

# **The Bylaws of the Lexington Real Foods Community Cooperative, Inc.**

Revised and approved by the Member-Owners October 26, 2003



### Article 1. Name:

The name of this Co-op is the Lexington Real Foods Community Cooperative, Inc. (hereinafter, the “Co-op”).

### Article 2. Offices:

- 2.1 PRINCIPAL OFFICE. The principal office of the Co-op is located at 230 Lexington Avenue, Buffalo, New York, 14222.
- 2.2 OTHER OFFICES. The Co-op may also have offices at such other places as the Board of Directors, from time to time, may designate.

### Article 3. Membership:

- 3.1 ELIGIBILITY AND ADMISSION. Membership in the Co-op shall be voluntary and open to any individual whose purpose in seeking membership is to use its services and is willing to accept the responsibilities of membership. Applicants will be admitted to membership upon submitting required information and purchasing or subscribing to purchase one or more shares of common stock at a price that is in accordance with the current level of investment as determined by the Board of Directors. Such share purchase requirement may be increased by reason of the reasonable capital needs of the Co-op. In case of doubtful eligibility, membership shall be subject to approval by the Board at any time within six months of application.
- 3.2 NOTIFICATION TO MEMBER-OWNERS. Each member-owner and each applicant for membership shall be provided with a copy of these bylaws and a written explanation of the meaning and significance of the consent provision in Section 8.3 below.

- 3.3 **RIGHTS.** Each member-owner shall be entitled to make purchases from the Co-op on terms generally available to member-owners, to receive benefits and entitlements on an equal or ratable basis with other member-owners, and to participate in the governance of the Co-op as set forth in these bylaws.
- 3.3A **RESPONSIBILITIES.** Each member-owner shall keep reasonably current in payment of the share purchase requirement described in Section 3.1 above and shall notify the Co-op of any change to his or her name or address. A member-owner who becomes delinquent in meeting his or her share purchase obligation to an extent determined by the Board, or who fails to patronize the Co-op for a period of time determined by the Board, shall be placed into inactive status. His or her participation rights shall then be suspended. A member-owner in inactive status may attain good standing only upon full payment of all arrearages. References herein to the rights and entitlements of members, except with respect to rights to redemption of capital funds, shall be understood to refer only to members in good standing.
- 3.4 **NONTRANSFERABILITY.** Neither membership nor membership rights and interests may be transferred. Any attempted transfer contrary to this section shall be wholly void and shall confer no rights on the intended transferee.
- 3.5 **LIMITED LIABILITY OF MEMBERS.** Member-owners shall not be liable for any debts or obligations of the Co-op except as otherwise provided by law.
- 3.6 **NONDISCRIMINATION.** The Co-op shall not discriminate on the basis of race, nationality, religion, age, gender, sexual orientation, political affiliation, disability or other arbitrary basis.
- 3.6A **ACCESS TO INFORMATION.** Member-owners shall be provided reasonably adequate and timely information as to the organizational and financial affairs of the Co-op. Members shall be provided financial statements of the Co-op and access to the membership list, minutes of meetings of member-owners and other information required by law. Such access shall be at a reasonable time and for a proper purpose.
- 3.6B **SETTLEMENT OF DISPUTES.** In any dispute between the Co-op and any of its members, or those formerly having such status, which cannot be resolved through informal negotiation, it shall be the policy of the Co-op to prefer the use of mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement. No party with a grievance against the other shall have recourse to litigation until the matter is submitted to mediation and attempted to be resolved in good faith.
- 3.7 **TERMINATION.** Membership may be terminated voluntarily by a member-owner at any time upon notice to the Co-op. Membership may be terminated involuntarily for cause by the Board, provided that the member-owner is accorded the opportunity to respond to the charges either in person or in writing. Upon termination of membership, all rights and interests in the Co-op shall cease except for rights to redemption of capital funds pursuant to Article 8A of these bylaws.

## Article 4. Meetings of Member-owners:

- 4.1 ANNUAL MEETING OF MEMBER-OWNERS. A meeting of the member-owners will be held annually.
- 4.2 SPECIAL MEETINGS. A special meeting of the members may be called by the Board of Directors at any time. The board must call a special meeting of members within 30 days of receipt of a written petition signed by at least twenty-five (25) member-owners. The agenda will be limited to the specific items listed on the petition.
- 4.3 NOTICE. Written notice of the place, date and time of any meeting of member-owners shall be provided to each member-owner. In the case of a special meeting, the notice shall also include the purpose of the meeting and by whom the meeting was called. If provided by first class mail, such notice shall be mailed not less than ten nor more than sixty days before the date of the meeting. If provided by third class mail, such notice shall be mailed not less than twenty-four nor more than sixty days before the date of the meeting.
- 4.4 QUORUM. The presence in person or by written ballot at the opening of a meeting of fifty member-owners or ten percent of all member-owners, whichever is lesser, shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of member-owners.
- 4.4A RECORD DATES. Unless otherwise determined by the Board of Directors, only persons who are member-owners at the close of business on the business day immediately preceding the date of distribution of notices shall be entitled to notice of any meeting of member-owners and to vote at such meeting.
- 4.5 VOTING. Each member-owner shall have one vote upon any matter submitted to a vote of the members. Voting may be by written ballots which must be provided to all member-owners with the notice of a meeting, if authorized by the Board of Directors. Voting to elect directors, except to fill a vacancy, must be by written ballots, as authorized by the Board of Directors. Member-owners shall be allowed to vote on written ballots until the close of the election period as set by the Board of Directors. There shall be no proxy voting. Vacant seats will be awarded to the candidate(s) with the greatest number of votes, and so on until all seats are filled. In the event of a tie for the final seat, the deciding vote will be cast by the Board of Directors. Meetings of member-owners shall be conducted in conformity with generally accepted parliamentary procedures.

4.6 **NOMINATIONS.** Member-owners will elect Directors during a period determined by the Board of Directors which will terminate at the annual meeting of the member-owners. The Board of Directors is responsible for recruiting and reviewing interested candidates throughout the year. At least three months prior to the annual meeting of the member-owners, a Nominating Committee will be established by the Board of Directors and a Chair appointed. The Chair will call upon Directors and member-owners to sit on the committee, which will propose a slate of a number of candidates greater than the number of vacancies of more than one year. Candidates can also be proposed by any member-owner. Voting will be conducted according to article 4.5. The Committee will also be impaneled in the event of vacancies with a balance in the term of less than one year and such vacancies shall be filled in accordance with Article 5, section 4, of these bylaws.

## Article 5. Board of Directors:

5.1 **NUMBER AND COMPOSITION.** The Board of Directors will consist of nine (9) member-owners elected by the member-owners. Paid employees and spouses or partners of paid employees may not serve as Directors. A person with an overriding conflict of interest with the Co-op shall not be qualified to serve as a director.

5.2 **TERM OF OFFICE.** Directors will be elected for three year terms at the annual meeting or member-owners. Terms of office shall be so staggered that one-third shall expire in each year. Directors shall hold office until their successors are elected.

5.3 **TERMINATION.** The term of office of a director may be terminated prior to its expiration in any of the following ways: (i) voluntarily by a director upon notice to the Co-op; (ii) automatically upon termination of membership in the Co-op; (iii) by action at a meeting of member-owners whenever the best interests of the Co-op would thereby be served; and (iv) for cause by member-owners or by the Board provided that the accused director is accorded the opportunity to respond to the charges in person or in writing. A director who is absent from two consecutive Board meetings, unless excused by the Board for good cause, shall be presumed to have resigned.

5.4 **VACANCIES.** The Board must fill vacancies on the Board of one year or less. Only the member-owners can fill vacancies on the Board of Directors of more than one year remaining in the term by voting as described in article 4, section 5.

5.5 **COMPENSATION.** Compensation of the Board of Directors shall be determined by resolution of the Board of Directors. All decisions regarding directors' compensation shall be announced to the membership of the Co-op at the next regular or special meeting of the member-owners. Officers and directors shall also be entitled to reimbursement for actual expenses incurred in attending board meetings or other business of the Co-op. Such expense claims shall be approved by a majority of the Board.

- 5.6 **CONTRACTS FOR PROFIT.** During her or his term of office, a director shall not be a party to a contract for profit with the Co-op which in substance shall differ in any way from similar contracts by it with member-owners or with others, or which shall vary from terms generally current among member-owners.
- 5.7 **CONFLICT OF INTEREST.** Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the Board. Directors having such an interest may not participate in the discussion or decision of the matter. A transaction in which a director has an interest shall be prohibited unless the transaction is fair to the Co-op and is approved by no less than a two-thirds majority of all disinterested directors.
- 5.8 **STANDARDS OF CONDUCT.** Directors shall be responsible at all times for discharging their duties in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.
- 5.9 **POWERS AND DUTIES** The business and affairs of the Co-op shall be managed under the direction of the Board of Directors. The Board of Directors shall make all necessary rules and regulations not inconsistent with law or with these bylaws. The Board of Directors shall have power to hire, oversee and dismiss a General Manager to coordinate and facilitate the daily functioning of the Co-op.
- 5.10 **INDEMNIFICATION.** In order to attract and retain qualified people to serve as directors and officers, the Co-op shall indemnify its directors and officers as required or permitted under New York law. Indemnification payments shall be made on a priority basis but only in such increments and at such times as will not jeopardize the ability of the Co-op to pay its other obligations as they become due.
- 5.11 **COMMITTEES.** The Board may establish standing and ad hoc committees. The Board cannot establish an Executive Committee (a committee of the Board which has all the powers of the Board).

## Article 6. Meetings of Board of Directors:

- 6.1 **REGULAR MEETINGS.** Regular board meetings will be held according to a schedule determined by the Board. Regular meetings will be open to member-owners. A portion of the meeting may be devoted to hearing member-owners' concerns. Additional member-owner participation during board meetings is at the discretion of the chair. Sessions of a board or committee meeting may be closed to discuss issues of personnel, litigation, real estate or other issues of a sensitive nature. The board may include in and exclude from closed sessions whomever it chooses.

- 6.2 ANNUAL BOARD MEETINGS. The incoming Board will hold an annual board meeting within one month after the election of new Directors at the annual meeting of the member-owners.
- 6.3 SPECIAL MEETINGS. Special meetings can be called by two-thirds of the directors at any time.
- 6.4 NOTICE. Meetings called by resolution of the Board shall require no notice other than such resolution, it being the responsibility of absent directors to inquire as to the time of further scheduled meetings. Special meetings shall require written or oral notice to all directors. Written notice shall be delivered at least five days before the date of the meeting and oral notices shall be given in person or by a telecommunications device at least 24 hours before the time of the meeting. Notices of meetings of the Board shall also be posted in a timely manner and in a conspicuous place in the Co-op's store, but the failure to do so shall not affect the validity of the meeting.
- 6.4A WAIVER OF NOTICE. Any notice of a meeting required under these bylaws may be waived in writing at any time before or after the meeting for which notice is required. A person who attends a meeting shall thereby waive any defects in the notice of such meeting unless he or she attends for the express purpose of objecting to the manner in which the meeting was convened.
- 6.5 QUORUM. A majority of the directors shall constitute a quorum.
- 6.6 OFFICIAL ACTS OF THE BOARD. The Board will act by majority vote of those present at a meeting with a quorum
- 6.7 ACTION WITHOUT A MEETING. Decisions of the Board of Directors may be made without a meeting if a consent in writing, stating the action to be taken, is signed by all directors and filed with the minutes.

## Article 7. Officers and Employees:

- 7.1 DESIGNATION AND QUALIFICATIONS. The principle officers of the Co-op shall consist of President, Vice President, Secretary and Treasurer. The Board may designate other officers or assistant officers. The President and Vice President shall be directors. Employees of the Co-op are not eligible for the offices of President, Vice President or Treasurer.
- 7.2 ELECTION, TERMS OF REMOVAL. Officers shall be elected by the Board at its first meeting following the annual meeting of member-owners. Officers shall serve for terms of one year or until election of their successors. Officers may be removed and replaced by the Board at any time whenever the best interests of the Co-op would thereby be served.

7.3 DUTIES. In addition to signing or attesting to formal documents on behalf of the Co-op as authorized by the Board, officers shall have the following duties and such additional duties as are determined by the Board:

(a) The President shall be responsible for assuring the orderly conduct of all meetings, coordinating the activities of the Board, maintaining effective communication with the general manager, and shall deliver a report of Board operations to the annual meeting of member-owners

(b) The Vice President shall be responsible for performing the duties of the President in his or her absence or disability and, as requested, assisting other officers in the performance of their duties;

(c) The Secretary shall be responsible for the recording and keeping of adequate minutes of all meetings of the Board and of the member-owners, assuring the safe-keeping of corporate records, issuing notices required under these bylaws, and authenticating records of the Co-op; and

(d) The Treasurer shall oversee the maintenance of financial records, reporting of financial information and filing of required reports and returns, and shall deliver a financial report to the annual meeting of member-owners.

## Article 8. Patronage Refunds:

8.1 DISTRIBUTION OF NET SAVINGS. The realized net savings of the Co-op, to the extent that it is attributable to the patronage of member-owners, shall be received and held by the Co-op for and as the property of its member-owners, the basis of each member-owner's interest therein being as set forth in this article. Such net savings shall be allocated and distributed among member-owners as patronage refunds in proportion to their patronage and in such a manner as to constitute patronage dividends within the meaning of federal income tax law. In determining and allocating such adjusted net savings, the Co-op shall use a single allocation unit except to the extent that, subsequent to the adoption of these bylaws, it shall engage in any new and distinct line of business.

8.2 EXCEPTIONS. Net savings may be reduced by such reasonable reserves for necessary business purposes as is determined by the Board. 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 patrons. Member-owners shall retain the right to waive in whole or in part, by action at a meeting of member-owners, any patronage refunds to which they may be entitled.

- 8.3 CONSENT OF MEMBERS. By obtaining or retaining membership in the Co-op, each member-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 written notice of allocation in the taxable year in which such notice is received.
- 8.4 RETENTIONS. A portion of patronage refunds may be retained for the reasonable capital needs of the Co-op. Such retentions shall be credited to revolving capital accounts in the names of recipient member-owners, shall accrue no monetary return on investment, shall not be transferable. They shall be re-deemed when determined by the Board to be no longer needed for capital purposes. At that time they shall be redeemed in the order of the oldest out-standing amounts and on a pro rata basis among such amounts. Retentions may also be redeemed under compelling circumstances as determined by associates. Retentions shall be subject at all times to being offset by amounts otherwise due and payable to the Co-op.

#### Article 8A: Capital Stock:

- 8A.1 ISSUANCE. To evidence capital funds provided by member-owners, the Co-op shall issue its common stock. Shares may be issued only to persons eligible for and admitted to membership in the Co-op. Shares shall be issued only upon full payment of their purchase or subscription price which shall not be less than the par value of the shares and which shall include capital funds paid prior to adoption of these bylaws. Payment for shares may be made by contributions of property, labor or services.
- 8A.2 TERMS. Shares shall be entitled to no dividend or other monetary return on investment. Shares shall be subject to assessment by reason of increased capital needs of the Co-op, but only to the extent that such increase is reflected in the level of investment then required of new member-owners.
- 8A.3 CERTIFICATES. Owners of fully-paid shares shall be entitled to receive one or more certificates evidencing such holdings. All certificates shall be signed by the President and Secretary and shall be numbered and registered by the Co-op. The Co-op may issue a replacement for any certificate alleged to have been lost, stolen or destroyed without requiring the giving of a bond or other security against losses.

8A.4 REDEMPTION. Upon request following termination of membership, common shares shall be redeemed when replacement capital has been secured by the Co-op from other member-owners. Shares shall also be redeemed as soon as practicable upon involuntary termination of membership, upon death of a member-owner, and under other compelling circumstances as determined by the Board. Shares shall be redeemable at the lesser of their carrying value on the books of the Co-op or their net book value. Redemption proceeds shall be subject to offset by amounts due and payable to the Co-op by the member-owner. In the case of voluntary termination of membership, a reasonable processing fee may be imposed by the Board. Reapplications for membership after full or partial redemption shall be subject to full repayment of redemption proceeds and a reasonable processing fee, if any, as determined by the Board.

#### Article 8B. Fiscal matters:

8B.1 FISCAL YEAR. The fiscal year of the Co-op shall be July 1 – June 30.

8B.2 ANNUAL AUDIT AND REPORT. The operations of the Co-op for each fiscal year shall be audited by an experienced bookkeeper or accountant or firm of accountants not regularly employed by the Co-op. A written report of the audit, including a statement of services rendered by the Co-op, with total amount of business transacted, balance sheet, and income and expense statement, shall be submitted to the annual meeting of member-owners, and shall at all times be available for inspection by any member-owner.

8B.3 BONDING. Any officer or employee who handles funds or securities of the Co-op amounting to one thousand or more dollars in a year shall be covered by an adequate bond approved by the Board. The costs of such bonds shall be paid by the Co-op.

#### Article 9. Miscellaneous:

9.1 RESERVED RIGHTS OF THE MEMBERSHIP. Only the membership, voting according to article 4, section 5, can amend the Certificate of Incorporation in accordance with Article 10, section 2, sell or distribute assets of the Corporation (other than in the normal course of business), and fill vacancies on the Board of more than one year remaining in the term in accordance with article 5, section 4 of these bylaws. Only an affirmative vote of three-fourths of the member-owners voting according to article 4, section 5 can remove Directors without cause in accordance with Article 5, section 3. Only two-thirds of the member-owners voting according to article 4, section 5 can dissolve the Corporation in accordance with Article 9, section 4 of these bylaws.

9.2 AMENDMENTS TO THE CERTIFICATE OF INCORPORATION. Only a majority of the member-owners voting according to article 4, section 5 can amend the Certificate of Incorporation. Amendments to the Certificate of Incorporation must be filed with the Secretary of State and a certified copy must be submitted to the Department of Agriculture and Markets.

- 9.3 **AMENDMENTS TO THE BYLAWS.** These bylaws can be amended by the affirmative vote of two-thirds of member-owners at a meeting held after due written notice setting forth the proposed action and the purpose of the meeting. These bylaws can also be amended by the Board, but any amendment adopted by the Board shall be reported to the next annual meeting of member-owners and, if not affirmatively approved thereat, shall cease to be in effect. A certified copy of bylaw amendments must be submitted to the Department of Agriculture and Markets within thirty days after adoption.
- 9.4 **DISSOLUTION OF THE CORPORATION.** Dissolution can proceed only with two-thirds vote of member-owners present in person or by written ballots at a meeting called and conducted in accordance with Article 4 of these bylaws. A committee of three member-owners, selected by the membership, acting on behalf of the Co-op will distribute its assets, liquidate its assets, pay its debts and expenses and divide remaining assets among the member-owners according to the provisions in the bylaws. Notice of dissolution must be provided to the member-owners of the Co-op.
- 9.5 **SEVERABILITY.** In the event that any provision of these bylaws is determined to be invalid or unenforceable under any statute or rule of law, then such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or rule of law without affecting the validity or enforceability of any other provision of these bylaws.

## Appendix:

### EXPLANATION OF PATRONAGE REFUND CONSENT PROVISION

The Internal Revenue Code generally requires each person receiving a patronage refund to include the amount of such distribution in his or her gross income in the taxable year in which it is received. Under bylaw section 9.3, mere acceptance or retention of membership in the Co-op constitutes consent to such inclusion in taxable income, including the portion of the patronage refund that is retained by the Co-op for its capital needs.

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

In effect, the consent provision is of no significance to members of the Co-op, except as to organizational members and except where the purchases of members who are natural persons are for business or income-producing purposes.