new Trustees are not elected at such a meeting, the vacancy or vacancies created by such removal(s) shall be filled as provided in Section 3.15 of this Article III, below.

3.15 **Vacancies on the Board of Trustees:**

(a) Vacancies on the Board of Trustees shall exist: (1) on the death, resignation, disability, or removal of any Trustee; (2) whenever the number of Trustees authorized for the corporation is increased; and, (3) on the failure of the Trustees of the corporation in any election therefor to elect the full number of Trustees authorized.

(b) Vacancies shall be filled by the majority vote of the remaining Trustees in office.

(c) A reduction of the authorized number of Trustees of the corporation does not remove any Trustee prior to the expiration of his or her term of office.

3.16 ***Leave of Absence.*** Upon the request of any Trustee and approval of the Board, a Trustee may take a leave of absence from the Board. A leave of absence shall be granted at the discretion of the Board only if exigencies of a personal or business nature interfere with a Trustee's ability to serve, and the Trustee expects to be able to return to service on the Board prior to the end of his or her then current term of office. A Trustee on leave of absence shall not be a voting member of the Board, and his or her seat on the Board shall be considered vacant for all purposes specified in these By-Laws, except as herein provided. A Trustee on leave of absence shall nevertheless receive minutes of meetings of the Board and shall be invited to all social events to which Trustees are invited. A Trustee's leave of absence shall continue until the Board approves the Trustee's request to return to active Board service, or the Trustee's current term of office ends, whichever shall first occur. If, at the time a Trustee on leave of absence requests to return to active service, no vacancy on the Board of Trustees exists pursuant to Section 3.15 of these By-Laws, the leave of absence shall continue until such vacancy exists. The period of time that a Trustee is on leave of absence shall not be counted in calculating the Trustee's term of office, pursuant to Section 3.07 of these By-Laws.

3.17 ***Interested Trustees.*** Not more than forty-nine percent (49%) of the persons serving on the Board of Trustees at any time may be interested persons. An "interested person" is (a) any person being compensated by the corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the corporation.

3.18 ***Conflicts of Interest Policy.*** The Board of Trustees shall adopt a Conflicts of Interest Policy that requires Trustees, Officers, and key employees to disclose interests that constitute or could result in a conflict of interest. The Conflicts of Interest Policy shall also specify, in accordance with Sections 5233 and 5234 of the California Nonprofit Public Benefit Corporation Law, the steps that must be taken by the Board of Trustees to approve a decision or transaction that involves an actual or apparent conflict of interest. The Board of Trustees shall regularly and consistently monitor and enforce compliance with the Conflicts of Interest Policy.

Article IV OFFICERS

4.01 ***Authorized Offices.*** The Officers of the corporation shall be a President, a Vice President, an Artistic Director, a Managing Director, a Secretary, a Treasurer and an Immediate Past President. At the discretion of the Board of Trustees, the corporation may also have one or more additional Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers; and such other officers as may be appointed in accordance with the provisions of Section 4.03, below. One person may hold two or more offices, except those of President and Secretary.

4.02 ***Qualifications for Office.*** Any Trustee, but no person who is not a Trustee of this corporation, may be elected as an Officer.

4.03 **Appointment of Other Officers, Agents.** The Board of Trustees may appoint such other Officers or agents as it may deem advisable, and such Officers shall serve such terms, have such authority, and perform such duties, as may be prescribed from time to time by the Board of Trustees.

4.04 **Removal of Officers.** Any Officer may be removed, either with or without cause, by a majority vote of the Board of Trustees. Such removal(s) shall be effected at any regular or special meeting of the Board of Trustees, and any such Officer so removed ceases to be qualified for the office he or she occupies, as herein provided. Any Officer may resign at any time by giving written notice to the Board of Trustees, or to the President, or to the Secretary. Any such resignation shall take effect at the date of receipt of such written notice, or at any later time specified in the notice not to exceed sixty (60) days after the date of its receipt; and unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

4.05 **Vacancy in Offices.** Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any Officer, shall be filled by the Board of Trustees for the unexpired term of the particular office, by the majority vote of the Board of Trustees at their next meeting after such vacancy occurs. In the event of any vacancy in office other than that of President, such vacancy may be filled temporarily by appointment by the President, until such time as the Board of Trustees shall fill the vacancy.

4.06 **Duties of President.** The President shall serve as Chair of the Board and chief executive officer, subject to the Board of Trustees. The President shall perform all duties incident to the office and such other duties as may be required by law, by the Amended Articles, or by these By-Laws, or which may be validly prescribed from time to time by the Board of Trustees. The President shall preside at all meetings of the Board of Trustees. Except as otherwise expressly provided by law, by the Amended Articles, or by these By-Laws, the President shall in the name of the corporation execute such instruments which may from time to time be authorized by the Board of Trustees; and shall also, *ex officio*, be a member of all standing and other committees of the corporation.

4.07 **Duties of Vice President.** In the absence of the President, or in the event of his or her inability or refusal to act, a Vice President (if more than one is serving pursuant to Section 4.03 above) then shall have such other powers and perform such other duties as may be prescribed by law, by the Amended Articles, or by these By-Laws, or as may be prescribed by the Board of Trustees from time to time.

4.08 **Duties of Artistic Director.** The Artistic Director shall be in charge of all artistic endeavors of the corporation, including the selection of plays and artists. The Artistic Director shall also have such other powers and perform such other duties as may be prescribed by law, by the Amended Articles, by these By-Laws, or in a written employment or other agreement approved by the Board of Trustees from time to time.

4.09 **Duties of Managing Director.** The Managing Director shall supervise and control the affairs of the corporation and be in charge of the administration of the corporation. The Managing Director shall also have such other powers and perform such other duties as may be prescribed by law, by the Amended Articles, by these By-Laws, or in a written employment or other agreement approved by the Board of Trustees from time to time.

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4.10 **Duties of Secretary.** The Secretary of the corporation shall:

(a) Certify and keep at the principal office of the corporation the original in a copy of these By-Laws, and all future by-laws regularly enacted.

(b) Keep at the principal office of the corporation, or at such other place(s) as the Board of Trustees may order or authorize, a book or books of the minutes of all of the meetings of the Trustees, recording therein among other things the time and place of holding, whether annual, regular, or special (and if special, how authorized), notice thereof given, the names of those present at the meetings of Trustees, and the proceedings thereof.

(c) See that all notices are duly given in accordance with the provisions of these By-Laws or as required by law.

(d) Be the custodian of the assets and of the seal of the corporation.

(e) Keep at the principal office of the corporation a membership book containing the names and addresses and phone numbers of each Trustee, and in any case where a Trusteeship is terminated, record the fact in such record together with the date on which such office ceased.

(f) Exhibit at all reasonable times to any Trustee upon request, or to his or her agent or attorney, the by-laws, the membership book, and the minutes of the proceedings of the Board of Trustees.

(g) In general, perform all duties incident to the office of Secretary of a corporation, and such other duties as may be required by law, or the Amended Articles, or these By-Laws, or which may be assigned from time to time by the Board of Trustees.

4.11 **Duties of Immediate Past President.** The Immediate Past President of the corporation shall serve as an *ex officio* member of the Board of Trustees until the conclusion of the term of the following President. The Immediate Past President shall advise the President and the Board of Trustees and may perform such additional duties or responsibilities as the President or Board of Trustees may request. Upon expiration of the term of office of the Immediate Past President, he or she shall be immediately eligible to be elected to the Board of Trustees, notwithstanding the provisions of Section 1.07(c) of these By-Laws.

4.12 **Duties of Treasurer and/or Delegates(s).** The Treasurer shall advise the Board of Trustees and the President on policies regarding investments, cash management, debt management and financial risk assessment, including identifying and analyzing the risks associated with the financial decisions of the corporation. The Treasurer shall have such other duties as may be assigned by the Trustees, the President, or these By-Laws. The Board of Trustees may designate a person, who need not be a member of the Board of Trustees, to serve as the Chief Financial Officer or Controller of the corporation. In the absence of such a designation, the Treasurer shall serve as the Chief Financial Officer of the corporation. Subject to the provisions of Article VII below, the Chief Financial Officer or Controller, or if the Treasurer is serving as Chief Financial Officer, such person as the Treasurer shall delegate, shall:

(a) Have charge and custody of and be responsible for all funds and securities of the corporation, and deposit all such funds in the name of the corporation in such banks, trust companies, or other depositories as shall be authorized by the Board of Trustees.

(b) Receive, and give receipt for, moneys due and payable to the corporation from any source whatsoever.

(c) Disburse, or cause to be disbursed pursuant to procedures established and supervised by the Treasurer, the Chief Financial Officer, or the Controller, the funds of the

corporation as may be directed by the Board of Trustees, taking proper vouchers or other records for such disbursements.

(d) Keep and maintain adequate and correct accounts of the financial affairs of the corporation, and of its property and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses.

(e) Exhibit at all reasonable times the books of account and financial records to any Trustee of the corporation, or to his or her agent or attorney, upon request.

(f) Render to the President and to the Trustees, whenever requested, an account of any or all of the transactions which are the duty of the office of Treasurer, and of the financial condition of the corporation.

(g) Prepare, or cause to be prepared, and certify, the financial statements reflecting the financial condition of the corporation and its financial transactions, upon an annual basis.

(h) In general, perform all the duties incident to the office of Treasurer of a corporation, and such other duties as may be required by law, or the Amended Articles, or these By-Laws, or by the Board of Trustees as assigned from time to time.

(i) If required by the Board of Trustees, at the expense of the corporation, the Treasurer, the Chief Financial Officer, or the Controller as to all duties delegated hereunder, shall give bond for the faithful discharge of each and all of his or her duties, in such sum and with such surety or sureties as the Board of Trustees shall determine.

4.13 ***Compensation of Officers.*** All Officers of the corporation, except the Artistic Director and Managing Director, shall serve without compensation, except that they shall be allowed and paid their actual and necessary expenses incurred in performing the business of the corporation when so authorized by the Board of Trustees.

4.14 ***Term of Office.***

(a) The term of office of the Artistic Director and Managing Director, as such offices are described in Section 4.08 and 4.09 of this Article IV, shall be simultaneous with terms of their employment.

(b) The term of office of the President shall be two (2) years from the date of his or her initial election. The initial two-year term the President may be extended in one year increments at the discretion of the Board. No person shall serve as President for more than four (4) years consecutively.

(c) Each other Officer shall hold office until he or she resigns or is removed from office, or is otherwise disqualified to serve.

Article V COMMITTEES

5.01 ***Establishment of Committees.*** The corporation shall have the committees set forth in this Article V and such other committees, standing, ad hoc, or otherwise, as may be established from time to time in accordance with these By-Laws.

5.02 ***Executive Committee.*** The Executive Committee shall consist of the President, the Vice President(s), the Treasurer; the Secretary; the Artistic Director; the Managing Director, the chairs of the standing committees, and any other Trustees appointed by the Board of Trustees; provided that the Board of Trustees may remove any member of the Executive Committee. The

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President of the corporation shall serve as chair of the Executive Committee. Members of the Executive Committee each shall serve until the next Annual Meeting, or, in the case of the President, Artistic Director or Managing Director, until he or she ceases to serve as President, Artistic Director or Managing Director. The Board of Trustees may delegate to the Executive Committee any of the powers and authority of the Board of Trustees in the management of the business and affairs of the corporation, except as set forth in Section 5.09 or otherwise limited by applicable law, by the Amended Articles, or by these By-Laws. The designation of the Executive Committee and the delegation thereto of authority shall not operate to relieve the Board of Trustees, or any individual Trustee, of any responsibility imposed on it, him or her, by law, by the Amended Articles, or by these By-Laws. By a majority vote, the Trustees may at any time modify or revoke any or all of the authority so delegated; remove any member of the Executive Committee for any reason; increase or decrease but not below three (3) the number of its members; and fill vacancies therein from members of the Board of Trustees. The Executive Committee may establish rules for its meetings, and meet at such times as it deems necessary, provided that a reasonable notice of all meetings of the Executive Committee shall be given to its members; and no act of the Executive Committee shall be valid unless approved by the vote or written consent of a majority of its members.

5.03 **Standing Committees.** The corporation shall have the following standing committees. For each standing committee, (i) the President, the Managing Director, and the chair of the Trustees Committee, by majority vote, or (ii) the Board of Trustees shall appoint and shall also have the power to remove, one or more chairs, each of whom shall be a Trustee or Officer unless otherwise specified in these By-Laws; provided that any chair appointed by the Board of Trustees may be removed only by the Board of Trustees. No less than 75% of the members of any standing committee shall be Trustees. Unless otherwise specified in these By-Laws, members of standing committees shall be appointed and removed by (i) the President, the Managing Director, and the chair of the Trustees Committee, by majority vote, or (ii) the Board of Trustees; provided that any committee member appointed by the Board of Trustees may be removed only by the Board of Trustees. The President, the Artistic Director, and the Managing Director shall serve as *ex officio* members of all standing committees except for the Audit Committee or any committee responsible for executive compensation. Standing committees shall meet at such times and places as specified by the committee chair or as directed in each committee's respective charter.

(a) **Audit Committee.** In accordance with Section 12586(e)(2) of the California Government Code, the Board of Trustees shall appoint an Audit Committee of the corporation and shall designate, and have the power to remove, the chair of the Audit Committee. The President, the chair of the Audit Committee, and the chair of the Trustees Committee, by majority vote, shall designate, and shall have the power to remove, the members of the Audit Committee. The Audit Committee shall consist of at least three (3) members of which a majority shall be Trustees. The Audit Committee may include non-Trustees. While it may include members of the Finance Committee, the chair of the Audit Committee may not be a member of the Finance Committee, and members of the Finance Committee must constitute less than half of the Audit Committee. The Audit Committee may not include: (i) any member of the staff, including top management, (ii) the Treasurer, Chief Financial Officer or Controller, or (iii) any person who has a material financial interest in any entity doing business with the corporation. Each member will hold office for a term of one year or until he or she ceases to be a member pursuant to Section 5.05. There are no limits to the number of terms that an individual can serve. Under the supervision of the Board of Trustees, the Audit Committee shall oversee effective functioning of

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the corporation's financial auditors, their qualifications and independence, adequacy of the corporation's internal control systems, and oversight of the integrity of financial statements and reports, and shall have such other responsibilities and powers as set forth in the Audit Committee Charter, as adopted and amended by the Board of Trustees from time to time.

(b) *Finance Committee.* The Finance Committee shall consist of the Treasurer, Managing Director, and such other members as shall be appointed in accordance with Section 5.03 above. The duties of the Finance Committee shall include the determination of the financial feasibility of corporate projects including the preparation of a proposed budget for each annual or other fiscal period as established by the Board of Trustees, including proposed expenditures of funds or the use of the property of the corporation, acquisition of any real or personal property, construction of any improvements, the conduct of any artistic productions or enterprises, the payment of salaries or other compensation to any Officer or staff members of the corporation, or other expenditures. In undertaking these determinations and preparation and submissions of budgets, the Committee shall consult with all necessary Officers and staff members of the corporation. It shall report its budget and other recommendations to the Board of Trustees at the time(s) specified by the Board of Trustees. The Committee shall also monitor receipts and expenditures by the corporation.

(c) *Trustees Committee.* The Trustees Committee shall be made up of the chair of the Trustees Committee, the President, the Artistic Director, the Managing Director, and such other members as appointed in accordance with Section 5.03 above. Each member shall serve for an annual term, and each shall serve until the next Annual Meeting, or until he or she ceases to be a member pursuant to Section 5.05. The duties of the Trustees Committee shall include identifying and recruiting candidates for Trustees and Officers and evaluating Trustees and Officers. The Committee shall investigate suggestions for candidates for membership on the Board of Trustees and shall recommend prospective Trustees. Annually, the Committee shall (i) review and recommend Trustees for continued service as required based on evolving needs of the corporation and (ii) propose the slate of Officers for the following year, to be presented to the Board of Trustees before the Annual Meeting. The Trustees Committee shall also identify best practices and develop and recommend board governance principles applicable to the corporation.

5.04 *Ad Hoc Committees.* The Board of Trustees or the President may, from time to time, designate ad hoc committees for specific purposes or activities. For each such ad hoc committee, the Board of Trustees or the President may appoint, and have the power to remove, one or more chairs or members; provided that any chair or member appointed by the Board of Trustees may be removed only by the Board of Trustees. Chairs and members of ad hoc committees may be Trustees or non-Trustees, as deemed advisable. If the Board of Trustees establishes an ad hoc committee, the Board of Trustees may disestablish such committee. If the President establishes an ad hoc committee, either the Board of Trustees or the President may disestablish such committee. The times and places for, as well as procedures governing, ad hoc committee meetings shall be adopted in accordance with Section 5.08.

5.05 *Terms of Chairs and Members of Committees.*

(a) *Standing Committees.* The chair of each standing committee shall serve as such until the earliest to occur of: (i) the next Annual Meeting, (ii) such chair's removal, (iii) such committee is disestablished, (iv) such chair resigns, (v) such chair ceases to be a Trustee or Officer

of the corporation, or (vi) such chair ceases to be a member of said committee. Each member of a standing committee shall serve until the earliest to occur of (i) a new chair of that committee is appointed, (ii) such member is removed from the committee, resigns, or ceases to be a Trustee, or (iii) such member otherwise ceases to qualify as a member of said committee.

(b) *Ad Hoc Committees:* Chairs and members of any ad hoc committee shall serve as such for the shorter of the life of such committee, or until the next Annual Meeting, unless they sooner are removed, resign, or cease to qualify as a member of said committee.

5.06 *Vacancies on Committees:* Vacancies on any committee shall be filled for the unexpired portion of the term in the same manner as provided in the case of original committee membership appointments.

5.07 *Quorum Requirements for Committees:* One-half (1/2) of the whole Executive Committee or of any standing committee of the members thereof shall constitute a quorum of such committee, and the act of a majority of the members in attendance shall be the official act of that committee. Unless the President or the Board of Trustees provides otherwise, each ad hoc committee shall act under the direction of its chair without the requirement of a quorum.

5.08 *Rules for Committee Proceedings:* Each committee of the corporation may adopt for its own government and procedure such rules not inconsistent with any, these By-Laws, or with any rules and regulations for such committee adopted by the Board of Trustees, by resolution or adoption of a committee charter. If there is any inconsistency between any rules and regulations adopted by the Board of Trustees and the committee, the rules and regulations adopted by the Board of Trustees shall govern.

5.09 *Limitations Upon Committees:* No committee of the Board of Trustees, including the Executive Committee, shall have the authority of the Board of Trustees with respect to:

- (a) The filling of vacancies on the Board of Trustees or on any committee which has the authority of the Board of Trustees;
- (b) The fixing of compensation of the Trustees for serving on the Board of Trustees, or on any committee which has the authority of the Board of Trustees;
- (c) The amendment or repeal of any provision of the By-Laws or any other instrument;
- (d) The amendment or repeal of any resolution of the Board of Trustees which by its express terms is not so amendable or repealable;
- (e) The appointment of other committees of the Board of Trustees or members thereof if any such committee will have the authority of the Board of Trustees;
- (f) The expenditure of corporate funds in support of a nominee for Trustee when there are more people nominated for Trustee than can be elected; or
- (g) The approval of any self-dealing transaction which, when it is not reasonably practicable to obtain approval of the Board of Trustees, prior to entering into such a transaction, a committee authorized by the Board of Trustees may approve the transaction in a manner consistent with the standards set forth in Section 520(b)(2), the California Nonprofit Public Benefit Corporation Law subject to ratification by a majority of the Trustees then in office (excluding the vote of any interested Trustee at the next meeting of the Board of Trustees).

Article VI
INDEMNIFICATION

6.01 **Definitions:** For the purposes of this Article, "Covered Person" means any person who is or was a Trustee or Officer of the corporation, or is or was serving at the request of the corporation as a member of any committee or subcommittee of the Board of Trustees or as a trustee, officer, manager or member of the governing body of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise; "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, against any Covered Person in his or her capacity as such, including any threatened, pending, or completed action or proceeding against any Covered Person who is or was serving as a trustee, investment manager, or other fiduciary of any employee benefit plan or trust maintained by the corporation; and "Expenses" includes, without limitation, attorneys' fees, costs and other expenses incurred in the defense of any Proceedings and attorneys' fees, costs, and other expenses of establishing a right to indemnification under this Article.

6.02 **Successful Defense by Covered Person:** To the extent that a Covered Person has been successful on the merits in the defense of any Proceeding referred to in Section 6.03 or 6.04 of this Article or in the defense of any claim, issue or matter therein, the Covered Person shall be indemnified against Expenses actually and reasonably incurred by the Covered Person in connection therewith. If a Covered Person either settles any Proceeding or sustains a judgment rendered against him, then the provisions of Sections 6.03, 6.04, and 6.05 of this Article shall determine whether the Covered Person is entitled to indemnification.

6.03 **Actions Brought by Persons Other Than the Corporation:** Subject to the required findings pursuant to Section 6.05, the corporation shall indemnify any Covered Person who was or is a party or is threatened to be made a party to any Proceeding (other than an action brought by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law (Self-Dealing Transactions), or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust), against Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the Proceeding.

6.04 **Action Brought by or on Behalf of the Corporation:** Subject to the required findings pursuant to Section 6.05, the corporation shall indemnify any Covered Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action brought by or in the right of the corporation, or brought under Section 5233 of the California Corporations Code, or brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust, against Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the Proceeding. Notwithstanding the foregoing, no indemnification shall be made under this Section 6.04 with respect to any of the following:

(a) Any claim, issue or matter as to which such Covered Person shall have been adjudged to be liable to the corporation in the performance of such Covered Person's duty to the corporation, unless and only to the extent that the court in which such Proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such

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Covered Person is fairly and reasonably entitled to indemnity for the Expenses which such person shall determine;

(b) Any amounts paid settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(c) Any Expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

6.05 **Determination of Satisfaction of Standard of Conduct.** The indemnification granted to a Covered Person in Sections 6.03 and 6.04 may be made by the corporation only if authorized in the specific case upon a determination that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth below:

(a) **Required Standard of Conduct for Actions Brought by Persons Other Than the Corporation.** With respect to indemnification pursuant to Section 6.03, the Covered Person seeking reimbursement must be found, in the manner provided below, to have acted in good faith and in a manner he or she reasonably believed to be in the best interest of the corporation and, in the case of a criminal proceeding, to have had no reasonable cause to believe his conduct was unlawful. The termination of any 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 Covered Person did not act in good faith and in a manner which the Covered Person reasonably believed to be in the best interest of the corporation or that the Covered Person had reasonable cause to believe that his or her conduct was unlawful.

(b) **Required Standard of Conduct for Actions Brought by or on Behalf of the Corporation.** With respect to indemnification pursuant to Section 6.04, the Covered Person seeking reimbursement must be found, in the manner provided below, to have acted in good faith, in a manner he or she reasonably believed to be in the best interest of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) **Manner of Determination of Good Faith Conduct.** The determination that indemnification is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth above may be made either by the Board of Trustees by a majority vote of a quorum consisting of Trustees who are not parties to the proceeding or by the court in which such proceeding is or was pending upon application made by the corporation or the Covered Person or the attorney or other person rendering a defense, whether or not such application is by the Covered Person, and any such person is opposed by the corporation.

6.06 **Limitations.** No indemnification or advance shall be made in any circumstance when it appears that the indemnification or advance would be inconsistent with a provision of the Amended Articles, these By-Laws or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the Expenses were incurred or that advance were paid, which prohibits or otherwise limits indemnification, or that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

6.07 **Advance of Expenses.** Expenses incurred in defending any Proceeding shall be advanced by the corporation before the final disposition of Proceeding or receipt of an undertaking by or on behalf the Covered Person to repay the amount of the advance unless it is determined ultimately that the Covered Person is entitled to be indemnified as authorized in this Article, unless and to the extent the Board of Trustees determines in the specific case that there is a reasonable likelihood that indemnification of the Covered Person has not met the applicable standard of conduct set forth in Section 6.05 or that indemnification of the Covered Person would otherwise be inconsistent with this Article or applicable law.

6.08 **Contractual Rights of Non-Trustees and Non-Officers.** Nothing contained in this Article shall affect any right of indemnification to which persons other than Trustees and Officers of the corporation or any subsidiary of the corporation may be entitled by contract or otherwise.

6.09 **Indemnification of Employees and Agents.** Nothing contained in this Article VI is intended or shall be construed to preclude or limit the corporation from providing indemnification to employees or agents of the corporation.

6.10 **Fiduciaries of Employee Benefit Plans.** Notwithstanding any other provisions of this Article VI to the contrary, the corporation shall, to the extent permitted by applicable law, indemnify any Covered Person who was or is a party to, or is threatened to be made a party to, any Proceeding arising out of or related to such Covered Person's service, role or capacity as a fiduciary of an employee benefit plan of the corporation, against Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any such Proceeding. Nothing contained in this Article shall limit any right to indemnification to which any such Covered Person may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

6.11 **Directors' and Officers' and Fiduciary Liability Insurance.** The corporation may purchase and maintain directors' and officers' and fiduciary liability insurance for the benefit of any Covered Persons in such capacity; provided, however, that the corporation shall have no power to purchase and maintain such insurance to indemnify any Covered Person for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law. Notwithstanding any other provision of this Article VI, the corporation shall not be liable under this Article VI to indemnify any Covered Person against Expenses, liabilities or losses incurred or suffered in connection with, or make any advances with respect to, any Proceeding against any Covered Person to the extent that the amount of such Expenses, liabilities or losses are otherwise actually paid to such Covered Person pursuant to any liability insurance policy maintained by or for the corporation.

6.12 **Severability.** Each and every paragraph, sentence, term and provision of this Article VI is separate and distinct so that if any paragraph, sentence, term or provision of this Article VI shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of any other paragraph, sentence, term or provision of this Article VI. To the extent required, any paragraph, sentence, term or provision of this Article VI may be modified by a court of competent jurisdiction to preserve its validity and to provide the Covered Person with, subject to the limitations set forth in this Article VI and any agreement between the corporation and such Covered Person, the broadest possible indemnification permitted under applicable law.

6.13 **Subrogation.** If the corporation pays a claim under this Article VI, the corporation shall be subrogated to the extent of such payment to all of the rights of indemnity of the Covered Person, who shall execute all papers required and shall do everything that may be necessary or appropriate to secure such rights, including the execution of such documents necessary or appropriate to enable the corporation effectively to bring suit to enforce such rights.

6.14 **Effect of Repeal or Modification.** Any repeal or modification of this Article VI shall not adversely affect any right of indemnification of any Covered Person existing at the time of such repeal or modification with respect to any action or omission occurring prior to such repeal or modification.

Article VII

EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS

7.01 **Authority to Enter Into Contracts.** The Board of Trustees, except as otherwise provided in these By-Laws, may by resolution authorize any Officer or agent of the corporation to enter into any contract, or execute and deliver any instrument, in the name of and on behalf of the corporation, and such authority may be general or may be confined to specific matters.

7.02 **Deposit of Funds.** All funds of the corporation shall be deposited from time to time to the credit of the corporation in such bank(s), trust companies, or other depositories as the Board of Trustees may select.

7.03 **Acceptance of Gifts and Grants.** The Board of Trustees may accept on behalf of the corporation any contribution, grant, gift, bequest, or devise, in money or property or in kind, for any of the general or special purposes of the corporation, and upon such terms and conditions as the Board of Trustees may deem appropriate.

Article VIII

CORPORATE RECORDS, REPORTS AND VEST

8.01 **Minutes of Meetings.** The corporation shall keep at its principal place of business, or at such other place as the Board of Trustees may order, a book of the minutes of all meetings of the Trustees, with the time and place of holding, whether annual, regular or special, and how called, how authorized, the notice given, the names of those present at the Trustees' meetings, and the substance of the Proceedings thereof.

8.02 **Records of Transactions.** The corporation shall keep and maintain accurate records and correct accounts of its properties and business transactions, including assets, debts, liabilities, receipts, disbursements, gains and losses.

8.03 **Inspection of Books of Account.** The books of account shall be at all reasonable times open to inspection by any Trustee. Every Trustee shall have the absolute right at any reasonable time to inspect all books, records, documents of every kind, and financial properties of the corporation. Such inspection may be made in person, and the right to inspect includes the right to make copies at the expense of the Trustee requesting same.

8.04 ***Annual Reports and Financial Statement.*** The corporation shall produce and distribute the financial and other reports required by the California Nonprofit Public Benefit Corporation Law, including but not limited to the annual report required by Section 6321 of the California Nonprofit Public Benefit Corporation Law and the statement of transactions or indemnification required by Section 6322 of the California Nonprofit Public Benefit Corporation Law. Such report shall summarize the activities of the corporation for the preceding year, and activities projected for the coming year. The Board of Trustees shall also provide for the preparation of an annual financial statement, within one hundred and twenty (120) days of the close of the Fiscal Year specified in Article IX, below; and shall within such period send a copy of each such financial statement to each Trustee in office during such 120-day period. The financial statement shall consist of a balance sheet as of the close of business of the Fiscal Year of the corporation, contain a summary of receipts and disbursements, be prepared in such a manner and form as is sanctioned by sound accounting practices, and be certified by an independent certified public accountant.

8.05 ***Corporate Seal.*** The Board of Trustees may adopt, use and at will alter or modify, a corporate seal.

Article IX FISCAL YEAR

9.01 The Fiscal Year of the corporation shall begin on the 1st day of September, and end upon the 31st day of August, in each year.

Article X BY-LAWS

10.01 ***Effective Date.*** These By-Laws shall become effective immediately on their adoption. Amendments to the by-laws of the corporation shall become effective immediately on their adoption, unless the Board of Trustees in adopting them provides that they are to become effective at a later date.

10.02 ***Amendment or Repeal of By-Laws.*** Subject to any limitations contained in the Amended Articles, and any provision of law applicable to the amendment of by-laws of a nonprofit corporation, these By-Laws or any of them may be altered, amended, or repealed, and new by-laws adopted, by the vote of a majority of the Trustees present at any special or regular meeting of the Trustees at which a quorum is present, provided that written notice of such meeting and of the intention to change by-laws thereat is given and delivered as required in Article III of these By-Laws, or by the written consent of all Trustees without a meeting as provided in Article III of these By-Laws, provided, that a by-law fixing or changing the number of Trustees of the corporation may not be adopted, amended, or repealed except as provided in the Articles of Incorporation of the corporation.

10.03 ***Location of Official By-Laws.*** The original, or a copy of the by-laws as amended or otherwise altered to date, certified by the Secretary of the corporation, shall be recorded and kept in a book which shall be kept in the principal office of the corporation, and such book shall be open

to inspection by the members and any Trustee at all reasonable times during regular office hours.

Article XI
**PROHIBITION AGAINST
SHARING CORPORATE PROFITS OR ASSETS**

11.01 No Trustee, Officer, employee, or other person connected in any way with the corporation, or any other private individual, shall receive at any time any of the net earnings of pecuniary profits from the operations of the corporation; provided, that this provision shall not prevent payment to any such person of reasonable compensation for services rendered to or for the corporation in effecting any of its purposes, as shall be fixed from time to time by a resolution of the Board of Trustees; and no such person shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets upon dissolution of the corporation. All Trustees and Officers of the corporation shall be deemed to have expressly consented and agreed that on such dissolution or other winding up of the affairs of the corporation, whether voluntary or involuntary, the assets of the corporation, after all valid debts have been satisfied, then remaining under the control of the Board of Trustees, shall be distributed only as required by the Articles of Incorporation.

Article XII
EMERGENCY AUTHORITY

12.01 During any emergency resulting from an attack on the United States or on Berkeley, or during a nuclear disaster, earthquake, major fire, flood, or similar emergency condition, as a result of which a quorum of the Board or Executive Committee cannot readily be convened for action, a meeting of the Board of Trustees or Executive Committee may be called by any Officer or Trustee. Notice of a meeting so called need be given only to those Trustees or members of the Executive Committee as it may be feasible to reach at the time and by the means available at the time. The Trustees actually in attendance at the meeting of the Board of Trustees or Executive Committee called in accordance with this Article XII shall constitute a quorum.

The Board of Trustees, either before or during any such emergency, may provide, and from time to time may modify, lines of succession in the event that, during an emergency, any or all officers of the corporation shall for any reason be rendered incapable of discharging their duties.

CERTIFICATE

I, SCOTT HABER, hereby certify:

That I am the duly elected and serving Secretary of The Berkeley Repertory Theatre, a California nonprofit corporation; and that the foregoing Amended and Restated By-Laws, consisting of 17 pages, constitute the present by-laws of such corporation as duly adopted by the Trustees of the corporation as provided in its existing by-laws and Articles of Incorporation, as amended.

Dated: March 8, 2010

Scott Haber,
Secretary

Additional Data

Software ID:
Software Version:
EIN: 94-1679756
Name: Berkeley Repertory Theatre

Form 990, Part VII - Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

(A) Name and Title	(B) Average hours per week	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
Susan Medak Trustee, Managing Director	40 00	X			X			199,742	0	22,935
Tony Taccone Trustee, Artistic Director	40 00	X			X			171,447	0	49,531
Marjorie Randolph Trustee, President	1 00	X		X				0	0	0
William Falik Trustee, Vice President	1 00	X		X				0	0	0
Patricia Sakai Trustee, Vice President	1 00	X		X				0	0	0
Jack Schafer Trustee, Vice President	1 00	X		X				0	0	0
Phillip Trapp Trustee, Treasurer	1 00	X		X				0	0	0
Scott Haber Trustee, Secretary	1 00	X		X				0	0	0
David Cox Trustee	1 00	X						0	0	0
Thalia Dorwick Trustee	1 00	X						0	0	0
Oz Erickson Trustee	1 00	X						0	0	0
William Espey Trustee	1 00	X						0	0	0
John Field Trustee	1 00	X						0	0	0
David Fleishhacker Trustee	1 00	X						0	0	0
Kerry Francis Trustee	1 00	X						0	0	0
Robert G Harris Trustee	1 00	X						0	0	0
Wayne Jordan Trustee	1 00	X						0	0	0
Julie Matlof Kennedy Trustee	1 00	X						0	0	0
Carole S Krumland Trustee	1 00	X						0	0	0
Dale Rogers Marshall Trustee	1 00	X						0	0	0
Sandra R McCandless Trustee	1 00	X						0	0	0
Helen Meyer Trustee	1 00	X						0	0	0
Dugan Moore Trustee	1 00	X						0	0	0
Mary Ann Peoples Trustee	1 00	X						0	0	0
Peter Pervere Trustee	1 00	X						0	0	0

Form 990, Part VII - Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

(A) Name and Title	(B) Average hours per week	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional Trustee	Officer	Key employee	Highest compensated employee	Former			
Len Rand Trustee	1 00	X						0	0	0
Richard A Rubin Trustee	1 00	X						0	0	0
Emily Shanks Trustee	1 00	X						0	0	0
Sally Smith Trustee	1 00	X						0	0	0
Steve Snow Trustee	1 00	X						0	0	0
Roger Strauch Trustee	1 00	X						0	0	0
Jean Z Strunsky Trustee	1 00	X						0	0	0
Felicia Woytak Trustee	1 00	X						0	0	0
Leslie Waters Associate Artistic Director	40 00					X		112,452	0	20,795
Lynn Eve Komaromi Director of Development	40 00					X		108,511	0	14,402
Robert Sweibel Dir of Marketing & Communication	40 00					X		104,811	0	24,018
Karen Racanelli General Manager	40 00					X		103,914	0	24,915

Form 990, Part VIII - Statement of Revenue - 2a - 2g Program Service Revenue -

	Business Code	(A) Total Revenue	(B) Related or Exempt Function Revenue	(C) Unrelated Business Revenue	(D) Revenue Excluded from Tax under IRC 512, 513, or 514
Admissions	711,110	6,216,705	6,216,705		
Co-Production Revenue	711,110	1,164,667	1,164,667		
other program Revenue	711,110	401,180	401,180		
tuition/education	711,110	386,833	386,833		
Concessions	711,110	286,593		472	286,121

Form 990, Part IX - Statement of Functional Expenses - 24a - 24e Other Expenses

<i>Do not include amounts reported on line 6b, 8b, 9b, and 10b of Part VIII.</i>	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
miscellaneous	969,197	734,270	169,406	65,521
production materials	643,752	643,752		
housing	435,665	435,665		
credit card fees and ch	248,069	198,895	34,268	14,906
Maintenance	154,346	124,702	19,763	9,881