

**BERKSHIRE UNITED WAY, INC.**  
*FINANCIAL STATEMENTS*  
*JUNE 30, 2021 WITH COMPARATIVE TOTALS*  
*FOR THE YEAR ENDED JUNE 30, 2020*

**BERKSHIRE UNITED WAY, INC.  
FINANCIAL STATEMENTS**

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## MeyersBrothersKalicka, P.C.

CERTIFIED PUBLIC ACCOUNTANTS  
AND BUSINESS STRATEGISTS

### INDEPENDENT AUDITORS' REPORT

To the Board of Directors of  
Berkshire United Way, Inc.

#### **Report on the Financial Statements**

We have audited the accompanying financial statements of Berkshire United Way, Inc. (a nonprofit "Organization") which comprise the statements of financial position as of June 30, 2021, and the related statement of activities, cash flows, and functional expenses for the year then ended and the related notes to the financial statements.

#### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

#### **Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Organization's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal controls. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Berkshire United Way, Inc. as of June 30, 2021, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

## Report on Summarized Comparative Information

We have previously audited the Organization's 2020 financial statements, and our report dated October 16, 2020, expressed an unmodified opinion on those audited financial statements. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2020, is consistent, in all material respects, with the audited financial statements from which it has been derived.

*Mayer Brothers Kalicka, P.C.*

Holyoke, Massachusetts  
October 14, 2021

**BERKSHIRE UNITED WAY, INC.**

**STATEMENTS OF FINANCIAL POSITION  
JUNE 30, 2021 AND 2020**

*ASSETS*

	<b>2021</b>	<b>2020</b>
<b>Assets</b>		
Cash	\$ 1,105,558	\$ 1,134,173
Cash - restricted for COVID-ER Fund	-	113,408
Contributions receivable, net	745,859	557,882
Grants receivable	-	23,132
Other receivables	5,702	82,687
Prepaid expenses	15,306	8,662
Investments, at market value	3,834,309	3,189,510
Property and equipment, net	25,980	32,528
<b>Total assets</b>	<b>\$ 5,732,714</b>	<b>\$ 5,141,982</b>

*LIABILITIES AND NET ASSETS*

<b>Liabilities</b>		
Community grants payable	\$ 1,205,379	\$ 1,136,351
Due to designated agencies	68,848	79,058
Accounts payable	3,563	1,543
Accrued expenses	81,706	59,529
Paycheck Protection Program note payable	-	119,000
<b>Total liabilities</b>	<b>1,359,496</b>	<b>1,395,481</b>
<b>Net assets</b>		
Without donor restrictions		
Undesignated	1,964,129	1,343,832
Board designated reserve	711,000	644,018
Property and equipment	25,980	32,528
Total without donor restrictions	2,701,109	2,020,378
With donor restrictions	1,672,109	1,726,123
Total net assets	4,373,218	3,746,501
<b>Total liabilities and net assets</b>	<b>\$ 5,732,714</b>	<b>\$ 5,141,982</b>

The accompanying notes are an integral part of these financial statements.

BERKSHIRE UNITED WAY, INC.

STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2021  
WITH COMPARATIVE TOTALS FOR 2020

	2021		2020
	Without Donor Restrictions	With Donor Restrictions	Total
<b>Revenues, gains and other support</b>			
Campaign contributions			
Total campaign amounts raised	\$ 2,170,261	\$ -	\$ 2,170,261
Special events	49,500	-	49,500
In-kind support	13,482	-	13,482
Less: amounts raised on behalf of others	(51,012)	-	(51,012)
Less: provision for uncollectible pledges	(40,000)	-	(40,000)
Net campaign contributions	2,142,231	-	2,142,231
Gain on extinguishment of debt - Paycheck Protection Program	119,000	-	119,000
COVID-19 ER fund contributions	-	167,407	167,407
Interest and dividend income, net of investment fees	12,856	14,190	27,046
Administrative fees charged on designations	3,667	-	3,667
Grant income	90,000	-	90,000
Rental income	-	-	-
Gain on sale of building	-	-	-
Other	8,492	-	8,492
Realized and unrealized gains on investments	364,150	292,624	656,774
Released from restrictions (SABIC endowment)	115,194	(115,194)	-
Released from restrictions (Venture Fund)	30,000	(30,000)	-
Released from restrictions (COVID ER fund)	365,441	(365,441)	-
Investment return released for operations	17,600	(17,600)	-
<b>Total revenues, gains and other support</b>	<u>3,268,631</u>	<u>(54,014)</u>	<u>3,214,617</u>
<b>Expenses</b>			
Program services - community investment	1,973,662	-	1,973,662
Supporting services:			
Management and general	137,708	-	137,708
Fundraising (resource development)	476,530	-	476,530
<b>Total expenses</b>	<u>2,587,900</u>	<u>-</u>	<u>2,587,900</u>
<b>Change in net assets</b>	680,731	(54,014)	626,717
<b>Net assets, beginning of year</b>	2,020,378	1,726,123	3,746,501
<b>Net assets, end of year</b>	<u>2,701,109</u>	<u>1,672,109</u>	<u>4,373,218</u>

The accompanying notes are an integral part of these financial statements.

**BERKSHIRE UNITED WAY, INC.**

**STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED JUNE 30, 2021 AND 2020**

	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities</b>		
Change in net assets	\$ 626,717	\$ 755,502
Adjustments to reconcile change in net assets to net cash (used in) provided by operating activities		
Depreciation	12,246	32,521
Net realized and unrealized gain on investments	(656,774)	(48,754)
Provision for uncollectible pledges	40,000	13,522
Gain on the extinguishment of debt - Paycheck Protection Program	(119,000)	-
Gain on sale of building	-	(427,939)
Change in operating assets and liabilities:		
Contributions receivable	(227,977)	60,392
Grants receivable	23,132	(2,026)
Other receivables	76,985	(80,187)
Prepaid expenses	(6,644)	13,093
Community grants payable	69,028	(226,038)
Due to designated agencies	(10,210)	(27,931)
Accounts payable	2,020	(37,775)
Accrued expenses	22,177	17,155
Net cash (used) provided by operating activities	(148,300)	41,535
<b>Cash flows from investing activities</b>		
Proceeds from sale of building	-	647,730
Purchase of property and equipment	(5,698)	(9,844)
Purchase of investments	876,522	(1,784,396)
Proceeds from the sales of investments	(864,547)	1,905,951
Net cash provided by investing activities	6,277	759,441
<b>Cash flows from financing activities</b>		
Proceeds from Paycheck Protection Program note payable	-	119,000
Net (decrease) increase in cash and restricted cash	(142,023)	919,976
<b>Cash and restricted cash, beginning of year</b>	<b>1,247,581</b>	<b>327,605</b>
<b>Cash and restricted cash, end of year</b>	<b>\$ 1,105,558</b>	<b>\$ 1,247,581</b>

The accompanying notes are an integral part of these financial statements.

**BERKSHIRE UNITED WAY, INC.**

**STATEMENT OF FUNCTIONAL EXPENSES  
FOR THE YEAR ENDED JUNE 30, 2021**

	<b>Program Services Community Investment</b>	<b>Supporting Services Management and General</b>	<b>Fundraising</b>	<b>Total</b>
Community impact initiative work and grants	\$ 1,163,827			\$ 1,163,827
COVID-19 ER Fund grants	<u>365,441</u>			<u>365,441</u>
Total grants to other organizations	<u>1,529,268</u>			<u>1,529,268</u>
Salaries and related expenses				
Salaries	282,062	\$ 67,473	\$ 267,472	617,007
Employee benefits	31,238	6,950	27,611	65,799
Payroll taxes	<u>25,423</u>	<u>7,018</u>	<u>25,851</u>	<u>58,292</u>
Total salaries and related expenses	<u>338,723</u>	<u>81,441</u>	<u>320,934</u>	<u>741,098</u>
Support costs				
Contracted services	11,977	26,230	18,227	56,434
Supplies and small equipment	1,523	537	6,222	8,282
Telephone	2,624	856	2,224	5,704
Postage	4	277	3,133	3,414
Occupancy, other than depreciation and rent	7,897	2,571	6,695	17,163
Rent	<u>24,288</u>	<u>7,920</u>	<u>20,592</u>	<u>52,800</u>
Equipment maintenance	-	-	32	32
Printing and publications	2,892	1,243	6,105	10,240
Advertising	2,756	-	2,756	5,512
Travel	-	-	103	103
Conferences, meetings and special events	-	48	28,330	28,378
Conferences, training	56	243	303	602
Dues and subscriptions	460	1,050	612	2,122
National and state affiliation dues	17,388	5,670	14,742	37,800
General and liability insurance	3,086	1,006	2,617	6,709
Bank charges	2,134	711	3,729	6,574
Depreciation	5,633	1,837	4,776	12,246
Technology	21,949	5,552	21,919	49,420
In-kind expenses	1,004	-	12,479	13,483
Miscellaneous expense	-	516	-	516
Total support costs	<u>105,671</u>	<u>56,267</u>	<u>155,596</u>	<u>317,534</u>
<b>Total community impact and other expenses</b>	<u>\$ 1,973,662</u>	<u>\$ 137,708</u>	<u>\$ 476,530</u>	<u>\$ 2,587,900</u>

The accompanying notes are an integral part of these financial statements.



**BERKSHIRE UNITED WAY, INC.**

**STATEMENT OF FUNCTIONAL EXPENSES  
FOR THE YEAR ENDED JUNE 30, 2020**

	Program Services	Supporting Services		Total
	Community Investment	Management and General	Fundraising	
Community impact initiative work and grants	\$ 994,726			\$ 994,726
COVID-19 ER Fund grants	<u>1,908,300</u>			<u>1,908,300</u>
Total grants to other organizations	<u>2,903,026</u>			<u>2,903,026</u>
Salaries and related expenses				
Salaries	287,459	\$ 96,388	\$ 208,014	591,861
Employee benefits	31,783	10,731	17,509	60,023
Payroll taxes	<u>24,561</u>	<u>9,420</u>	<u>18,945</u>	<u>52,926</u>
Total salaries and related expenses	<u>343,803</u>	<u>116,539</u>	<u>244,468</u>	<u>704,810</u>
Support costs				
Contracted services	27,049	22,714	37,266	87,029
Supplies and small equipment	10,283	1,324	3,865	15,472
Telephone	4,398	528	938	5,864
Postage	55	639	2,502	3,196
Occupancy, other than depreciation	39,259	21,007	8,376	68,642
Equipment maintenance	-	-	131	131
Printing and publications	4,260	1,800	5,309	11,369
Advertising	3,597	-	4,364	7,961
Travel	1,326	371	769	2,466
Conferences, meetings and special events	1,483	(188)	3,261	4,556
Conferences, training	1,141	1,524	394	3,059
Dues and subscriptions	253	802	1,225	2,280
National and state affiliation dues	22,087	2,650	4,712	29,449
General and liability insurance	4,913	590	1,048	6,551
Bank charges	2,618	1,783	5,220	9,621
Depreciation	24,391	2,927	5,203	32,521
Technology	40,742	7,429	16,247	64,418
In-kind expenses	29,998	1,400	36,919	68,317
Miscellaneous expense	-	1,240	-	1,240
Total support costs	<u>217,853</u>	<u>68,540</u>	<u>137,749</u>	<u>424,142</u>
<b>Total community impact and other expenses</b>	<u>\$ 3,464,682</u>	<u>\$ 185,079</u>	<u>\$ 382,217</u>	<u>\$ 4,031,978</u>

The accompanying notes are an integral part of these financial statements.

# BERKSHIRE UNITED WAY, INC.

## NOTES TO FINANCIAL STATEMENTS JUNE 30, 2021 AND 2020

### 1. ORGANIZATION:

Berkshire United Way, Inc. (the “Organization”) is a nonprofit organization that ignites the collective power of individuals and organizations to build a stronger community together. The Organization raises funds through workplace campaigns, corporate gifts, sponsorships, government and foundation grants and individual donations. The Organization invests these resources in support of three priority community issues: early childhood literacy, positive youth development and economic prosperity. The Organization partners with a variety of nonprofit organizations in Berkshire County and leads several initiatives to address community needs including Pittsfield Promise and the Economic Prosperity Impact Council.

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

#### **Basis of accounting**

The accompanying financial statements have been prepared on the accrual basis of accounting in conformity with accounting principles generally accepted in the United States of America. The statements of financial position present assets and liabilities in order of their relative liquidity.

#### **Net assets**

In order to ensure observance of limitations and restrictions placed on the use of the resources available to the Organization, the accompanying financial statements are classified for accounting and reporting purposes into classes of net assets in accordance with the existence or absence of donor-imposed restrictions. Accordingly, net assets and changes therein are classified as follows:

Net assets without donor restrictions - Net assets are not subject to donor-imposed stipulations. Net assets without donor restrictions may be designated for specific purposes by action of the Board of Directors. Designated net assets consist of assets without restrictions designated by the Board for investment purposes.

Net assets with donor restrictions - Net assets subject to donor-imposed stipulations. Some donor-imposed stipulations are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed stipulations are perpetual in nature, where the donor stipulates that they be maintained permanently by the Organization. Generally, the donors of these assets permit the Organization to use all or part of the income earned on any related investments for general or specific purpose. When a restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions. Realized and unrealized gains and losses on restricted purpose gifts are reported as net assets with donor restrictions in accordance with donor stipulations and Massachusetts law.

The Board has adopted a reserve policy whereby certain net assets without donor restrictions are board designated in order to establish a means to provide ongoing funding for operations and community programs related to significant operational disruptions for a period of four months. This allows time to develop alternative plans if there is an unanticipated decline in available funds. Additionally, it provides a rational basis by which to determine a target range that is not excessive.

# BERKSHIRE UNITED WAY, INC.

## NOTES TO FINANCIAL STATEMENTS JUNE 30, 2021 AND 2020

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (CONTINUED)

#### **Comparative financial information**

The financial statements include certain prior year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with the Organization's financial statements for the year ended June 30, 2020, from which the summarized information was derived.

#### **Revenue and receivables**

Unconditional contributions and grants are recognized as support at the time they are pledged. Grants are presented as restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities as net assets released from restrictions. If a restriction is fulfilled in the same period in which the contribution is received, the Organization reports the support as unrestricted. Conditional promises to give represent gifts that depend on the Organization overcoming a donor-imposed barrier to be entitled to the funds. They are not recognized as support until the barrier is substantially met.

The Organization reports campaign contributions net of amounts that are designated by donors to a specific non-profit agency. Donor designated pledges were assessed a processing fee of 9.3% (which includes administrative costs) for the years ended June 30, 2021 and 2020, with a maximum fee of \$200 per donor which is based on historical costs in accordance with United Way Worldwide membership standards.

Campaign contributions can include amounts donated by individuals or companies paid as a pass-through payment to recipient organizations. Pass-through funds totaled \$20,400 for the year ended June 30, 2021, and they are not reflected in the statements of activities. There were no pass-through funds for the year ended June 30, 2020.

Contributions receivable are typically due within one year or less and therefore are recorded without any present value discount. The Organization provides for an allowance for uncollectible contributions and grants receivable based upon historical averages and management's estimates of current economic factors. Accounts are written off against the allowance when management has exhausted all reasonable collection efforts. The allowance for uncollectible contributions receivable was \$92,831 and \$78,000 as of June 30, 2021 and 2020, respectively. There was no allowance for grants receivable as of June 30, 2021 and 2020.

#### **Investments, including endowments**

Investments are recorded at fair value using methodologies discussed in Note 5. Gains and losses that result from market fluctuations are recognized in the period such fluctuations occur. Realized gains and losses resulting from sales or maturities are calculated on a specific identification basis. Investment activity is reported as increases or decreases in net assets without donor restrictions unless their use is restricted by explicit donor stipulation or by law.

Investment securities are exposed to various risks, such as interest rate, market and credit. Due to the level of uncertainty related to changes in interest rates, market volatility and credit risks, it is at least reasonably possible that changes in these risks could materially affect the fair value of investments and related activity reported on the financial statements.

# BERKSHIRE UNITED WAY, INC.

## NOTES TO FINANCIAL STATEMENTS JUNE 30, 2021 AND 2020

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (CONTINUED)

#### **Investments, including endowments (continued)**

The Organization's investments include donor restricted endowment funds and funds functioning as quasi-endowment funds. Donor restricted endowments consist of gifts received with a donor stipulation that require the funds to be invested in perpetuity. Quasi-endowment funds consist of board designated and donor restricted purpose funds. Board designated funds consist of monies internally designated. Donor restricted purpose funds consist of gifts received with a donor stipulation to be used for a particular purpose, but with no requirement for the funds to be invested in perpetuity and for which a fund was established to function as an endowment.

Professional accounting standards provide guidance on the net asset classification of donor restricted endowment funds for a not-for-profit organization that is subject to an enacted version of the Massachusetts Uniform Prudent Management of Institutional Funds Act of 2006 ("UPMIFA") which serves as a model act for states to modernize their laws governing donor restricted endowment funds.

The Board of Directors (the "Board") has interpreted UPMIFA, as adopted by the Commonwealth of Massachusetts, as requiring the preservation of the fair value of the original gift as of the gift date of the donor restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Organization classifies as net assets with donor restrictions, the original value of bequests donated to the permanent endowment.

The remaining portion of the donor restricted endowment fund is also classified as net assets with donor restrictions until those amounts are appropriated for expenditure in a manner consistent with the standard of prudence prescribed by UPMIFA. The Organization considers the following factors in making a determination to appropriate or accumulate donor restricted endowment funds: the duration and preservation of the funds, the purpose of the Organization and the donor restricted endowment funds, general economic conditions, the possible effect of inflation and deflation, the expected total return from income and the appreciation of investments, other resources of the Organization, and the investment policies of the Organization.

The Organization's endowment spending policy is calculated as up to 4.5% of its endowment fund's average fair value as of June 30<sup>th</sup> of the preceding three years in which the distribution was planned for. In fiscal years 2021 and 2020, this amounted to \$17,600 and \$16,500, respectively, which was used by the Organization. In establishing this policy, the Organization considered the long-term expected return on its investment assets, the nature and duration of the individual endowment funds, many of which must be maintained in perpetuity because of donor-restrictions, and the possible effects of inflation. The Organization expects the current spending policy to allow its endowment funds to grow annually. This is consistent with the Organization's objective to maintain the purchasing power of the endowment assets as well as to provide additional real growth through new gifts and investment return. Although not required by state law, the same spending policy is followed for investment funds without restrictions.

#### **Recent accounting standards**

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. As part of this new standard, there are significant changes that call for the treatment of current operating leases as capital leases, resulting in recognition by the lessee (the Organization) of a lease liability and a corresponding right-of-use asset. The lessor will recognize an asset representing its right to receive payments. The Organization is not required to apply the new standard until years beginning after December 30, 2021 (for the year ending June 30, 2023). The Organization may also early adopt the new standard. In preparation of this standard, management will be reviewing and evaluating all leases, review its capitalization policy, and assess the potential impact on any related financial covenants required by the Organization financing arrangements.

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (CONTINUED)**

**Property and equipment, net**

Property and equipment are carried at cost less accumulated depreciation. The Organization capitalizes expenditures for equipment in excess of \$2,500. The fair value of donated equipment is similarly capitalized. Depreciation is calculated based on the estimated useful lives of the respective assets using the straight-line method. The estimated useful lives of buildings and improvements is from seven to twenty years and the lives of furniture and equipment is from three to ten years.

When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and any resulting gain or loss is credited or charged to operations for the period. The cost of maintenance and repairs is charged to operations as incurred; significant renewals and betterments are capitalized. The Organization evaluated the carrying value of its property and equipment and no impairment was recorded.

Depreciation expense was \$12,246 and \$32,521 for the years ended June 30, 2021 and 2020, respectively.

**Community grants payable**

Community impact grants are awarded to agencies for specific programs for one or two years and are contingent on satisfactory program performance, contract compliance, and available dollars. The grants are recommended by staff, community volunteers and approved by the board of directors. These expenses are recorded prior to fiscal year end and monthly distributions will be made in the subsequent fiscal year. The Organization requires grant recipients to provide all required reporting in order to receive their last payment.

**Due to designated agencies**

Contributions that are designated to a specific third-party beneficiary are recorded as a liability at the time that the contribution is received. These pledges are paid to designated agencies, as received, with payments issued at least twice per year. The Organization received donor designations to outside parties of \$68,848 and \$89,512 for the years ended June 30, 2021 and 2020, respectively. The Organization wrote off \$17,836 and \$17,433, respectively of designation pledges received in prior campaign years that were deemed uncollectible. This resulted in net designations on the statements of activities of \$51,012 and \$72,079, respectively.

**In-kind contributions and contributed services**

In-kind contributions are reflected as contributions at their fair value at date of donation and are reported as unrestricted support unless explicit donor stipulations specify how donated assets must be used. The Organization benefited from donated supplies, a vehicle, special event related items, as well as services from a workplace campaign coordinator valued in the amounts of \$13,482 and \$38,812 during the years ended June 30, 2021 and 2020, respectively. For the year ended June 30, 2020, the Organization received an additional \$29,505 of in-kind donations of COVID-19 related supplies.

The Organization pays for most services requiring specific expertise. However, many individuals volunteer their time and perform a variety of tasks that assist the Organization. Approximately 5,000 and 3,500 volunteer hours were contributed, including approximately 410 and 360 hours by volunteers from local companies participating in the Organization's annual campaign during the years ended June 30, 2021 and 2020, respectively. The value of the volunteer hours has not been recorded in the statement of activities.

# BERKSHIRE UNITED WAY, INC.

## NOTES TO FINANCIAL STATEMENTS JUNE 30, 2021 AND 2020

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES: (CONTINUED)

#### Functional allocation of expenses

The cost of providing the various programs and activities has been summarized on a functional basis in the statement of activities. The statements of functional expenses present the natural classification detail of expenses by function. Accordingly, certain building costs have been allocated among the programs and supporting services benefited. This allocation is based on the full time equivalent of employees in each respective department. The remaining expenses are direct or allocated based on time spent in each function.

#### Advertising

The Organization charges advertising costs to expense as incurred which amounted to \$5,512 and \$7,961 for the years ended June 30, 2021 and 2020, respectively.

#### Tax-exempt status

The Organization is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code and, accordingly, no provision for federal or state income taxes has been made.

#### Uncertain tax positions

Management has evaluated significant tax positions against the criteria established by professional standards and believes there are no such tax positions requiring accounting recognition. The Organization's tax returns are subject to examination by taxing authorities for all years ending on or after June 30, 2018.

#### Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### 3. LIQUIDITY AND AVAILABILITY OF RESOURCES:

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of the statement of financial position date, comprise the following:

#### **Financial assets at June 30:**

	<u>2021</u>	<u>2020</u>
Cash, excluding amounts restricted for COVID-19 fund	\$ 1,105,558	\$ 1,134,173
Contributions receivable, net	745,859	557,882
Grants receivable	-	23,132
Other receivables	5,702	1,445
Annual spending policy distribution	17,600	16,500
Total financial assets available for general expenditure	<u>\$ 1,874,719</u>	<u>\$ 1,733,132</u>

Berkshire United Way, Inc. manages its liquidity by developing and adopting annual operating budgets that are designed to provide sufficient funds for general expenditures and allow the Organization to satisfy its liabilities and other obligations as they become due. Berkshire United Way, Inc. maintains financial assets on hand to meet approximately four months of normal operating expenses. The Organization has Board Designated endowments available for use throughout the fiscal year (approximately \$2,156,000 and \$1,656,000 at June 30, 2021 and 2020, respectively). The spending policy is detailed in Note 2. The Organization also has a line of credit in the amount of \$300,000, which it could draw upon in the event of an unanticipated liquidity need. The available balance on the line was \$300,000 at June 30, 2021 and 2020.

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**4. INVESTMENTS:**

The Board of Directors of the Organization, as the governing Board, is responsible for oversight of the Organization's investments. Establishment and implementation of investment policy, including the establishment of investment guidelines and the selection of investment managers, is the Board of Directors' responsibility. Investments authorized include marketable equity and debt securities and other types of investments that may be made with the prior approval of the Board of Directors.

The primary investment objective of the investment portfolio is growth of principal sufficient to preserve purchasing power and to provide income to support current and future activities of the Organization. Long term, the total return on the portfolio should equal the rate of inflation, plus the payout rate which is used to support current activities, plus an amount reinvested to support future activities.

From time to time, the fair value of assets associated with individual donor restricted endowment funds may fall below the level that the donor requires to be retained for perpetual funds. The historic gift value of donor restricted endowment funds cannot be reduced for any excess losses. Any excess losses shall reduce net assets with donor restrictions. As of June 30, 2021 and 2020, there were no cumulative losses on the investments of donor restricted endowment funds.

Investments at June 30, 2021 consist of:

	<u>Cost</u>	<u>Fair Value</u>	<u>Unrealized Gain/(Loss)</u>
Cash and equivalents	\$ 131,988	\$ 131,988	\$ -
Fixed income	420,039	434,776	14,737
Corporate bonds	422,816	445,495	22,679
Government bonds	93,476	95,143	1,667
Common stocks	652,527	1,108,651	456,124
Equity funds	717,135	1,061,721	344,586
Real estate investment trust	20,205	29,088	8,883
Mutual funds	88,889	127,345	38,456
Exchange traded products	358,616	400,102	41,486
Total investments	<u>\$ 2,905,691</u>	<u>\$ 3,834,309</u>	<u>\$ 928,618</u>

Investments at June 30, 2020 consist of:

	<u>Cost</u>	<u>Fair Value</u>	<u>Unrealized Gain/(Loss)</u>
Cash and equivalents	\$ 143,158	\$ 143,158	\$ -
Fixed income	365,852	389,451	23,599
Corporate bonds	496,302	525,492	29,190
Government bonds	94,601	97,903	3,302
Common stocks	641,309	834,001	192,692
Equity funds	815,231	876,086	60,855
Real estate investment trust	20,300	20,070	(230)
Mutual funds	68,073	78,344	10,271
Exchange traded products	209,640	225,005	15,365
Total investments	<u>\$ 2,854,466</u>	<u>\$ 3,189,510</u>	<u>\$ 335,044</u>

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**4. INVESTMENTS: (CONTINUED)**

The Organization's bonds were rated as follows as of June 30, 2021 and 2020:

	<u>2021</u>	<u>2020</u>
AAA	\$ 54,296	\$ 26,931
AA	172,171	124,279
A+	21,742	-
A	134,995	365,792
A-	28,136	-
BAA	-	28,510
BBB+	30,513	-
BBB	98,785	77,883
Total	<u>\$ 540,638</u>	<u>\$ 623,395</u>

The following schedule summarizes the investment return in the statement of activities for the years ended June 30, 2021 and 2020:

	<u>2021</u>	<u>2020</u>
Interest and dividends	\$ 59,503	\$ 71,283
Less: fees and other costs	(32,457)	(31,885)
Unrealized gains	593,574	60,214
Realized gains (losses)	63,200	(11,460)
Total	<u>\$ 683,820</u>	<u>\$ 88,152</u>

**5. FAIR VALUE MEASUREMENTS:**

The Organization follows established guidelines for a fair value hierarchy that prioritizes the inputs used to measure fair value. An asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement. This hierarchy prioritizes the inputs into three broad levels as follows:

- Level 1 Quoted prices (unadjusted) in active markets for identical assets or liabilities. Market price is generally obtained from exchange or dealer markets.
- Level 2 Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. Inputs are obtained from various sources including market participants, dealers and brokers.
- Level 3 Unobservable inputs that are supported by little or no market activity as they trade infrequently or not at all and that are significant to the fair value of the assets or liabilities.

Investments are reported at fair value based on quoted market prices, where available, and/or other market data for the same or comparable instruments and transactions in establishing the prices. Fixed income funds are valued at the closing price reported in the active market in which the bond is traded. All of the Organization's investments qualify as Level 1. (See Note 4).



**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**6. ENDOWMENTS:**

Endowment by net asset class and type at June 30, 2021 and 2020 consists of:

	<b>Net Assets with Donor Restrictions</b>		
	<b>Time or Purpose Restricted</b>	<b>Restricted in Perpetuity</b>	<b>Total</b>
<b>June 30, 2021</b>			
Donor restricted endowment funds	\$ 1,363,306	\$ 308,803	\$ 1,672,109
<b>June 30, 2020</b>			
Donor restricted endowment funds	\$ 1,041,801	\$ 486,288	\$ 1,528,089

The following schedule reconciles the change in endowments by net asset class for the years ended June 30, 2021 and 2020:

	<b>Net Assets with Donor Restrictions</b>		
	<b>Time or Purpose Restricted</b>	<b>Restricted in Perpetuity</b>	<b>Total</b>
Endowment investments - June 30, 2019	\$ 1,076,738	\$ 486,288	\$ 1,563,026
Realized and unrealized gains	29,634	-	29,634
Interest and dividends, net	21,882	-	21,882
Distributions (SABIC)	(69,953)	-	(69,953)
Spending policy distribution	(16,500)	-	(16,500)
Endowment investments - June 30, 2020	1,041,801	486,288	1,528,089
Donor funds reclassified	177,485	(177,485)	-
Realized and unrealized gains	292,624	-	292,624
Interest and dividends, net	14,190	-	14,190
Distributions (SABIC)	(115,194)	-	(115,194)
Distributions (Venture)	(30,000)	-	(30,000)
Spending policy distribution	(17,600)	-	(17,600)
Endowment investments - June 30, 2021	\$ 1,363,306	\$ 308,803	\$ 1,672,109

During the year ended June 30, 2021, the Organization completed a review of donor funds held in the endowments and determined that the Venture Funds classified as restricted in perpetuity were purpose restricted funds without a time restriction. This adjustment does not have an impact on the statements of net position and statements of activities as these funds remain within the category of net assets with donor restrictions.

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**7. PROPERTY AND EQUIPMENT:**

The Organization's property and equipment consists of the following as of June 30:

	2021	2020
Office improvements	64,877	64,887
Furniture and equipment	280,822	275,114
	345,699	340,001
Less: accumulated depreciation	(319,719)	(307,473)
Property and equipment, net	\$ 25,980	\$ 32,528

**8. LINE OF CREDIT:**

The Organization has a line of credit agreement with a local bank. The maximum amount available on the line of credit is \$300,000 which is due on demand. The line of credit is subject to annual renewal in June and secured by the property owned by the Organization and the unrestricted investment accounts. The line was renewed to May 31, 2022. The interest rate is the New York Prime Rate as published in the Wall Street Journal (3.25% at June 30, 2021 and 2020) with an interest rate floor of 2%. There was no outstanding balance against the line of credit at June 30, 2021 and 2020.

**9. NOTE PAYABLE – PAYCHECK PROTECTION PROGRAM:**

The Organization's note payable - bank at June 30 consisted of:

	2021	2020
Berkshire Bank:		
\$119,000 U.S. Small Business Administration Paycheck Protection Program ("PPP") unsecured note payable received May 5, 2020 with interest at 1%. Monthly installments of \$13,444 and payable over a two year period commencing upon determination if the loan is not forgiven. Payments do not start until October 2021, assuming the note is not forgiven. The PPP was authorized in the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. Subject to certain eligibility and certification requirements under the PPP, some or all of the loan amount may be forgiven. The Organization received notification on March 25, 2021 that the full amount of this loan has been forgiven which has been recognized in the statement of activities for the year ended June 30, 2021.	\$ -	\$ 119,000

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**10. LEASE INCOME:**

Prior to the sale of the building on June 30, 2020, the Organization leased office space to two other organizations at \$4,484 per month. One lease agreement terminated on December 20, 2019 and the other expired with the sale of the building. There was no rent income received for the year ended June 30, 2021. Total rent received was \$74,957 for the year ended June 30, 2020.

**11. OPERATING LEASE:**

The Organization sold their current office space as of June 30, 2020. On July 1, 2020, the Organization began leasing the space under a non-cancelable operating lease with payments of \$4,400 due through July 2025. Rent expense for this office space totaled \$52,800 for the year ended June 30, 2021. The Organization also leases office equipment with expenses totaling \$3,490 and \$4,005 for the years ended June 30, 2021 and 2020, respectively.

The following is a schedule of future minimum lease payments required under operating leases as of June 30:

<u>June 30,</u>		
2022	\$	55,415
2023		55,415
2024		55,415
2025		55,415
Total required minimum lease payments	\$	<u>221,660</u>

**12. NET ASSETS WITH DONOR RESTRICTIONS:**

Net assets with time/purpose donor restrictions are summarized as follows at June 30:

	<b>2021</b>		<b>2020</b>
SABIC endowment	\$ 920,389	\$	872,726
COVID-19 ER fund	-		198,034
Venture fund – see Note 6 for reclassification	340,994		-
Accumulated earnings on endowments restricted in perpetuity	101,923		169,075
	1,363,306		1,239,835

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**12. NET ASSETS WITH DONOR RESTRICTIONS: (CONTINUED)**

Net assets with donor restrictions in perpetuity are summarized as follows at June 30:

	<b>2021</b>	<b>2020</b>
Ruth P. Boraski – Children’s programs	211,378	211,378
General endowment	35,000	35,000
GE Good Neighbor – Community programs	62,425	62,425
Venture endowment – Human services – see Note 6	-	177,485
	308,803	486,288
Total donor restricted net assets	\$ 1,672,109	\$ 1,726,123

**13. NET ASSETS RELEASED FROM RESTRICTIONS:**

The net assets with donor restrictions released from restrictions in 2021 related to the following:

SABIC endowment - (10% corpus)	\$ 97,038
- (earnings)	18,156
	\$ 115,194
Venture Fund draw	\$ 30,000
Spending policy distributions on other endowments	\$ 17,600
COVID-19 ER Fund	\$ 365,441

**14. RETIREMENT PLAN:**

The Organization maintains a 403(b) Plan (the "Plan") for eligible employees. Employees are able to make salary reduction contributions upon hire. Employees are eligible for matching and base contributions from the Organization upon reaching age twenty-one and achieving one year of service (1,000 hours of service). The Organization’s contribution to the Plan was \$30,862 and \$7,599 for the years ended June 30, 2021 and 2020, respectively.

**15. RELATED PARTY TRANSACTIONS:**

The Organization recorded grants to various agencies who had affiliations with members of the board of directors and Berkshire United Way staff, totaling approximately \$140,000 and \$468,000 for the years ended June 30, 2021 and 2020, respectively.

**BERKSHIRE UNITED WAY, INC.**

**NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2021 AND 2020**

**16. CONTINGENCIES:**

**Disallowed claims**

Amounts received from grantor agencies are subject to audit and adjustment by grantor agencies. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds requiring repayment to the funding source. As of the date of these financial statements, the Organization has not been informed of any disallowed expenditures.

**Coronavirus**

The 2019 novel coronavirus (“COVID-19”) has adversely affected and may continue to adversely affect the economic activity globally, nationally and locally. While the Organization’s operations did not halt, these economic conditions and other effects of the COVID-19 pandemic may, in the future, adversely affect the Organization. The extent of any financial impact on the Organization’s operations will depend on future developments, including the duration of the pandemic, business interruption, and any related governmental or other regulatory actions, which cannot be predicted at this time.

**17. CONCENTRATIONS OF CREDIT RISK:**

The Organization maintains its cash balance in local financial institutions. These balances are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to \$250,000. At various times during the period, the cash balances may exceed the insured amounts. The Organization has not experienced any losses on these accounts and monitors the credit-worthiness of the financial institutions with which it conducts business. The Organization believes it is not exposed to any significant credit risk with respect to its cash balances.

**18. SUBSEQUENT EVENTS:**

Management has evaluated subsequent events through October 14, 2021, the date of which the financial statements were available to be issued.

# BERKSHIRE UNITED WAY, INC.

## BY-LAWS

### ARTICLE I

#### NAME; PRINCIPAL OFFICE; MEMBERS; SEAL

- 1) **Name:** This Corporation shall be known as: Berkshire United Way, Inc. (hereinafter referred to in these By-Laws as the "Corporation").
- 2) **Principal Office:** The principal office of the Corporation shall be located at 200 South Street, Pittsfield, Massachusetts. The Board of Directors may change the location of the principal office in Massachusetts and establish other such offices as it deems appropriate.
- 3) **Members:** The Corporation shall have no members. Any action or vote required or permitted to be taken by members of the Corporation shall be taken by action or vote of the same percentage of the Directors.
- 4) **Seal:** The seal of the Corporation shall be circular in form with the name of the Corporation around the periphery and the year and state of incorporation within or such other form as the Directors may determine.

### ARTICLE II

#### MISSION AND POWERS

- 1) **Mission Statement:** The Corporation ignites the collective power of individuals and organizations to build a stronger community together.
- 2) **Powers:** The Corporation shall have all powers necessary or appropriate under law to carry out its mission and purpose and to do any other act which may be done by a non-profit Corporation organized under Chapter 180 of the Massachusetts General Laws.

### ARTICLE III

#### NOT FOR PROFIT STATUS; DISSOLUTION

- 1) **Not-for-Profit Status:** No part of the net earnings of the Corporation shall inure to the benefit or be distributable to its Directors, Officers or any other private person; but the Corporation shall be authorized and empowered to pay reasonable compensation for goods purchased and services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities, or as described pursuant to current statutes

and/or regulations, of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including by the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

Notwithstanding any other provisions of these By-Laws, the Corporation shall carry on only those activities permitted to be carried on by a Corporation described in sections 501 c.(3) or 170 c.(2) of the Internal Revenue Code, as amended (or the corresponding provisions of any future internal revenue law).

- 2) **Dissolution:** Upon the dissolution, liquidation, termination or winding up of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all the liabilities of the Corporation, convey, transfer, or distribute the property and assets of the Corporation to one or more educational, charitable or literary institutions or organizations, created and organized for nonprofit purposes similar to those of the Corporation, which qualify as exempt from income tax under Section 501c(3) of the Internal Revenue Code as amended (or the corresponding provisions of any future internal revenue law), as the Board of Directors may determine; provided further that the Corporation's property and assets may be applied to charitable or educational purposes in accordance with the doctrine of cy pres in all respects as a court having jurisdiction may direct.

#### **ARTICLE IV FISCAL YEAR**

- 1) **Fiscal Year:** The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year.

#### **ARTICLE V MEETINGS**

- 1) **Annual Meeting:** The Annual Meeting of the Corporation shall be held on such specific date and at such place and time as the Board of Directors shall determine. The Directors and Officers of the Corporation shall be elected at this Annual Meeting. If no date for the annual meeting is established or such meeting has not been held on the date so determined, a special meeting in lieu of the annual meeting may be held with all of the force and effect of an annual meeting.
- 2) **Regular Meetings:** Regular meetings of the Board of Directors shall be held at least four times per year, on such specific dates, and at such places and times as the Board of Directors shall determine.
- 3) **Special Meetings:** Special Meetings of the Board of Directors may be called by the Chairperson of the Board of Directors, or six (6) or more Directors, at any time and at any place, reasonable notice thereof being given to each Director by

the Clerk, or in the case of the death, absence, incapacity or refusal of the Clerk, by the Directors calling the meeting. A Special Meeting may be held at any time without call or formal notice provided all the Directors are present or waive notice thereof. If no Regular meeting has been held on the date determined, a Special Meeting in lieu of such meeting may be held with all the force and effect of such meeting.

- 4) **Notice of Meetings:** At least thirty (30) days' notice by mail, facsimile transmission, or email to all Directors shall be given for an Annual Meeting. Forty-eight (48) hours' notice shall be given for a Regular or Special Meeting provided ten (10) days' notice is given for a Regular or Special Meeting where an amendment to these By-Laws will be proposed, unless shorter notice is agreed to by a quorum of the Board of Directors. Whenever notice of a meeting is required, such notice need not be given to any Director if a written waiver of notice, executed before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice to such Director. Such notice or waiver of notice need not specify the purposes of the meeting, unless otherwise required by law, the articles of organization of the Corporation, or by these By-Laws.
- 5) **Quorum at Meetings:** At any meeting of the Directors for the transaction of business, one half (1/2) plus one of the Directors then in office shall constitute a quorum. Any meeting may be adjourned by a majority of the votes cast by the Directors upon the question, whether or not a quorum is present, and the meeting may be held as adjourned without further notice.
- 6) **Action by Vote:** When a quorum is present at any meeting, a majority of the Directors present and voting shall decide any question, unless otherwise provided by law, the articles of organization or these By-Laws.
- 7) **Action by Writing:** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if two thirds of the Directors consent to the action in writing (including by email) and the written consent is filed with the records of the meetings of the Board of Directors. Such consent shall be treated as a vote of the Directors at a meeting for all purposes.
- 8) **Presence through Communications Equipment:** Unless otherwise provided by law or the articles of organization, any Director may participate at a meeting of the Board of Directors or any Committee thereof by means of a conference telephone call, computer or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.



**ARTICLE VI  
BOARD OF DIRECTORS**

- 1) **Powers:** The Board of Directors shall have and may exercise all the powers of the Corporation except such as are conferred upon others by law or as expressly provided in these By-Laws.
  
- 2) **Numbers and Elections:** The Corporation shall have a Board of Directors of at least fifteen (15) but no more than twenty-five (25) Directors, all of whom shall be volunteers. No member of the Board of Directors shall be an employee of the Corporation.
  - (a) No Director may serve more than two (2) consecutive three (3) year terms except for services as an officer or appointment to fill a vacancy.
  
  - (b) A Director who has served two (2) consecutive three (3) year terms may be re-elected as a Director after a minimum one (1) year absence following the preceding two (2) consecutive three-year terms;
  
  - (c) Notwithstanding the above, Directors shall continue to serve until their successors shall be elected and qualified.
  
  - (d) The number of Directors may be changed by amendment of the By-Laws.
  
- 3) **Vote of Interested Directors:** A Director who is a member, stockholder, trustee, director, officer or employee of any firm, corporation or association with which the Corporation contemplates contracting or transacting business shall disclose their relationship or interest to the other Directors acting upon or in reference to such contract or transaction. No Director so interested shall vote on such a contract or transaction, but they may be counted for purposes of determining a quorum. The affirmative vote of a majority of the disinterested Directors shall be required before the Corporation may enter into such contract or transaction.

In case the Corporation enters into a contract or transacts business with any firm, corporation or association of which one or more of its Directors is a member, stockholder, trustee, director, officer or employee, such contract or transaction shall not be invalidated or in any way affected by the fact that such Director or Directors have or may have interests therein which are or might be adverse to the interests of the Corporation provided disclosure of such Director/s interest had previously been disclosed to the entire Board of Directors. No Director or Directors having disclosed such adverse interest shall be liable to the Corporation or to any creditor of the Corporation or to any other person for loss incurred by it under or by reason of any such contract or transaction, nor shall any such Director or Directors be accountable for any gains or profits to be realized thereon.

**ARTICLE VII**

## OFFICERS

- 1) **Number and Qualification:** The Officers of the Corporation shall be the Chairperson of the Board of Directors, Vice-Chairperson, President, Treasurer, and Clerk. Each Officer shall be a Director of the Corporation, except the President.
- 2) **Election:** The Officers of the Corporation, except the President, shall be elected by the Board of Directors at the Annual Meeting of the Corporation, and shall hold office for two (2) years and until their successors are elected. The President shall be appointed by the Board of Directors for such term and compensation as the Board of Directors shall from time to time determine.
- 3) **Chief Executive Officer:** The Board of Directors shall hire a Chief Executive Officer who shall be President of the Corporation for the tenure of his or her employment and shall have general charge and supervision of the affairs of the Corporation. The Chief Executive Officer shall, in accordance with the policies, budget and practices of the Corporation, have immediate and overall supervision of the operations of the Corporation, and shall direct the day-to-day business of the Corporation, maintain properties of the Corporation, hire, discharge and determine salaries and other compensation of all staff members under the Chief Executive Officer's supervision, and perform such additional duties as may be directed by the Executive Committee of the Board of Directors, be the custodian of all papers, documents, and records of the Corporation, and cooperate with and furnish information and assistance to all Committees.

The Chief Executive Officer shall make such reports at the Board and Executive Committee meetings as shall be required by the Chairperson or the Board. The Chief Executive Officer shall be an ex-officio non-voting member of all Committees.

The Chief Executive Officer may not be related by blood or marriage/domestic partnership within the second degree of consanguinity or affinity to any member of the Board of Directors. The Chief Executive Officer may be hired at any meeting of the Board of Directors by a majority vote and shall serve until removed by the Board of Directors upon an affirmative vote of three-quarters (3/4) of the members present at any quorum meeting of the Board of Directors. Such removal may be with or without cause. Nothing herein shall confer any compensation or other rights on any Director, who shall remain an employee terminable at will, as provided in this Section.

- 4) **Chairperson:** The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors and the Executive Committee. The Chairperson shall be an ex-officio member of all Committees with voting authority, and shall have such powers and duties incident to the office, or as may

be determined by the Board of Directors.

- 5) **Vice-Chairperson:** The Vice-Chairperson shall perform all the duties of the Chairperson upon the absence or inability of the Chairperson to serve, and shall assist the Chairperson as necessary. If the office of Chairperson becomes vacant, the Vice-Chairperson shall serve for the unexpired term. The Vice-Chairperson shall have all other powers and duties incident to the office, or as may be determined by the Board of Directors.
- 6) **Treasurer:** The Treasurer shall have oversight of all assets of the Corporation and shall assure that full and accurate accounts of receipts and disbursements are maintained in books belonging to the Corporation. The Treasurer shall assure and provide oversight of the financial affairs of the Corporation.
- 7) **Clerk:** The Clerk of the Corporation shall ensure that an accurate record of all meetings, votes and proceedings of the Board of Directors in a book, computer database, or similar medium to be kept for that purpose. The Clerk shall cause to be given notice of all meetings of the Board of Directors as provided by these By-Laws and by law. The recital in the record of a meeting that notice has been duly given shall be deemed sufficient proof that the meeting has been legally called and the Directors legally notified.
- 8) **Other Officers:** Other Officers of the Corporation may be appointed by, and shall have such duties and powers as may be designated from time to time by, the Board of Directors, at any Regular or Special Meeting.
- 9) **Bond:** The Board of Directors shall require the Treasurer or any other Officer or employee of the Corporation to give a bond in a sum, and with one or more sureties satisfactory to the Board of Directors, conditioned upon the faithful performance of their duties and for the restoration to the Corporation in case of death, resignation, retirement, or removal from office, of all papers, vouchers, money, and other property of whatever kind in their possession or under their control, belonging to the Corporation.

## ARTICLE VIII RESIGNATION, REMOVAL AND VACANCIES

- 1) **Resignation:** Any Director or Officer may resign at any time by delivering his resignation in writing to the Chairperson of the Board of Directors, the Chief Executive Officer, the Clerk, or to the Corporation at its principal office. Such resignation shall be effective upon receipt unless specified to be effective at some other time.
- 2) **Removal:** A Director or Officer may be removed, with or without cause, by the vote of two-thirds (2/3) of the Directors then in office.

- 3) **Vacancies:** Any vacancy in the Board of Directors may be filled by a vote of a majority of the Directors then in office at any Regular or Special Meeting. The Directors may exercise all their powers notwithstanding the existence of one or more vacancies in the board. Vacancies in any office or on the Executive Committee may be filled by a two-thirds (2/3) vote of the Directors then in office. Any Director or Officer elected by the Directors to fill a vacancy shall serve for the balance of the unexpired term and until a successor is elected and qualified. Any Director who fills a vacancy may then be appointed to serve two full terms.

## **ARTICLE IX BOARD COMMITTEES**

- 1) **Board Committees:** Committees of the Board shall be either standing or special. The Directors shall establish the following standing Board Committees, the members of which are to be elected or appointed by Regular or Special Meeting of the Board of Directors, unless otherwise expressly provided herein. Each Committee shall have a Charter that outlines the committee's specific functions, authority and designated powers. There shall be the following standing Committees:
- 2) **Executive Committee:** There shall be an Executive Committee which shall consist of the current Officers of the Corporation, the Chairpersons of the Finance, Governance, Resource Development and Community Impact Committees, and not more than three at-large members to be appointed by the Chairperson of the Board of Directors. The Executive Committee shall exercise such powers as the Board of Directors shall delegate and shall, in general, exercise the powers of the Board of Directors between meetings thereof, and shall keep regular minutes of its proceedings, and report the same to the next meeting of the Board of Directors.
- 3) **Finance Committee:** There shall be a Finance Committee to oversee the development and management of the Corporation's annual budget; the management of its financial resources including any building and investment assets and report recommendations; the evaluation of the Corporation's financial controls and accounting system. The Finance Committee shall also receive financial statements and report to the Board no less than quarterly.
- 4) **Governance Committee:** The Governance Committee shall be responsible for preparing and presenting nominations for the Board of Directors and Officers of the Corporation at the Annual Meeting. The Committee shall meet at least annually to review and monitor the attendance, performance and composition of the Board of Directors for the purpose of assuring inclusiveness and active participation in the governance of the Corporation. The Committee may, at its

discretion and for any reason the Committee sees fit, recommend removal of a Director from the Board of Directors, although no such recommendation is required for removal.

- 5) **Community Impact Committees:** The CIC shall consist of members and task forces designated by the Board of Directors to reflect the goals and mission of the Corporation and shall be responsible for identifying the needs of the community, evaluating strategies to address these needs, and recommending to the Board of Directors investments into those programs that attack root causes, deliver meaningful and measurable results, and help to create sustainable changes in Berkshire County.
- 6) **Campaign Cabinet:** The Campaign Cabinet plans and executes strategies for attracting and retaining donors, especially corporate and workplace, in line with annual and long-term campaign goals. Special event committees are created ad-hoc with specific goals for particular events outside of campaign.
- 7) **Audit Committee:** The Audit Committee shall oversee the external and internal audits of the Corporation's financial transactions, the necessary controls to ensure compliance with the Corporation's financial policies, and compliance with federal and state legal requirements. The Committee shall recommend to the Board the designation of an independent auditor for the Corporation and shall ensure that the Annual Audit Report is prepared in a timely fashion and submitted to the Board of Directors for review.
- 8) **Other or Special Committees:** The Chairperson of the Board of Directors shall from time to time appoint such Special Committees or Task Forces as are authorized by the Board of Directors including but not limited to: Marketing; Communications; Public Relations; Investment and Human Resources. Each Committee or Task Force shall consist of such number of persons as the Board of Directors deems advisable. All acts of such Committees shall be subject to approval of the Board of Directors.
- 9) **Public Comment:** No board Committee nor any member of a board Committee shall make public any action or resolution until it shall first have reported to the Board of Directors and have been authorized by the Board of Directors to make public such action or resolution, except in those instances where authority to act has been previously delegated to the Committee or to such member of a Committee.
- 10) **Quorum:** At any meeting of a Committee of the Board of Directors, a majority of the Committee members shall constitute a quorum, except that when a Committee consists of more than nine (9) members, five (5) members shall constitute a quorum.

**ARTICLE X  
NONBOARD COMMITTEES**

- 1) ***Additional Non-board Committees:*** The Directors shall have the authority to establish such additional Non-board Committees as they may from time to time deem advisable, including by way of example and not in limitation, Non-board Committees designated as sponsors, benefactors, contributors, advisors, and friends of the Corporation. The Board of Directors shall designate the individuals to serve on any such Committee so established. Such individuals shall serve in an ordinary capacity and, except as the Board of Directors shall otherwise designate, shall have no right to notice of or to vote at any meeting of the Board of Directors of the Corporation, and shall not be considered for purposes of establishing a quorum and shall have no other rights or responsibilities with regard to the Board of Directors or the affairs of the Corporation.
- 2) ***Public Comment:*** No Non-board Committee nor any member of a Non-board Committee shall make public any action or resolution until it shall first have reported to the Board of Directors and have been authorized by the Board of Directors to make public such action or resolution, except in those instances where authority to act has been previously delegated to the Committee or to such member of a Committee.
- 3) ***Ex Officio members:*** The Chairperson of the Board of Directors and the Chief Executive Officer shall be ex officio members of all Non-board Committees.

**ARTICLE XI  
INDEMNIFICATION**

- 1) ***Indemnification:*** The Corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as a director or officer of the Corporation or of any of its subsidiaries, or who at the request of the Corporation may serve or at any time has served as a director, officer or, committee member or in a similar capacity with, another organization, against all expenses and liabilities (including counsel fees, judgments, fines, excise taxes, penalties and amounts payable in settlements) reasonably incurred by or imposed upon such person in connection with any threatened, pending or completed action, suit or other proceeding, whether civil, criminal, administrative or investigative, in which he or she may become involved by reason of his or her serving or having served in such capacity (other than a proceeding voluntarily initiated by such person unless he or she is successful on the merits, the proceeding was authorized by the Corporation or the proceeding seeks a declaratory judgment regarding his or her own conduct); provided that no indemnification shall be provided for any such person with respect to any matter as to which he or she shall have been finally adjudicated in any proceeding not to

have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation; and provided, further, that as to any matter disposed of by a compromise payment by such person, pursuant to a consent decree or otherwise, the payment and indemnification thereof have been approved by the Corporation, which approval shall not unreasonably be withheld, or by a court of competent jurisdiction. Such indemnification shall include payment by the Corporation of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he or she shall be adjudicated to be not entitled to indemnification under this article, which undertaking may be accepted without regard to the financial ability of such person to make repayment.

A person entitled to indemnification hereunder whose duties include service or responsibilities as a fiduciary with respect to a subsidiary or other organization shall be deemed to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation if he or she acted in good faith in the reasonable belief that his or her action was in the best interests of such subsidiary or organization or of the participants or beneficiaries of, or other persons with interests in, such subsidiary or organization to whom he or she had a fiduciary duty.

Where indemnification hereunder requires authorization or approval by the Corporation, such authorization or approval shall be conclusively deemed to have been obtained, and in any case where a director of the Corporation approves the payment of indemnification, such director shall be wholly protected, if:

- (i) the payment has been approved or ratified (1) by a majority vote of a quorum of the directors consisting of persons who are not at that time parties to the proceeding, (2) by a majority vote of a committee of two or more directors who are not at that time parties to the proceedings and are selected for this purpose by the full board (in which selection directors who are parties may participate), or (3) by the members of the Corporation if disinterested; or
- (ii) the action is taken in reliance upon the opinion of independent legal counsel (who may be counsel to the Corporation) appointed for the purpose by vote of the directors or in the manner specified in clauses (1), (2) or (3) of subparagraph (i); or
- (iii) the payment is approved by a court of competent jurisdiction; or
- (iv) the directors may have otherwise acted in accordance with the standard of conduct set forth in Chapter 180 of the Massachusetts General Laws.

Any indemnification or advance of expenses under this article shall be paid promptly and in any event within 60 days, after the receipt by the Corporation of a written request therefore from the person to be indemnified, unless with respect to a claim for indemnification the Corporation shall have determined that the person is not entitled to indemnification. If the Corporation denies the request or if payment is not made within such 60-day period, the person seeking to be indemnified may at any time thereafter seek to enforce his or her rights hereunder in a court of competent jurisdiction and, if successful in whole or in part, he or she shall be entitled also to indemnification for the expenses of prosecuting such action. Unless otherwise provided by law, the burden of proving that the person is not entitled to indemnification shall be on the Corporation.

The right of indemnification under this article shall be a contract right inuring to the benefit of the directors, officers and other persons entitled to be indemnified hereunder and no amendment or repeal of this article shall adversely affect any right of such director, officer or other person existing at the time of such amendment or repeal.

The indemnification provided hereunder shall inure to the benefit of the heirs, executors and administrators of a director, officer or other person entitled to indemnification hereunder. The indemnification provided hereunder may, to the extent authorized by the corporation, apply to the directors, officers and other persons associated with constituent corporations that have been merged into or consolidated with the corporation who would have been entitled to indemnification hereunder had they served in such capacity with or at the request of the corporation.

The right of indemnification under this article shall be in addition to and not exclusive of all other rights to which such director or officer or other persons may be entitled. Nothing contained in this article shall affect any rights to indemnification to which Corporation employees or agents other than directors and officers and other persons entitled to indemnification hereunder may be entitled by contract or otherwise under law.

- 2) **Personal Liability:** No Officer or Director shall have any personal liability to the Corporation for monetary damages for breach of fiduciary duty as an Officer or Director notwithstanding any provision of law imposing such liability; but this provision shall not eliminate or limit the liability of an Officer or Director (1) for any breach of the Officer's or Director's duty of loyalty to the Corporation; (2) for acts or omission not in good faith or which involve intentional misconduct or a knowing violation of the law; or (3) for any transaction from which the Officer or Director derived an improper personal benefit. This provision shall not eliminate the liability of any Director or Officer for any act or omission occurring prior to the date on which this provision becomes effective. No amendment to or repeal of



this provision shall apply to or have any effect upon the liability or the alleged liability of any Director or Officer of the Corporation for or with respect to any acts or omissions of such Director or Officer occurring prior to such amendment or repeal.

- 3) **Insurance:** The Corporation shall purchase and maintain insurance on behalf of any person who is serving or who has served as a Director, Officer, employee or other agent of the Corporation, or who is serving or has served at the request of the Corporation as Director, Officer, Committee Member, employee or other agent of another organization, with such insurance to be against any liability incurred in any such capacity or arising out of his/her status as such, whether or not the Corporation has the power to indemnify him/her against any such liability.

## **ARTICLE XII AMENDMENTS**

- 1) **Amendments:** These By-Laws may be amended or repealed, in whole or in part, by vote of two-thirds of the Directors then in office at any meeting of the Board of Directors, if a notice of the proposed alterations, repeal or substitution is contained in the notice of such meeting.

## **ARTICLE XIII NON-DISCRIMINATION**

**Non-discrimination.** The Officers, Directors, Committee members, employees and persons served by the Corporation shall be selected entirely on a non-discriminatory basis with respect to color, race, age, sex, national origin, sexual orientation, genetic information, gender identity or expression, religion, disability, marital status, veteran status, ancestry, national origin or any group protected by federal, state or local law.

## **ARTICLE XIV MISCELLANEOUS PROVISIONS**

- 1) **Execution of Instruments:** All contracts, deeds, leases, bonds, notes, checks and other instruments authorized to be executed by an Officer of the Corporation on its behalf shall be signed by the Chairperson of the Board of Directors, Vice Chairperson, President or Treasurer except as the Board of Directors may generally or in particular cases otherwise determine.
- 2) **Voting of Securities:** Except as the Board of Directors may otherwise designate, the Chairperson of the Board of Directors, Vice Chairperson, President or Treasurer may waive notice of, and appoint any person or persons (with or without power of substitution) to act as proxy or attorney in fact for this Corporation at any meeting of stockholders of any other corporation, the securities of which may be held by this Corporation.

- 3) **Corporate Records:** The original or attested copies of the articles of organization, By-Laws and records of all meetings of incorporators and Directors shall be kept in Massachusetts at the principal office of the Corporation.
- 4) **Definitions:** All references in these By-Laws to the articles of organization and to these By-Laws shall be deemed to refer, respectively, to the articles of organization and the By-Laws of the Corporation as amended and in effect from time to time.

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Clerk

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Date

Approved by Berkshire United Way Board of Directors on June 25, 2021.