

**OPERATING AGREEMENT
OF
NEW WHALOM COOPERATIVE, LLC**



Part I: Organization

1.1 - **Purpose.** New Whalom Cooperative, LLC (referred to herein as "the Cooperative") is organized to own and operate an amusement park and shall be operated on a cooperative and nonprofit basis for the primary and mutual benefit of its patron-members as ultimate consumers.

1.2 - **Powers.** The Cooperative shall have the power to do everything necessary and convenient to providing amusement services and operating on a cooperative and nonprofit basis, including all things incidental to or connected with such purposes and other lawful activities.

1.3 - **Cooperative principles.** The Cooperative shall be operated in accordance with the cooperative principles adopted by the 1995 General Assembly of the International Co-operative Alliance, such principles being: (i) voluntary and open membership without arbitrary discrimination; (ii) democratic governance; (iii) economic participation by members; (iv) autonomy and independence of the cooperative; (v) providing education and training; (vi) cooperation with other cooperatives; and (vii) concern for community.

1.4 - **Nondiscrimination.** The Cooperative shall not arbitrarily discriminate on the basis of race, nationality, religion, age, gender, sexual orientation, or political affiliation.

Part II: Member-owners

2.1 - **Eligibility.** [1] Member-ownership in the Cooperative shall be voluntary and open to any household whose purpose is to use the services of the Cooperative and who is willing to accept the responsibilities of member-ownership. [2] In the event that any doubts arise concerning eligibility within six months after the date of application, an application for member-ownership shall be subject to approval by the Board.

2.2 - **Admission.** [1] Applicants will be admitted as member-owners upon submitting required information and purchasing or subscribing to

purchase not less than three nor more than nine units of fair share capital at their issuing price of one hundred dollars per unit. [2] On or before admission each member-owner shall be provided a copy of this operating agreement, including the appended explanation of the patronage dividend consent provision. [3] By obtaining and retaining member-ownership in the Cooperative each member-owner shall thereby signify their acquiescence to this agreement and the means by which it may be amended.

2.3 - Rights. [1] Each member of a member-owner household shall be entitled to patronize the Cooperative on terms generally available to member-owners. [2] Households that have subscribed but not fully paid for the minimum required units of fair share capital shall be considered member-owners for all purposes, except during any time in which they are in inactive status under section 2.5 below. [3] Except as otherwise provided herein, only the designated primary member-owner shall be entitled to participate in the governance of the Cooperative as set forth in this operating agreement. [4] No member-owner as such may act unilaterally for or on behalf of the Cooperative. [5] No action by the Cooperative shall require vote or other approval of member-owners other than as required by law or as explicitly or impliedly provided in this agreement.

2.4 - Responsibilities. Each member-owner shall pay within one month of its due date all agreed installment payments of the fair share capital requirement described in Section 2.2 above, shall patronize the Cooperative on at least an annual basis, and shall notify the Cooperative of any change to his or her name or address.

2.5 - Inactive status. [1] A member-owner who becomes delinquent by one month in meeting the fair share capital requirement, or who fails to patronize the Cooperative for two years, shall be placed into inactive status. [2] His or her participation rights shall then be suspended. [3] A member-owner in inactive status may attain good standing upon recommencing current payment of financial obligations or reestablishing a patronage relationship with the Cooperative. [4] References in this operating agreement to the rights and entitlements of member-owners shall be understood to refer only to member-owners in good standing.

2.6 - Access to information. Member-owners shall be provided reasonably adequate and timely information as to the operational and financial affairs of the Cooperative. A member-owner shall, upon request that is reasonable and made in good faith, be provided information concerning the operational and financial affairs of the Cooperative that is necessitated by and

directly related to a proper purpose and that describes with reasonable particularity the information sought, subject to such reasonable restrictions or conditions as is determined by the Board to be necessary to protect confidential or sensitive information. Any proper request necessitating information from the Cooperative's records of member-owners shall be accommodated by means other than direct access to such records.

2.7 - Settlement of disputes. In any dispute between the Cooperative and any of its member-owners or former member-owners which cannot be resolved through informal negotiation, it shall be the policy of the Cooperative 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. Neither 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.

2.8 - Nontransferability. [1] Member-ownership rights and interests, including fair share capital and deferred patronage dividends, may not be directly sold, assigned, or otherwise transferred. [2] Following termination of member-ownership, or at any time as to fair share capital in excess of the minimum amount, the Cooperative will upon request of the member-owner transfer the carrying value of such rights and interests, net of any authorized offsets, to the credit of another person designated by the requesting member-owner, provided that the transfer is for a price that does not exceed the carrying value of such rights and interests and that the person so designated is or becomes a member-owner of the Cooperative. [3] Any attempted transfer contrary to this section shall be wholly void and shall confer no rights on the intended transferee.

2.9 - Withdrawal and expulsion. A member-owner may withdraw at any time upon notice to the Cooperative. A member-owner may be expelled by the Board for cause after being provided fair notice of the charges and an opportunity to respond in person or in writing.

Part III: Meetings of Member-owners

3.1 - Annual meeting. An annual meeting of member-owners shall be held following the close of each fiscal year to receive reports on the operations and finances of the Cooperative, to elect Supervisors, and to conduct such other business as may properly come before the meeting.

3.2 - Special meetings. Special meetings of member-owners may be

called by the Board and shall be called by the President as soon as possible after the receipt of petitions signed by fifteen percent of all member-owners, such petitions stating any proper business to be brought before the meeting.

3.3 - Time and place. The date, time, and place of all meetings of member-owners shall be determined by the Board or, in the event that the Board fails to so act, by the Clerk. Meetings shall be held at a place convenient to member-owners.

3.4 - Notice. Written notice of the time, place, and purpose or purposes of the meeting shall be provided to each member-owner not less than fifteen nor more than thirty days before the date of the meeting. Any business conducted at a meeting other than that specified in the notice of the meeting shall be of an advisory nature only.

3.5 - Record dates. Unless otherwise determined by the Board, only persons who are member-owners at the close of business on the day immediately preceding the date of distribution of notices shall be entitled to notice and to vote with respect to the subject of such notice.

3.6 - Quorum. The presence in person or by ballot at the opening of the meeting of fifteen 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.

3.7 - Voting. [1] Unless otherwise required by this operating agreement, each household member-owner shall have one and only one vote on each matter submitted to a vote of member-owners. [2] Such vote shall be exercisable only by the member-owner's primary card holder. [3] Voting by proxy shall not be permitted. [4] Unless otherwise required by law or by this operating agreement, issues shall be decided by a simple majority of votes cast except where one or more choices are to be made from several alternatives, in which case the alternative(s) receiving the most votes shall be considered approved. [5] Meetings of member-owners shall be conducted generally in accordance with reasonable and accepted rules of parliamentary procedure.

3.8 - Voting by written ballot. Member-owners may, as authorized by the Board, vote by written ballot delivered to the Cooperative. Ballots, together with the exact text of an issue for decision shall be included in the notice of the meeting to which they relate. Ballots shall be submitted in a sealed plain envelope inside another envelope bearing the member-owner's

name and any other required identifying information and shall be submitted in conformity with instructions contained in the notice. Casting of a written ballot shall be equivalent to presence in person at a meeting, and ballots shall be counted together with votes cast at the meeting, if any. In the case of balloting separate from a meeting, voting by ballot shall for all purposes be considered a meeting of member-owners.

3.9 - Issues submitted by member-owners. Notices of a meeting of member-owners shall include any proper issue submitted by petition of at least seven percent of all member-owners. Petitions must be received by the Cooperative not less than forty five days before the date of the meeting at which they are to be presented to a vote of member-owners.

Part IV: Board of Supervisors

4.1 - Powers and duties. Except as to matters reserved to member-owners by law or by this operating agreement, the business and affairs of the Cooperative shall be managed by one or more managers under the direction and control of the Board of Supervisors (sometimes referred to herein as "the Board"). The duties of the Board shall include, but not be limited to, overseeing the operations and finances of the Cooperative, establishing policies to govern operational decisions, engaging one or more managers and monitoring and evaluating their performance, securing good conditions of employment, and assuring that the purpose and mission of the Cooperative are properly carried out. Such powers shall reside exclusively in the Board as a deliberative body; they may reside in individual directors only to the extent explicitly so delegated by the Board.

4.2 - Number and qualifications. [1] The Board shall consist of not less than five nor more than nine individuals. [2] To be qualified as a Supervisor, a person must be a member of a member-owner household which, except as to the first election of Supervisors, must have been a member-owner for at least six months prior to the commencement of the election of Supervisors, and must not have any overriding conflict of interest with the Cooperative. [3] Two members of the same household shall not be eligible to serve as Supervisors at the same time.

4.3 - Nominations, election and terms. Supervisors may be nominated by the Board, by a nominating committee, or by petitions signed by at least fifteen member-owners and submitted to the Cooperative at least forty five days before the date of the annual meeting. Supervisors shall be elected by member-owners. At or in connection with the first annual meeting

and periodically thereafter as may be necessary, Supervisors shall be elected for specific one-, two-, or three-year terms in order to have a reasonable distribution of terms among serving Supervisors. At other times Supervisors shall be elected for terms of three years. Candidates receiving the highest number of votes shall be given the longest available terms. Supervisors shall hold office until their successors are elected or until their offices are sooner terminated in accordance with this operating agreement.

4.4 - Compensation. Supervisors may be compensated for their services as such as determined at a meeting of member-owners. Supervisors may be reimbursed for reasonable expenses incurred in connection with the performance of authorized business of the Cooperative.

4.5 - Standards of conduct. Supervisors shall be responsible at all times for discharging their duties in good faith, with the care that an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner that they reasonably believe to be in the best interests of the Cooperative.

4.6 - Conflicts of interest. Supervisors shall be under an affirmative duty to disclose their actual or potential conflicts of interest, either direct or indirect, in any matter under consideration by the Board or by a committee exercising any authority of the Board, and such interest shall be made a matter of record in the minutes of the meeting. A Supervisor or committee member having such an interest shall be permitted to make a statement with regard to the matter but shall not be permitted to participate in the discussion or decision of the matter.

4.7 - Limitation on personal liability. The personal liability of a Supervisor or officer to the Cooperative or to its member-owners for monetary damages for conduct as a Supervisor or officer is hereby eliminated except (i) for any breach of the duty of loyalty, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, and (iii) for any transaction from which the person derived an improper personal benefit.

4.8 - Indemnification. [1] The Cooperative may as permitted by MGL Ch. 156C, sec. 8(a) indemnify its Supervisors and officers for liabilities to which they may be subject by reason of their service to the Cooperative. [2] 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 Cooperative to pay its other obligations as they become due. [3] Any

indemnification payments or advances shall be reported to member-owners not later than the next-scheduled meeting of member-owners.

4.9 - **Committees.** The Board may appoint special or standing committees to advise the Board or to exercise such authority as the Board shall designate. Such committees shall include at least one Supervisor. The appointment of any committee shall not relieve the Board of its responsibilities in the oversight of the Co-op.

4.10 - **Termination.** The term of office of a Supervisor may be terminated prior to its expiration in any of the following ways: (i) voluntarily by a Supervisor upon notice to the Clerk; (ii) automatically upon termination of member-ownership in the Cooperative; and (iii) for cause by the Board or at a meeting of member-owners, provided the accused Supervisor is accorded fair notice of the charges and an opportunity to respond in person or in writing. A Supervisor who is absent from three consecutive Board meetings or four meetings in any one-year period shall, unless excused by the Board for good cause, be presumed to have resigned.

4.11 - **Vacancies.** Any vacancy among Supervisors occurring between annual meetings may be filled by the Board until the next annual or special meeting of member-owners, at which time member-owners shall elect a Supervisor to fill the unexpired term of the vacant Supervisor's position.

Part V: Meetings of the Board

5.1 - **Meetings.** Meetings of the Board shall be held no less frequently than once in each two-month period. Meetings not called by the Board (special meetings) may be called by the President and shall be called by the Clerk upon request of any three Supervisors.

5.2 - **Notice.** Meetings called by the Board shall require no notice, it being the responsibility of absent Supervisors to inquire as to the time of further scheduled meetings. Special meetings shall require written or oral notice to all Supervisors. 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 forty-eight 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 Cooperative's store, but the inadvertent failure to do so shall not affect the validity of the meeting.

5.3 - **Waiver of notice.** Any notice of a meeting required under this

operating agreement may be waived in writing at any time before or after the meeting for which notice is required. A person who attends a meeting other than for the sole purpose of objecting to the adequacy of the notice shall be deemed to have waived any objection to the notice.

5.4 - **Quorum.** The presence in person of a majority of Supervisors shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board.

5.5 - **Decision making.** Decisions at meetings of the Board shall be made by consensus, attempting to resolve issues based on the purpose, mission, and best interests of the Cooperative. If Supervisors have made a diligent effort to reach a consensus and the issue requires immediate action, then such issue may be decided by a two-thirds majority vote.

5.6 - **Referendum.** Any action of potentially serious consequence taken by the Board shall be referred to a meeting of member-owners for approval or disapproval if demanded within ten days of such action by any three Supervisors. Such meeting shall be called by the Clerk within twenty days of such demand.

5.7 - **Action without a meeting.** Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting only if a written consent to the action is signed by all Supervisors and filed with the minutes of meetings.

5.8 - **Open meetings.** Meetings of the Board and all committees shall be open to member-owners, except that sessions of a meeting may be closed as to matters of a confidential or sensitive nature.

Part VI: Officers

6.1 - **Designation and qualifications.** The principal officers of the Cooperative shall consist of President, Clerk, and Treasurer. Principal officers shall be Supervisors. The Board may designate other officers or assistant officers.

6.2 - **Election, terms and 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 Cooperative would thereby be served.

6.3 - Duties. In addition to signing or attesting to formal documents on behalf of the Cooperative 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 coordinating the activities of the Board, assuring the orderly conduct of all meetings, maintaining effective communication with the manager or managers, and shall present a report of operations at the annual meeting of member-owners.

(b) The Clerk shall be responsible for the recording and keeping of adequate minutes of all meetings of the Board and of member-owners, overseeing the issuance of notices required under this operating agreement, and authenticating records of the Cooperative.

(c) The Treasurer shall oversee the maintenance of financial records, issuance of financial reports and the filing of all required reports and returns, and shall present a financial report at the annual meeting of member-owners. Unless the Board determines otherwise, the President shall have authority to execute on behalf of the Cooperative, and the Clerk to attest to, documents evidencing transactions authorized by the Board.

Part VII: Share Capital

Section 7.1 - Issuance and terms. [1] To evidence the contributed capital of member-owners the Cooperative shall issue units of fair share capital. [2] Fair share capital may be issued only to persons eligible for, and admitted to member-ownership in, the Cooperative. [3] Fair share capital shall be considered issued upon full payment of no less than their issuing price and shall be evidenced by certificates. [4] Fair share capital shall be entitled to no dividend or other monetary return on contributed capital. [5] The fair share capital requirement shall be subject to increase for the reasonable capital needs of the Cooperative. [6] Units of preferred share capital, with such preferences and other terms and conditions may be agreed to by the parties, may be issued provided that the Cooperative has first assured compliance with all applicable securities laws.

Section 7.2 - Redemption. [1] Upon request of the member-owner fair share capital in excess of the minimum number of units shall be redeemed when replacement capital is provided by other member-owners. [2] It shall be redeemable at the lesser of its carrying value on the books of the Cooperative or its net book value, and shall be subject to offset by amounts due and payable to the Cooperative by the member-owner. [3] No redemption shall be made when such payment would impair the ability of the Cooperative to meet its other obligations as they become due. [4] Other fair

share and preferred capital shall be redeemable only upon liquidation of the Cooperative.

Part VIII: Patronage Dividends

8.1 - Distribution obligation. [1] The realized net earnings of the Cooperative attributable to the patronage of member-owners (patronage-sourced income) shall be allocated and distributed among member-owners in proportion to their patronage and in such a manner and at such a time as to constitute patronage dividends within the meaning of federal income tax law. [2] Unless otherwise required under federal tax law all of the operations of the Cooperative shall be netted into a single allocation unit. [3] Net earnings not attributable to the patronage of member-owners shall not be allocated or distributed among member-owners.

8.2 - Reductions. Any distributable net earnings of such a nominal amount as not to justify the expenses of distribution may, as determined by the Board, be excluded from distribution. Net earnings may be reduced by such reasonable reserves for necessary business purposes as is determined by the Board. A patronage dividend to which member-owners are entitled may be waived in whole or in part by vote of member-owners.

8.3 - Consent of member-owners. By obtaining or retaining member-ownership in the Cooperative, 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 qualified written notice of allocation in the taxable year in which such notice is received.

8.4 - Deferred amounts. [1] Payment of a portion of patronage dividends not to exceed eighty percent of the allocation may be deferred for the reasonable capital needs of the Cooperative, as determined by the Board. [2] Such amounts shall be credited to revolving capital accounts in the names of recipient member-owners and shall accrue no dividend or other monetary return on capital. [3] Deferred patronage dividends may be redeemed when determined by the Board to be no longer needed for capital purposes. [4] At that time they shall be redeemed in the order of the oldest outstanding amounts and on a pro rata basis among such amounts, except that redemptions shall be payable only to member-owners who are then in good standing or become so within a six-month period of time. [5] Deferred patronage dividends may also be redeemed under compelling circumstances as determined by the Board. [6] They shall be subject to being offset by

amounts otherwise due and payable to the Cooperative and by assessments resulting from tax audit adjustments.

8.5 - Net losses. No portion of a net operating loss realized by the Cooperative shall be allocated to member-owners. The patronage portion of such losses shall be carried forward to offset patronage-sourced income of subsequent years. The nonpatronage portion of such losses shall be carried back and forward to offset nonpatronage-sourced income of prior and subsequent years as required or permitted under federal income tax law.

Part IX: Fiscal and Miscellaneous Matters

9.1 - Operating year. The operating year of the Cooperative shall coincide with the calendar year.

9.2 - Communication by electronic means. Unless otherwise required by this operating agreement, any notice, consent, ballot, petition, or other document required or permitted by this operating agreement may be delivered by electronic means, provided that, in the case where such communication expressly or impliedly requires the signature of the person submitting the communication, means are in place to reasonably assure the authenticity of the signature.

9.3 - Liquidation. Upon liquidation and dissolution of the Cooperative, its assets shall be distributed in the following manner and order: (i) by paying or making provision for payment of all liabilities and expenses of liquidation; (ii) by redeeming deferred patronage dividends, if any, which, if they cannot be paid in full, shall be paid in the order of the oldest outstanding amounts and on a pro rata basis among all amounts for each fiscal year; (iii) by redeeming share capital at their carrying value on the books of the Cooperative which, if they cannot be paid in full, shall be paid on a pro rata basis among all outstanding amounts; and (iv) by distributing any remaining assets among current and former member-owners in proportion to their patronage during the five years immediately preceding the date of dissolution, or, if so determined by a vote of member-owners, to one or more cooperative or nonprofit organizations that may best further the purposes and mission of the Cooperative.

Part X: Interpretation and Amendment

10.1 - Interpretation. The Board of Supervisors shall have the power to interpret this operating agreement, apply it to particular circumstances, and

adopt policies in furtherance of it, provided that all such actions are reasonable and consistent with this operating agreement.

10.2 - **Severability**. In the event that any provision of this operating agreement 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 this operating agreement.

10.3 - **Amendment**. This operating agreement shall become effective and may be amended or replaced only by action at a meeting of member-owners, provided that the proposed amendments are stated or fully described in the notice of the meeting at which the amendments are to be adopted.

Appendix:

EXPLANATION OF PATRONAGE DIVIDEND CONSENT PROVISION

Section 8.3 of this operating agreement relates to when and how patronage dividends are required to be included in the taxable incomes of recipient member-owners. Section 1385(b) of the Internal Revenue Code provides that a patronage dividend shall not be included in the taxable income of a recipient to the extent that such amount "is attributable to personal, living, or family items." This exclusion from taxable income would apply to member-owners whose purchases from the Cooperative were for such personal use. To such persons section 8.3 is therefore of no effect. To all other member-owners section 8.3 represents their consent to include the amount of their patronage dividend in their taxable incomes for the year in which they receive their patronage dividend notice and check. This consent would apply to member-owners whose patronage of the Cooperative was for business or income-producing purposes.