

# BERKSHIRE CO-OP MARKET BY-LAWS

*Adopted in its entirety by Membership*

*11/1/2014*

*Revised by Owner vote*

*9/23/2017*

## 1. OWNERSHIP

### 1.1 Eligibility

**1.1.1** Any individual 18 years or older, firm, association, or corporation shall, on approval by the Cooperative of his/her or its application and payment for Ownership stock and any required fees, be accepted into Ownership on terms and conditions established by the Board of Directors (hereinafter referred to as the "Board"). Such terms and conditions may include issuance of additional cards and other provisions for dependents and partners/significant others who share a common household with an individual who is an Owner.

**1.1.2** The Cooperative shall not discriminate on the basis of social or political grounds, national or ethnic origin, religion, race, age, sex, handicap, gender, sexual preference, gender identity, or marital status.

**1.1.3** Subject to section 5.0 of these Bylaws, each Owner of the Cooperative shall hold one share of Ownership Stock and such additional shares of other classes of stock as may be required by the Board.

**1.1.4** Each Owner that is not an individual shall designate a person to act on the Owner's behalf in conducting the affairs of the Cooperative. Such designation shall remain in effect until the Cooperative receives a written notice authorizing a change in the designated person.

**1.1.5** Each Owner shall abide by the Articles of Organization, the Bylaws and the policies of the Cooperative. Each Owner is responsible for notifying the Cooperative of changes in the Owner's postal and e-mail address, and any other change in the Owner's information or status which may affect Ownership.

### 1.2. Termination of Ownership.

**1.2.1** Ownership may be terminated voluntarily by an Owner upon notice to the Cooperative, or automatically if an Owner shall die, cease to exist, or fail to patronize the Cooperative for a period of time determined by the Board.

**1.2.2** The Board may in its sole discretion,

at any regular or special meeting, terminate the Ownership of an Owner if the Board determines that the Owner has conducted activities contrary to the best interests of the Cooperative, or if the Board determines that the Owner has violated the terms of the application, the Articles of Organization, the Bylaws and/or policies of the Cooperative. Prior to an action to terminate Ownership for any of the reasons stated in this section 1.2.2, the Board shall send notice of the proposed termination to the Owner's last known e-mail and postal addresses. Any Owner so notified may request in writing, within thirty (30) days of the date of the notification, an opportunity to appear before the Board to contest the proposed termination of Ownership. Any action of the Board to terminate Ownership shall be by two-thirds vote of the directors present, and shall be final.

## 2. MEETINGS OF OWNERS

### 2.1 Meetings of Owners.

**2.1.1 Annual Meeting of Owners.** Within 6 months after the close of the fiscal year, the Annual Meeting of the Owners of the Cooperative shall be held at the principal place of business of the Cooperative, or at any other place conveniently located within the area served by it, on such date and at such time as the Board shall determine.

**2.1.2 Annual Report.** A written annual report, including a balance sheet showing the assets and liabilities of the Cooperative and an operating statement for the most recently completed fiscal year, shall be provided to Owners at or prior to the Annual Meeting of the Cooperative.

**2.2 Special Meetings of Owners.** A Special Meeting of the Owners of the Cooperative shall be called by the Secretary (or the Vice President, in the event that the Secretary is unable or unwilling to call the meeting) whenever a majority of the Board—or ten (10) percent of the Owners or one-hundred (100) Owners, whichever is less—submit a petition in writing requesting a Special Meeting. The petition shall state the purpose of the Special Meeting. The Special Meeting shall be called and held by the Board within sixty (60) days of a properly submitted and received petition. The Board shall be responsible for conducting any Special

Meeting.

**2.3 Notice.** Written notice of Annual and Special Meetings of Owners shall be sent to the last known postal address of each Owner—and shall be posted on prominent signs at all Cooperative locations—not less than 10 (ten) business days before such meeting. Such notice shall state the nature of the business to be conducted and the time and place of the meeting. No business shall be transacted at any Annual or Special Meeting other than that referred to in the notice. In the event that email or other forms of notice are allowed under Massachusetts law, the Cooperative shall have the option to utilize these forms of notice of Owners' meetings in lieu of postal notification.

### 2.4 Owner Voting.

**2.4.1** Each share of Ownership stock shall have one vote upon any matter submitted to a vote of the Owners.

**2.4.2** The Board shall present to the Ownership any proposals or matters upon which a decision by the Ownership is required by Massachusetts law or these bylaws, and may present such other proposals and matters as the Board shall decide. The specific content of any proposal or matter being submitted for a vote shall be made available to the Ownership at least fourteen days before the vote commences.

**2.4.3** Voting may be by show of hands, voice vote, written ballot, mail-in ballot and/or electronic ballot, as determined by the Board, except that the election of directors shall be conducted by secret ballot. Whatever method of voting is used, the Board shall ensure that (i) the method is secure, accurate and permitted under Massachusetts law, (ii) that there is a sufficient time period during which votes may be cast, and (iii) the means by which votes are tallied is fair and accurate. The election of Directors shall be conducted in accordance with Section 3.8 below; the Board, at its discretion, may provide for instant runoff voting.

**2.4.4** There shall be no proxy voting.

**2.4.5** Unless otherwise stated in the Articles of Organization, these Bylaws, or required by law, all questions shall be decided by a vote of the majority of the Owners voting thereon who are present at a meeting or who have cast an absentee ballot.

**2.4.6** With respect to any matter for which

not less than a majority of any class of stock outstanding and entitled to vote thereon is required by law for approval, if a quorum of Owners, as described in Section 2.5 of these Bylaws, is present or represented at a meeting for which proper notice was given to the owners—including that one of the purposes of such meeting was to consider such matter—then only those owners in attendance or represented at the meeting by absentee ballots shall be deemed to be entitled to vote on such matter for purposes of determining if the requisite percentage of votes has been obtained.

**2.5 Quorums.** At any Annual or Special Meeting of the Owners, the quorum necessary for the transaction of business shall be at least three percent (3%) for Annual Meetings and five percent (5%) for Special Meetings of the total number of Owners of voting stock of the Cooperative. Only Owners in actual attendance or who have properly submitted an absentee ballot shall count towards a quorum.

### 3. BOARD OF DIRECTORS

**3.1** The Board of Directors shall set the policies and direct the affairs of the Cooperative, and shall exercise its authority in the interests of the Cooperative.

**3.2** The Board shall consist of nine (9) Directors, each of whom shall be an Owner of the Cooperative in good standing and at least eighteen (18) years of age.

**3.3** No person shall be eligible for nomination, election or appointment as a Director if that person is in competition with, or is affiliated with any enterprise that is in competition with, the Cooperative.

**3.4** No Director shall be engaged by the Cooperative as a regular employee.

**3.5** No more than one person from any firm, immediate family, household, association, or corporation may serve as a Director.

**3.6** The Board may establish a nominating committee to solicit and review applications for nomination to the Board, and to present a slate of nominees to the Owners for consideration. Owners in good standing not selected by the nominating committee shall be placed on the ballot upon submitting a petition signed by at least twenty-five (25) Owners in good standing. Said petition must be received not less than thirty (30) days prior to the Annual Meeting. The Cooperative shall equitably provide information on all candidates to the Owners.

**3.7** Directors shall be elected at the Annual Meeting of the Owners of the Cooperative. The term for each Director shall be three (3) years. Terms shall be staggered so that one-third (1/3) of the directors are elected to full terms each year. Directors may not serve

more than three (3) consecutive full three-year terms, except that the Directors in office at the time that these bylaws are adopted may serve up to four (4) consecutive three-year terms following adoption of the Bylaws. A former Director is eligible to serve on the Board after having been off the Board for a period of one (1) year.

**3.8 Election.** Except as otherwise specified under Section 3.9, the nominee(s) receiving the greatest number of votes shall be elected. In an instance where an unfilled vacancy exists for a partial term, the recipient of the lowest number of votes among the winners shall serve for the remainder of the partial term.

**3.9 Vacancies.** Any vacancy on the Board due to the resignation of a Director prior to completion of his or her term, or the removal or death of a Director, may be filled by Board appointment. A Director so appointed shall act as a Director and shall serve until the next Annual Meeting, at which time the Owners shall vote by majority to ratify the appointment.

**3.10 Board Meetings.** The Board shall hold regular meetings at least six (6) times per year at such times and places as it deems necessary and reasonable for the well-being of the Cooperative, and shall make every effort to meet monthly. Board meetings shall in general be open to any Owner of the Cooperative on an observational basis; however, the Board may at the request of a Director convene a closed meeting in order to conduct the business of the Cooperative pertaining to sensitive issues (such as personnel and legal matters) and in cases of emergencies. Closed meetings may be scheduled immediately prior to or after the regular monthly meeting of the Board or during a special meeting.

**3.11 Action without a Meeting.** Decisions of the Board may be made without a meeting if consent in writing, stating the action to be taken, is signed by all Directors of the Cooperative who would be eligible to attend and vote at a regular meeting of the Board and filed with the minutes. Consent via email is valid for purposes of this section.

**3.12 Special Meetings of the Board.** A Special Meeting of the Board shall be held whenever called by the President or by a majority of the Directors. Each call for a Special Meeting shall be in writing, shall be signed by the person or persons calling the meeting, shall be addressed and delivered to the Secretary, and shall state the time and place of such meeting. Only the business specified in the written notice shall be transacted at a Special Meeting.

**3.13 Notification.** Notice is not required for regularly scheduled monthly meetings

of the Board. Written notice of other Board meetings shall be given to each Director by, or under the supervision of, the Secretary of the Cooperative not less than five (5) days prior to the time of the meeting. Notice may be waived by any Director, and appearance at a meeting shall constitute a waiver of notice. Notice via email is valid for purposes of this section.

**3.14 Quorum.** A quorum shall consist of a simple majority of the Directors currently serving. Should the Board consist of an even number of Directors due to a vacancy, then a quorum shall consist of half the number of Directors currently serving. The Board may allow for participation in a meeting by electronic means provided that all directors can participate equally in the meeting without impediment, and such participation shall count in establishing a quorum.

**3.15 Voting.** Unless otherwise specified by the Articles of Organization or the Bylaws of the Cooperative, all matters before the Board for initial consideration shall be decided by consensus. If one or more Directors oppose a decision on the matter, the matter will be returned for additional discussion. If no solution becomes apparent during the Board meeting and circumstances do not require an immediate decision, the matter shall be postponed until the next meeting, at which time a majority vote shall decide the matter if consensus is still not possible. For the purposes of this section, a majority of the Board may determine whether circumstances require an immediate decision on a matter; if the Board shall so determine, then the matter shall be voted on during the current meeting and a majority vote of the Board shall be sufficient to decide the matter.

**3.16 Compensation and Reimbursement.** The compensation, if any, of the Directors shall be determined by the Board, and shall be published in the annual report to Owners. The level of compensation shall be reasonable, and shall be set at a level that will not jeopardize the interests of the Cooperative. The Cooperative shall reimburse Directors for reasonable expenses incurred in carrying out their duties and responsibilities.

**3.17 Removal.** A Director may be removed from office for cause by action of a 2/3 majority vote of the remainder of the entire Board. The following are bases upon which a Director may be removed:

**3.17.1** A Director who misses three

meetings in a row, or four meetings in any twelve-month period, may be removed by action of the other Directors.

**3.17.2** A Director who ceases to have the necessary qualifications as established by the Bylaws or policies of the Cooperative may be removed by action of the other Directors.

**3.17.3** A Director who exhibits mental incompetence or is physically incapable of carrying out his or her duties may be removed by action of the other Directors.

**3.17.4** A Director who engages in illegal action or egregious behavior that has a detrimental effect on the Cooperative or the functioning of the Board of Directors may be removed by action of the other Directors.

**3.18** Conflicts of Interest. A Director is under affirmative obligation to disclose any actual, potential or perceived conflicts of interest. Directors with conflicts of interest may not vote on any matter related to the conflict, and may not participate in any discussions on the matter unless authorized to do so by the Board. The Board may take any other actions it deems appropriate to address a conflict of interest on the part of a Director.

**3.19 Committees.** The Board may, at its discretion appoint committees, as it deems appropriate.

#### **4. BOARD OFFICERS**

**4.1** At the first Board meeting following the Annual Meeting of the Owners, the Board shall elect a President, Vice President, Secretary and Treasurer from among the Directors. The Board may, at its discretion, combine the offices of Secretary and Treasurer. All such Officers shall hold office for a term of one year, or until their successors have been elected and qualified. Such Officers shall serve at the will of the Board, and may be removed by majority vote of the Board and successors elected at any Board meeting. Each Officer shall be a Director.

**4.2** The Officers shall perform such duties as are ordinarily assigned to such Officers in the normal course of business. The President and Secretary shall have authority to sign all documents within the scope of the implied or express authorization of the Board, state and federal law, and the Articles of Organization and Bylaws of the Cooperative. The Vice President shall act as President in the absence or disability of the President.

#### **5.0 OWNER STOCK**

**5.1 Terms of Ownership.** In accordance with the Articles of Organization and Bylaws of the Cooperative and applicable state and federal law, the Board shall determine the

terms of Ownership, including the amount to be paid to acquire a share of Owner stock and any additional amounts that shall be paid to maintain ownership of a share of Owner stock, which terms shall apply to all Owners equitably. Owner shares are entitled to no patronage dividends—or other dividends or monetary returns on investment—unless required by law or authorized by the Board of Directors in accordance with the provisions of Section 6 of these Bylaws. Receipts of Owner stock shall be accounted for in one or more special accounts.

**5.2 Termination.** The Cooperative retains the right to terminate any Ownership as provided in the Bylaws and to redeem or recall any share(s) of stock. Such redemption of stock by the Cooperative is subject to section 5.4.

**5.3 Transferability.** Shares of stock shall be transferrable only to the Cooperative or otherwise with the consent and approval of the Board.

**5.4 Redemption.** The redemption value of an Owner share shall in no case be more than the cumulative amount paid by the Owner to acquire and maintain his or her share, reduced by any indebtedness of the Owner to the Cooperative. The Cooperative shall not redeem shares of stock of terminating Owners, whether for cause or for voluntary or involuntary reasons, unless, in the sole judgment of the Board, such redemption shall not jeopardize the financial stability and well-being of the Cooperative. The Board may establish additional terms and conditions for redemption of Owners' shares of stock, provided such terms and conditions apply to all Owners equitably.

**5.5 No Known Address.** In case the Board deems it necessary to redeem any share of stock, notification of such redemption and the sum of the redemption amount shall be sent to the Owner by U.S. regular mail delivery to the last known address for the Owner in the Cooperative's records. If any such notification is returned to the Cooperative as undeliverable, then the redemption amount allocated to the Owner in question shall be forfeited by the Owner and allocated to the Cooperative's capital reserve.

**5.6** Owners who choose to pay the Owner share price in annual installments must make required installment payments on time to remain in good standing. In the event that an Owner fails to make a required installment payment, the Owner will be placed in inactive status until the Owner's account is returned to good standing. Owners who remain inactive beyond a twelve-month period, or who fail to notify the Cooperative of their intention to terminate

their Ownership, may be terminated, and any partial equity payments accrued to date may be forfeited and allocated to the Cooperative's capital reserve.

#### **6. PATRONAGE DIVIDENDS**

**6.1 Distributable Net Earnings.** In arriving at distributable net earnings, the realized net earnings of the Cooperative for each fiscal year, to the extent attributable to the patronage of Owners, shall be reduced by the following: (i) an appropriation of twenty percent (20%) of net earnings for a reserve fund until such fund accumulates to thirty percent (30%) of paid-up capital stock, but only to the extent such appropriation exceeds net earnings attributable to business with non-owners; (ii) such adjustments as may be necessary to put such earnings on a tax basis; and (iii) such reasonable reserves for necessary business purposes as may be determined by the Board.

**6.2 Allocations to Owners.** Distributable net earnings, as determined under Section 6.1, shall be allocated among Owners in proportion to their patronage and distributed as patronage dividends. Patronage shall be measured by the dollar amount of purchases from the Cooperative. Any allocations of such a nominal amount as not to justify the expenses of distribution may, as determined by the Board, be excluded from distribution provided that they are not then or later distributed to other Owners.

**6.4 Consent of Owners.** By obtaining or retaining Ownership in the Cooperative, each Owner shall thereby consent to take into account, in the manner and to the extent required by Section 1385 of the Internal Revenue Code, the stated dollar amount of any qualified written notice of allocation in the taxable year in which such notice is received. A copy of this section and the explanation attached to these Bylaws as Exhibit I, as may be amended to reflect any future changes to the Internal Revenue Code, shall be provided to all Owners prior to commencement of patronage and the disbursement of an Owner patronage dividend.

**6.4.1** Any owner not claiming the allocated patronage dividend by the end of the timeframe designated by IRS section 1385 agrees that the Cooperative can direct the unclaimed funds as it sees fit, and the retained portion of the patronage dividend shall remain in the name of the owner.

**6.5 Deferred Amounts.** Patronage dividends not distributed for a given

fiscal year under Section 6.3 shall be credited to revolving capital accounts in the names of recipient Owners. Such deferred patronage dividends shall accrue no monetary return on investment and shall not be transferable. They shall be redeemed at no more than their carrying value on the books of the Cooperative when determined by the Board to be no longer needed for capital purposes of the Cooperative. At that time they shall be redeemed in the order of the oldest outstanding amounts and on a pro rata basis among such amounts, and shall be payable only to persons who are then Owners in good standing or who become so within ninety days of the effective date of redemption. Deferred patronage dividends may also be redeemed under compelling circumstances as determined by the Board.

**6.6 Allocation of Net Loss.** In the event the Cooperative shall incur a net loss in any fiscal year, such loss may be charged against retained earnings or other unallocated Owners' equity accounts. If the net loss exceeds such amounts, or in any event if the Board so determines, the amount of such loss may either be carried forward to offset adjusted net earnings of subsequent fiscal years or allocated to Owners in the same manner as for adjusted net earnings except that such allocation shall not exceed the total of invested capital. Any such allocated net loss shall be charged first against retained patronage dividends of prior fiscal years and then against patronage dividend allocations of subsequent fiscal years. Allocated net losses which are not so offset may be charged against the carrying value of shares only upon termination of Ownership. Allocated net losses shall not otherwise be assessed to or collected from Owners.

**6.7 No Known Address.** Patronage dividends and/or notice of patronage dividends shall be sent to Owners by U.S. regular mail delivery to the Owner's address in the Cooperative's records. If any such notice or dividend is returned to the Cooperative as undeliverable, then the patronage dividend allocated to the Owner in question shall be forfeited by the Owner and allocated to the Cooperative's capital reserve.

## **7. DISSOLUTION.**

The Cooperative may be dissolved by a two-thirds vote of the Owners.

## **8. INDEMNIFICATION AND INSURANCE.**

**8.1** The Cooperative shall indemnify each person who is or has been a Director or Officer of the Cooperative against liabilities—including attorney fees, judgments, fines, and amounts paid in settlements—actually

and reasonably incurred by him or her in connection with the performance of Cooperative duties, provided, however, that no indemnification may be given for any person with respect to any matter as to which he or she shall have been adjudicated not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Cooperative, or to the extent that the matter relates to service with respect to an employee benefit plan, in the best interests of the participants or beneficiaries of the plan. The Board may allow for the advancement of expenses for an indemnified person to defend a proceeding before final disposition of the matter, provided that the person furnishes a written promise to repay the money advanced if he or she shall be subsequently adjudicated not to be entitled to indemnification. .

**8.2** The Cooperative may purchase liability insurance coverage for any person serving as an Officer, Director, employee, or agent to the extent permitted by law.

## **9. BYLAWS**

**9.1 Amendment.** The Board shall have the authority to amend these Bylaws. Prior to taking any action to amend the Bylaws, the content of a proposed amendment shall be conspicuously posted at the Cooperative and mailed and/or emailed to Owners for a review and comment period of not less than thirty (30) days, as determined by the Board. All written comments of Owners submitted to the Board during this comment period shall be considered by the Board, and the Board shall have the discretion whether to act upon any comments submitted. Should the Board vote to amend the Bylaws, the amendment shall be placed on the agenda of the next Annual Owners Meeting or a Special Meeting of Owners for a vote by the Owners. The amendment shall become final and effective following the meeting, unless two thirds (2/3) of the Owners in attendance at the meeting or who have properly submitted their vote by absentee ballot vote not to approve it.

**9.2 Severability.** In the event that any provision of these Bylaws is determined to be invalid or unenforceable under any statute or regulation, then such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or regulation without affecting the validity or enforceability of any other provision of these Bylaws.

## **Exhibit I: EXPLANATION OF PATRONAGE DIVIDEND CONSENT PROVISION**

The Internal Revenue Code generally

requires each person receiving a patronage dividend to include the amount of such distribution in his or her gross income in the taxable year in which the related notice is received. Under Bylaw Section 6.4, mere acceptance or retention of Ownership in the Cooperative constitutes consent to such inclusion in taxable income, including the portion of the patronage dividend that is retained by the Cooperative for its capital needs.

The Cooperative has been advised by legal counsel, however, that the general rule for inclusion in income of patronage dividends is subject to an exception that is applicable to consumer cooperatives. Under that exception, a patronage dividend is not required to be included in gross income if an Owner's purchases from the Cooperative are related to "personal, living or family items." The patronage dividend would thus be taxable to an Owner only if his or her purchases are related to the operation of a trade or business or other income-producing activities.