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Bylaws of the Multiple Listing Service

(Separately Incorporated but Wholly Owned by the Berkshire County Board of REALTORS[®], Inc.)

Amended October 2008

Article 1 - Name

The name of this organization shall be the Multiple Listing Service of the Berkshire County Board of REALTORS[®] Inc., hereinafter referred to as the Service, all the shares of stock of which are solely and wholly-owned by the Berkshire County Board of REALTORS[®].

Article 2 - Purpose

A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting either as subagents, buyer agents, or in other agency or non-agency capacities as defined by law); by which cooperation among participants is enhanced, by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so that participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of sale (or lease).

Article 3 - Service Area

The area within which the Service shall function at all times and shall be coextensive with or within the territorial jurisdiction of the Berkshire County Board of REALTORS[®].

Article 4 - Participation

A. Participation Defined

Any REALTOR[®] of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.** However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "membership" or "participation" unless they hold a current, valid real estate broker's license and offer or accept offer or accept compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board Multiple Listing Service is

strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "participation" or "membership" or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law. (Amended 12/08)

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 12/08)

Any applicant for MLS participation shall complete an orientation program of no more than three (3) hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval within thirty (30) days after access has been provided. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "Membership" or "Participation" unless they hold a current, valid real estate broker's license and are capable of accepting and offering cooperation and compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.

Use of information developed by or published by an association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by an association multiple listing service where access to such information is prohibited by law. The Realtor® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation shall be termed the participant in the service and shall have all rights, benefits, and privileges of the service, and shall accept all obligations of the service for the participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the service by all persons affiliated with the participant who utilize the service.

B. Application for Participation

Application for participation shall be made in such manner and form as may be prescribed by the Board of Directors of the Service and made available to any REALTOR® (principal) of this or any other Board requesting it. The application form shall contain a signed statement agreeing to abide by these Bylaws and any other applicable Rules and Regulations of the Service as from time to time amended or adopted.

C. Discontinuance of Service

Participants of the Service may discontinue the Service by giving the Service 30 days written notice and may reapply to the Service after 12 months, by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid.

D. Subscribers

Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with Participants.

Article 5 - Service Charges

The charges made for participation in the Service shall be as determined, and as amended from time to time by the Board of Directors of the Service, and specified in Rules and Regulations of the Service.

Article 6 - Governing Body

A. Government of the Service

The government of the Service shall be vested in a Board of Directors comprised of the elected Officers and Directors nominated and elected as described in this Article.

B. Officers of the Service

The Officers of the Service, who shall also be Directors, shall be a President, a Vice President, a Secretary / Treasurer, and shall have such duties as described in this article.

C. Board of Directors

There shall be a total of no more than 8 elected Directors, including the President, Vice President and a Secretary / Treasurer of the Service to be elected from among the Participants or REALTORS® affiliated with Participants of the Service, except that not more than 3 (no more than 2 from the same agency) Directors may be elected from among REALTORS® other than Participants who are affiliated with Participants and serve with consent of the Participants as representatives of the Participants with whom they are affiliated. In addition to the elected Directors, the current President of the Berkshire County Board of REALTORS® or a person appointed by the President, and the Immediate Past President of the Service shall serve as Directors, ex officio, with full voting privileges.

D. Nomination and Election of Officers and Directors

The Officers and Directors of the Service shall be nominated by a vote of the Participants in the Service in accordance with the provisions of Article 7, Meetings, of these Bylaws and as further set forth following:

1. **Nominating Committee.** The President of the Service shall appoint a Nominating Committee each year which Committee shall be comprised of 5 Participants of the Service. The appointment of the Nominating Committee shall be made by such a date as to enable the Committee to meet and select a proposed slate of Officers and Directors of the Service no more than 60 nor less than 30 days prior to the date of the meeting of the Participants of the Service at which nominees shall be selected by vote of the Participants. The proposed slate of Officers and Directors shall be reported to the President and Secretary of the Service.

2. **Notice of Proposed Nominees.** The President shall cause a list of the proposed nominees selected by the Nominating Committee to be forwarded to the Participants of the Service, setting forth the time, place, and other pertinent conditions of the meeting to select the final list of nominees by vote of the Participants of the Service. The notice to the participants of the Service concerning the meeting to select nominees for Officers and Directors shall be mailed on a date at least twenty-one (21) days prior to the proposed meeting.

3. **Rights of Participants to Select Additional Nominees.** The names of additional proposed nominees may be added to the list selected by the Nominating Committee by a petition submitted to the Secretary of the Service by 10% of the Participants of the Service, with said petition received not less than 7 days prior to the date of meeting of the Participants to select nominees for Officers and Directors. The names contained in such petition, if duly received and certified, shall be presented in writing to the Participants at the meeting to select nominees as additional nominees for consideration for such office as specified in the petition. In addition, nominations may be made from the floor at the duly noticed meeting of the Participants to select nominees for Officers and Directors and, if seconded, shall be added to the list of proposed nominees.

4. **Voting by Written Secret Ballot.** Voting for selection of nominees, if other than on a motion to cast a unanimous vote for the original proposed slate shall be by secret ballot, and said ballot shall contain blank spaces for writing in additional names proposed by petition or from the floor at the meeting to select nominees.

5. **Vote to Select Nominees.** Voting shall be in accordance with provisions of Article 7 of these Bylaws.

6. **Nominees Submitted to Shareholder for Election.** When nominees for Officers and Directors of the Service for the forthcoming fiscal year have been selected by vote of the Participants of the Service, such nominees shall be submitted to the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) for election pursuant to Article XII, Section 2 of the Bylaws of the Berkshire County Board of REALTORS®. Upon election by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder), the individuals so elected shall be considered Officers-Elect and Directors-Elect and shall assume their respective offices on January 1st.

The term of office for Officers and Directors of the Service shall be on a calendar year basis. In the event one (1) or more nominee(s) is/are not elected by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder), and upon notice of such failure of election, the President of the Service shall select a proposed Participant or Participants, as required, subject to confirmation by the Board of Directors, for submission as nominee(s) to the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) to be considered for election to fill the vacancy or vacancies existing.

In the event that nominees are not duly and timely provided by the Service to the Board of Directors of the Berkshire County Board of REALTORS®, as provided in these Bylaws, then the Board of Directors of the Berkshire County Board of REALTORS® shall exercise rights as sole and exclusive shareholder to elect a Participant or Participants of the Service to fill any existing vacancy or vacancies as Officers or Directors of the Service.

E. Term of Office

The Officers shall serve for a one-year term. The elected Directors shall serve for one (1) and two (2) year terms so that expiration dates are staggered. Officers and Directors shall take office upon the effective date of their offices and shall continue until their successors are elected, qualified and installed. No Officer or Director shall be nominated and elected to the same office for more than two consecutive terms.

F. Duties of Officers and Directors

The duties of the Officers and Directors shall be as follows:

1. **President:** The President shall be the chief elected officer of the Service and shall preside at its meetings and those of the Board of Directors, and shall perform all the duties of President subject to declared policies and, as required, subject to confirmation of the Board of Directors.
2. **Vice President:** The Vice President shall, in the absence of the President, perform all of the duties of the President.
3. **Secretary/Treasurer:** The Secretary/Treasurer shall be the custodian of the funds of the Service and shall keep an accurate record of all receipts and disbursements. The Secretary/Treasurer shall provide to all Members of the Board of Directors a quarterly statement of all accounts and financial affairs for the Service, and shall have charge of the corporate seal and affix the name to all documents properly requiring such seal.
4. **Directors:** The Board of Directors of the Service shall be the governing body of the Service and shall have control of all the affairs of the Service and shall authorize all expenditures of funds. The Board of Directors shall, prior to the end of each fiscal year, prepare a budget reflecting projected costs and expenses of the Service for the next fiscal year, indicating projected income from all sources. The budget shall be submitted to the Participants of the Service for approval at the annual meeting. The Board of Directors shall not incur an obligation in excess of 5% over the total budget without authorization by vote of a two thirds majority of REALTOR® Participants of the Service present and voting unless such excess is the result of an increase in volume of listings processed by the Service over that projected in preparing the annual budget. The Board of Directors shall employ such executive, legal, and office personnel it deems necessary to care for and maintain the properties of the Service and otherwise conduct the administrative business of the Service. The Board of Directors shall have the right to make an audit of all books and accounts at any time without notice. The Board of Directors shall have the power from time to time to adopt such Rules and Regulations that they may deem appropriate subject to final approval of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder). Except as otherwise provided in these Bylaws and Rules and Regulations, the action of the Board of Directors shall be final.

Indemnification: No member shall pursue or prosecute by action, suit or proceeding, civil or criminal, against the Berkshire County Board of REALTORS® Multiple Listing Service, Inc., its Officers and Directors, or any person now or hereafter an Officer, Committee member or Director of the Board, any said claim based upon any act of said Board or said person relating to the business of the Board, and particularly any act of said Board or said person in advancing, suspending, expelling or otherwise disciplining a member.

6. **Removal Of Officers:** In the event that an Officer or Director of the Multiple Listing Service is deemed to be incapable of fulfilling the duties for which elected, but will not resign from office voluntarily, the Officer or Director may be removed from office under the following procedure:
 - (a) A petition requiring the removal of an Officer or Director and signed by not less than one third of the Participants or a majority of all Directors of the MLS shall be filed with the President, or if the President is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed to be disqualified from further service.
 - (b) Upon receipt of the petition, and not less than twenty (20) days or more than forty-five (45) days thereafter, a special meeting of the Participants of the MLS shall be held, and the sole business of the meeting shall be to consider the charge against the Officer or Director, and to render a decision on such petition.
 - (c) The special meeting shall be noticed to all Participants at least ten (10) days prior to the meeting, and shall be conducted by the President of the MLS unless the President's continued service in office is being considered at the meeting. In such case, the next-ranking officer will conduct the meeting of the hearing by the Participants. Provided a quorum is present, a three-fourths vote of Participants present and voting shall be required for removal from office.

(d) Any vote taken by the Participants to remove an Officer or Director must ultimately be confirmed by a majority vote of the Directors of the Berkshire County Board of REALTORS® (shareholder). Notwithstanding the foregoing, the Berkshire County Board of REALTORS® (shareholder) may remove an Officer or Director by a majority vote of the Directors of the Berkshire County Board of REALTORS® (shareholder).

Article 7 - Meetings

A. Annual Meeting

The annual meeting of Participants of the Service shall be held during the month of October at the time and place specified by the Board of Directors, for the main purpose of the election of officers. In the event the Participant is unable to attend the Annual Meeting, a REALTOR® substitute from their office may be appointed by the Participant and the MLS President shall be notified in writing no less than ten (10) days prior to the meeting.

B. Special Meetings of the Service

Special meetings of Participants of the Service may be called from time to time the President, the Board of Directors, or by 10% of the Participants of the Service. Written notice stating the day, place, and hour of the meeting, the purpose for which the meeting is called, shall be delivered to all REALTORS® who are Participants in the Service, not less than ten (10) days prior to said meeting.

C. Quorum and Voting at Meetings of the Service

For the transaction of business, 20% of the Participants of the Service shall be considered a quorum. A majority vote by such Participants present and voting at a meeting attended by a quorum shall be required for passage of motions.

D. Meetings of the Board of Directors

The Board of Directors may meet at any time it deems advisable on the call of the President or any three (3) Members of the Board of Directors. Five (5) Directors shall constitute a quorum. A majority vote by the Directors present and voting at a meeting attended by a quorum shall be required for passage of motions. Absence from three (3) consecutive regular meetings without an excuse deemed valid by the Board of Directors shall be construed as resignation therefrom.

E. Presiding Officer

At all meetings of the Participants of the Service, or of the Board of Directors, the President or, in the absence of the President, the Vice President shall serve as presiding officer. In the absence of the President and Vice President the President shall name a temporary Chairperson or, upon his failure to do so, the Board of Directors of the Service shall appoint a temporary Chairperson.

Article 8 - Committees

The President, with the approval of the Board of Directors, shall create such standing or Ad Hoc Committees as deemed desirable and shall appoint their Members. Each Committee shall consist of not less than 2 Participants

in the Service, but may also include REALTORS®, employed by or affiliated as independent contractors with a REALTOR® Participant serving as representatives of said REALTOR® Participants and with their consent, and who may serve either as a Chairperson or Member of a Committee.

Article 9 - Fiscal Year

The fiscal year of the Service shall commence on January 1 and shall end on December 31.

Article 10 - Amendments

A. Amendments of Bylaws

Amendments to these Bylaws shall be by the Participants of the Service, and shall be determined at an Annual Meeting or Special Meeting of the Service in accordance with the provisions of Article 7 concerning Meetings of the Service. Amendments to the Bylaws of the Service approved by the Participants and shall further be subject to approval of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder).

When amendments to the Bylaws of the Service have been approved by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder), said amendments shall be effective immediately or as stated in the amending resolution.

If the proposed amendments to the Bylaws of the Multiple Listing Service fail approval of the Board of Directors of the shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments to Bylaws be further considered and resubmitted to the shareholder as approved by the Participants of the Multiple Listing Service.

B. Amendments to Rules and Regulations

Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Board of Directors of the Multiple Listing Service in accordance with the provisions of Article 7, Section D, concerning Meetings of the Board of Directors, subject to final approval by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder).

When approved by the Board of Directors of the Berkshire County Board of REALTORS® (shareholder) as described, the amendments to the Rules and Regulations of the Multiple Listing Service shall be effective immediately or as stated in the amending resolution.

If the proposed amendments of the Multiple Listing Service Rules and Regulations fail approval by the Board of Directors of the shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments must be further considered and resubmitted as approved by the Board of Directors of the Multiple Listing Service of the Berkshire County Board of REALTORS® (shareholder).

Article 11 - Dissolution

In the event this Service shall at any time terminate its activities, the Board of Directors of the Service shall consider and adopt a plan of liquidation and dissolution with the approval of the Participants thereof and of the Board of Directors of the Berkshire County Board of REALTORS® (shareholder). Said plan shall provide for the collection of all assets, the payment of all liabilities, and the remaining portions thereof be assigned to the parent corporation, namely, the Berkshire County Board of REALTORS®.

(end)