



LAKEWINDS
FOOD CO-OP

**Articles
& Bylaws**

Amended October 2013

Amended and Restated Articles of Incorporation of Lakewinds Food Co-op A Minnesota Cooperative

The following Articles of Incorporation are hereby amended and restated in their entirety pursuant to Chapter 308A.135 of Minnesota Statutes.

ARTICLE I. NAME

The name of this cooperative association shall be Lakewinds Natural Foods Cooperative.

ARTICLE II. PURPOSE

The purpose of this cooperative shall be to engage in a mercantile and marketing business to supply and furnish to its members and patrons on a cooperative basis such supplies, commodities, properties and services as they may require. In order to accomplish this goal, this cooperative shall buy, sell, market, store warehouse, acquire, transport, distribute, process, produce and otherwise engage in any activity connected with or related to its purposes.

For these purposes it shall have the power to:

- (a) Borrow money from its members and others upon adequate security; to issue bonds, debentures, notes and other obligations and to secure the same by pledge, mortgage, or trust deed on any property of this cooperative; to draw, make, accept, endorse, guarantee, execute and issue promissory notes, bills of exchange, drafts, warrants, warehouse receipts, certificates and other obligations and negotiable or transferable instruments for any purpose deemed necessary to further the objects for which this cooperative is formed.
- (b) Acquire, purchase, hold, lease, encumber, sell, exchange, and convey such real estate, buildings and personal property as the business of this cooperative may require.
- (c) Purchase, sell transfer and own capital stock, bonds, and obligations of other corporations.
- (d) Join with other cooperative corporations or associations to form district, state, national or international purchasing, marketing and service organizations; and to purchase, acquire and hold capital stock, notes, bonds, and other obligations of such organizations.
- (e) Do and perform every act and thing necessary and proper to the conduct of its business for the accomplishment of the purposes set forth herein or permitted by the laws of Minnesota applicable to this cooperative, and to have and exercise all of the powers conferred upon this cooperative by the laws of Minnesota under which it was organized, and acts amendatory thereof and supplemental thereto.

ARTICLE III. PLACE OF BUSINESS

The principal place of business of this cooperative shall be its headquarters at 6321 Bury Drive, Suite 21, Eden Prairie, Minnesota, 55346. This cooperative may operate from its stores and facilities at other locations.

ARTICLE IV. DURATION

The period of the continuance of this cooperative shall be perpetual.

ARTICLE V. CAPITAL STOCK

Section 1. The amount of authorized capital stock of this cooperative shall be one million

three hundred thousand (1,300,000) shares and shall be divided into three classes. Class A stock shall consist of one hundred thousand (100,000) shares of voting stock with a par value of ninety dollars (\$90.00) per share. Class B stock shall consist of one million one hundred thousand (1,100,000) shares of non-voting stock with a par value of ten dollars (\$10.00) per share. Class C stock shall consist of one hundred thousand (100,000) shares of non-voting stock with a par value of one hundred dollars (\$100.00) per share.

Section 2. Class A stock may be issued for cash and only Class A stockholders shall be deemed to be members of this cooperative. Class A stockholders shall have voting power of one vote per member. Voting by proxy shall not be allowed. No dividends shall be paid on Class A stock; however, patronage dividends may be paid when authorized by the Board of Directors in accordance with the Bylaws.

Section 3. Class B stock may be issued in full or partial payment of patronage refunds. Class B stock shall have no voting power and no dividends shall be paid thereon.

Section 4. Class C stock may be issued only to holders of Class A stock. Class C stock shall have no voting rights. Each share of Class C stock shall have a minimum maturity of five (5) years after issuance. Specifically, the soonest this cooperative will redeem any shares of Class C stock will be a minimum of five (5) years after the date such shares were issued as provided in Section 6 hereof. Dividends may be paid on Class C stock at the discretion of the Board of Directors, not to exceed eight percent (8%) per annum. Dividends, if declared, may be cumulative, as determined by the Board of Directors at the time the dividend is declared.

Section 5. No share of stock shall be issued for less than its par value, nor until the same has been fully paid for in cash or its equivalent, and each share of stock shall be paid for at such time and in such manner as the Board of Directors of this cooperative shall require.

Section 6. Subject to the provisions of Section 4 with respect to redemption of the Class C stock, when the Board of Directors determines that this cooperative has sufficient working capital, Class B stock and Class C stock may be called for payment at the par value specified in Section 1. Capital stock shall be called for redemption as provided herein and in the Bylaws. Any redemption of stock is subject to the requirement that at the time of redemption the total amount of stock remaining outstanding after deduction of the amount of stock redeemed, plus Retained Earnings of this cooperative, shall at least equal the total liabilities of this cooperative.

Section 7. This cooperative shall have a prior lien, with the right of enforcement of ordinary liens, upon all outstanding stock for any indebtedness due this cooperative. No stock shall be sold or transferred except with the consent and approval of the Board of Directors. Capital stock shall be subject to redemption as provided by law in the manner as the Bylaws shall prescribe. The capital stock of this cooperative shall be nonassessable.

ARTICLE VI. ALLOCATION TO MEMBER-PATRONS

Section 1. All or any part of the patronage refund declared by this cooperative at any time may be paid in Class B stock by allocated equity reserve or by the issuance of capital interest certificates, or by any other media determined by the Board of Directors.

Section 2. All of the annual member-patrons' net overpayments (net income), including patronage refunds received by this cooperative from other cooperative associations, available for distribution, shall belong to its patrons and shall be allocated to them on the basis of patronage and as provided in the Bylaws.

Section 3. In the event of liquidation or dissolution of this cooperative, all debts and liabilities shall first be paid according to their respective priorities. Holders of capital stock shall then be paid the par value of their shares, with priority given to holders of Class C stock until fully repaid, then holders of Class A stock until fully repaid, and finally holders of Class B stock until fully repaid. If upon the occurrence of a liquidation or dissolution, the assets and funds legally

available for distribution to a particular class of holders of capital stock of this cooperative are insufficient to permit the payment in full to such holders of the full preferential amount, then the entire assets and funds of the cooperative legally available for distribution will be distributed ratably among such holders in proportion to the full amounts to which they would otherwise be respectively entitled hereunder.

ARTICLE VII. BOARD OF DIRECTORS AND ANNUAL MEETINGS

Section 1. The government of this cooperative and the management of its affairs shall be vested in a board of not less than five (5) directors who shall be elected by ballot by the Class A stockholders from their own number at the annual meeting. The exact number of directors and their terms on the board shall be prescribed in the Bylaws.

Section 2. The annual meeting of the stockholders shall be held in the territory served by this cooperative annually at such time as may be determined by the Board of Directors of this cooperative.

Section 3. Vacancies in the Board of Directors, except in cases of removal by the stockholders, may be filled by the remaining members of the board, the person or persons so appointed to hold office only until the next annual meeting of the stockholders and until their successors have been elected and qualified.

Section 4. A director is not personally liable to the cooperative association or its members for monetary damages for breach of fiduciary duty except in the following circumstances: (a) for a breach of the director's duty of loyalty to the cooperative association or its members; (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (c) for a transaction from which the director derived an improper personal benefit; or (d) for an act or omission occurring prior to the date these amended Articles of Incorporation became effective.

ARTICLE VIII. OFFICERS

Section 1. The officers of this cooperative shall be a president, one or more vice presidents, a secretary and a treasurer, who shall be elected annually by and from the directors. The offices of secretary and treasurer may be combined, and when so combined, the person filling such office shall be termed "secretary-treasurer."

Section 2. The registered office address for this cooperative shall be 17501 Minnetonka Boulevard, City of Minnetonka, County of Hennepin, State of Minnesota, 55345.

Article IX. Dissolution, Amendments

Section 1. This cooperative may be dissolved in the manner as provided by law.

Section 2. These Articles of Incorporation may be amended as provided by law.

RESOLVED FURTHER, that the proper officers and employees of this cooperative be and they hereby are authorized to take whatever actions may be necessary and proper to make said amendments to the Articles of Incorporation effective.

Amended and Restated Bylaws of Lakewinds Food Co-op A Minnesota Cooperative

ARTICLE I. MEETINGS

Section 1. (Annual Meetings) The annual meeting of the members shall be held in the territory served by this cooperative annually at such time as may be determined by the Board of Directors of this cooperative.

Section 2. (Special Meetings) The president shall cause a special meeting of the members to be called upon a written request of at least twenty percent (20%) of the voting members, or upon a majority vote of the directors. The notice of the time, place, and purpose of such special meetings shall be issued within ten (10) days from and after the presentation of such petition, and such special meeting shall be held within thirty (30) days from and after the day of presenting the petition. No business shall be considered at such meeting except as may be mentioned in the call and included in the notice of the meeting.

Section 3. (Notice of Meeting) Notice shall be given by the secretary of all meetings of the members by publication in a legal newspaper published in the county of the principal place of business of this cooperative, or by publication in a magazine, periodical, or house organ regularly published by or on behalf of this cooperative and circulated generally among its members, or by mailing (by U.S. mail or email) a notice thereof to each member at his, her or its last known address, at least two weeks prior to the date of the meeting. The secretary shall execute a certificate setting forth a correct copy of such notice and showing the date of mailing or publication thereof. The failure of any member to receive any such notice of the annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such annual or special meeting.

Section 4. (Voting) Each member shall have one vote upon any matter submitted to a vote of the members regardless of the number of shares owned and no member shall be allowed to vote by proxy. Voting by mail and voting by electronic means shall be allowed on all matters that members are entitled to vote upon if authorized by the Board of Directors.

Section 5. (Quorum, Members) At any regular or special meeting of the voting members, a quorum necessary for the transaction of business shall be at least ten percent (10%) of the total number of voting members of this cooperative, except that when the number of members shall exceed five hundred (500), fifty (50) voting members present shall constitute a quorum. Should there not be a quorum of members at a membership meeting, voting may take place by mail in order to obtain the requisite number of members for transaction of business.

Section 6. (Presiding Officer) The President or the President's designee shall preside at all meetings of the members.

Section 7. (Regular Directors' Meetings) Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors, by proper resolution duly adopted and recorded upon the minutes, shall from time to time determine. Each member of the Board shall be duly notified by mail or phone in advance of any such meeting.

Section 8. (Special Directors' Meetings) Special meetings of the Board of Directors may be called by the president or by a majority of said Board. Each member of the Board of Directors shall be duly notified of all such meetings.

Section 9. (Special Meeting Content) No business except that mentioned in call for special meeting of the Board of Directors shall receive final action at said meeting. A majority of the directors shall constitute a quorum at all meetings of the Board, and a majority vote of the mem-

bers present shall decide all questions. Presence at a meeting shall constitute a waiver of notice of such meeting.

Section 10. (Board Meeting Quorum and Voting) A quorum of the Board of Directors shall consist of a majority of the directors. A majority vote of a quorum of the Board of Directors shall decide all questions except where a greater vote is required by the Articles of Incorporation, these Bylaws or law.

Section 11. (Action without Board Meeting) Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if all directors consent thereto in writing and the writing or writings are held with the minutes or proceedings of the Board of Directors.

ARTICLE II. MEMBERSHIP

Section 1. (Qualifications) Any adult individual over the age of 18, cooperative, or non-profit organization may apply for membership in accordance with the terms established by the Board of Directors. This cooperative shall not discriminate on social or political grounds or on the basis of race, creed, age, sex, handicap, sexual preference, or marital status.

Section 2. (Application) Application for membership shall be made in writing on a form provided by this cooperative. All applications are subject to approval by the Board of Directors. Upon approval by the Board of Directors of the membership application, the prospective member must sign a stock purchase agreement for one one (1) share of Class A stock with a par value of ninety dollars (\$90.00) and provide payment in full for such share in the amount of ninety dollars (\$90.00), or other dollar amount specified in writing and approved in advance by a majority vote of the Board of Directors.

Section 3. (Board Action) Each application shall be acted on by the Board of Directors at the first meeting of the Board of Directors after payment in full is received with respect to such application.

Section 4. (Receipt of Bylaws) Each new member shall receive a copy of the Articles and Bylaws of this cooperative.

Section 5. (Joint Membership) Membership may be held jointly in the names of two or more persons. When a membership is jointly held, the first person named on the membership shall have the right to cast the vote for that membership, unless such right is given in writing by the first named person to another person listed on the membership. In the event a membership is held jointly in the names of a married couple that subsequently divorces and provides this cooperative with written notice of such divorce, the membership will continue in the name of the member who signed the membership, and such member shall be responsible for any obligations to the joint holder for his or her ownership interest in accordance with their divorce settlement or other applicable agreement, unless such couple mutually agrees in writing to another disposition of the membership in accordance with these Bylaws.

Section 6. (Current Address) Each member agrees to provide this cooperative with a current address. This obligation continues as long as the member has any interest in this cooperative. Failure to provide a current address is a decision by the member to gift to this cooperative any equity or other interest the member has in this cooperative.

Section 7. (Inactive Members) Once a year, preceding the annual meeting, the Board of Directors shall determine those members who have not kept a current address on file with this cooperative and who have not shopped at one of the cooperatives store in the immediately preceding twelve month period. These members shall be deemed inactive members; any inactive member's membership is subject to termination pursuant to Section 8 below. In the event a member dies and such member did not hold a joint membership with another person, such deceased member's membership shall be redeemed by the cooperative upon notice from an authorized representative of such member's estate of such member's death and the desired disposition of such deceased member's membership in accordance with these Bylaws. In the

event this cooperative is not provided with such written notice from an authorized representative of such deceased member's estate, this cooperative may deem such deceased member to be an inactive member.

Section 8. (Termination or Withdrawal of Membership) If a member fails to comply with the requirements of these Bylaws or the terms of the membership agreement, or indicates in writing the intent to withdraw from this cooperative, this cooperative through its Board of Directors may elect to terminate the membership, either by:

(a) purchasing the capital stock of such member by tendering to him, her or it the par value thereof, or the book value thereof if less than the par value, together with any dividend or patronage refund due or unpaid, less any indebtedness due this cooperative;

(b) or recalling the capital stock of such member and issuing to him, her or it non-voting capital stock in an amount to be ascertained as specified above.

Section 9. (Restrictions on Transfer) Every member agrees that the capital stock can only be transferred to this cooperative upon prior written approval by the Board of Directors. The stock of this cooperative is not transferable in any other event.

Section 10. (Member Information) This cooperative's policy is to take commercially reasonable measures to protect against the disclosure of member names and contact information to third parties not affiliated with the cooperative, subject to compulsory disclosure as required by law, court order, administrative proceeding or other governmental action.

ARTICLE III. DIRECTORS AND OFFICERS

Section 1. (Number of Directors and Term) The Board of Directors shall be composed of nine (9) Directors, elected by membership ballot at the time of the annual meeting of this cooperative. The Board of Directors may increase the number of Directors to eleven (11) Directors upon a majority vote of the Board of Directors approving such increase. Every Director shall be a member in good standing of this cooperative. The normal term of service for Directors shall be three (3) years. Consecutive years of service as a Board member shall be limited to six (6) years, with such member being eligible to serve again following a break in service of at least one (1) year. Employees, consultants, contractors and other paid agents of this cooperative are ineligible to become Board members and shall remain ineligible for a period of one year following termination of the paid relationship with this cooperative. Any Director who changes categories by becoming a paid agent must resign from the Board.

Section 2. (Vacancies and Alternates) Any vacancy in the Board of Directors, except as may be caused by removal by the stockholders, shall be filled until the next annual meeting by the remainder of the Board of Directors at their discretion. If the number of directors falls below six (6), a special meeting will be held to fill the vacancies.

Section 3. (Election of Officers) The Board of Directors shall meet within forty-five (45) days after the first election and after each annual election, and shall elect by ballot by and from their number a president, vice-president, secretary, and treasurer. Directors and officers shall hold office until their successors shall have been elected and qualified.

Section 4. (Compensation) The compensation, if any, of the Board of Directors shall be determined by resolution of the Board of Directors of this cooperative at any regular or special meeting called for that purpose. Any such resolutions regarding compensation that are adopted by the Board of Directors shall be announced to the members of this cooperative at the next regular or special meeting of the members. Directors shall be entitled to reimbursement for actual expenses incurred in attending board meetings or any other business of this cooperative when such expense accounts have been approved by at least a majority vote of the directors. Compensation of the officers shall be set by the Board of Directors.

Section 5. (Removal by Members for Cause) Any director of this cooperative may be removed from office for cause related to the duties of the position of director, at any annual or special

meeting called for the purpose, at which a quorum of the members shall be present, by vote of the majority of the members present. The removal of a director shall not be considered at a special meeting unless that fact has been stated in the notice of the meeting. No director shall be removed from office at either an annual or special meeting unless the director is informed of the meeting at which the matter is to be considered at least twenty-one (21) days before such meeting. Such notice shall be by registered mail addressed to the director at that individual's last known address, and the director shall be entitled to be heard at such meeting, except a director may be removed at an annual meeting for failure to attend the required number of Board meetings without notice. In case of removal under this section, the members may choose to fill the vacancy for the unexpired term of such director, and such election may be held at the same meeting at which the director was removed from office. Alternatively, the remaining directors may fill the position as provided in Section 2 hereof. Failure of a director to attend three (3) consecutive directors' meetings, or 33 1/3 percent of the directors' meeting, except for absences excused by a majority of the directors, during a six-month period just preceding, shall automatically vacate the office of said director and the remaining directors shall thereupon fill said vacancy as provided in Section 2 hereof.

Section 6. (Removal by Directors for Cause) Any director of this cooperative may be removed from office for cause related to the duties of the position of director, at any regular or special meeting of the Board of Directors, by a majority vote of all of the remaining directors. No director shall be removed from office under this section unless such director has been informed of the meeting at which the matter is to be considered at least twenty-one (21) days before such meeting. Such notice shall be by registered mail addressed to the director at that individual's last known address, and the director shall be entitled to be heard at such meeting, except a director may be removed without notice at a meeting of the Board of Directors for failure to attend the required number of Board meetings. In case of removal under this section, the remaining directors may fill the position as provided in Section 2 hereof.

ARTICLE IV. DUTIES AND POWERS OF DIRECTORS

Section 1. (Management of Business) The Board of Directors shall govern the business and the affairs of this cooperative and make all necessary rules and regulations not inconsistent with law or with these Bylaws, for the management of the business and the guidance of the officers, employees, and agents of this cooperative.

Section 2. (Bonds of Employees) The Board of Directors may require the general manager and any other officers, employees and agents charged by this cooperative with responsibility for the custody of any of its funds or property to provide a fidelity bond in such sum as the Board of Directors determines. Such bond shall be furnished by a responsible bonding company or other surety satisfactory to the directors, and the cost thereof shall be paid by this cooperative.

Section 3. (Audits) The Board of Directors shall examine all accounts at their regular meetings at least four (4) times a year. In addition, the books shall be audited annually or more frequently if deemed appropriate by the Board, by a competent auditing service, preferably a cooperative auditing service. Such audit shall be made between the date of the close of the fiscal year and the date of the annual meeting, and a printed report of such audit shall be submitted to the members at their annual meeting. The report shall contain a balance sheet showing the financial condition of this cooperative at the close of the fiscal year, a statement of income and expenses for the year, and such statistical memoranda or additional financial information as may be desired by the Board of Directors.

Section 4. (Declaration of Patronage Refund) The Board of Directors shall have the authority to declare the patronage refund and the manner and time of payment.

Section 5. (General Manager) The Board of Directors shall have power to employ and dismiss the general manager of this cooperative. The general manager shall have general charge of the ordinary and usual business operations of this cooperative, under and subject to the direction,

approval and control of the directors as specified in this cooperative's Board Governance Policies.

(a) The general manager shall be required to maintain all records and accounts in such manner that the true and correct condition of the business may be ascertained therefrom at any time and shall render annual and periodical statements in the form and manner prescribed by the directors. The general manager shall carefully preserve all books, documents, correspondence and records of whatever kind pertaining to the business which may come into his or her possession.

(b) The general manager shall employ, dismiss, and affix the wages of employees not specifically employed by the Directors, subject to direction, approval and control or delegation of the Directors.

(c) The general manager shall handle and account for all moneys belonging to this cooperative, which come into his or her possession, in the manner and form prescribed by the Directors.

ARTICLE V. DUTIES AND POWERS OF OFFICERS

Section 1. (President) The president shall:

(a) Preside over all meetings of this cooperative and of the directors.

(b) Sign as president, all notes, deeds and conveyances of real estate, as well as certificates of stock of this cooperative.

(c) Fulfill all responsibilities of the President's role specified in this cooperative's Board Governance Policies.

Section 2. (Vice-President) In the absence or disability of the president, the vice-president shall preside and perform the duties of the president.

Section 3. (Secretary) The secretary shall:

(a) Keep a complete record of the meetings of this cooperative and of the Board of Directors.

(b) Sign as secretary, with the president, all notes, deeds and other conveyances, as well as all certificates of stock of this cooperative.

(c) Serve all notices required by law.

(d) Perform such other duties as may be required by this cooperative or the Board of Directors.

Section 4. (Treasurer) The treasurer shall:

(a) Receive and disburse all funds of this cooperative.

(b) Keep a complete record of all financial transactions of this cooperative and perform such other duties pertaining to the office of treasurer as may be required by the Board of Directors.

(c) Shall cause to be prepared and submit in printed form to the annual meeting of the members a complete and detailed report of the current year's business which shall contain a statement of assets and liabilities, a statement of income and expenses, and such other statements and statistical memoranda as the Board of Directors shall require. Such statements shall be in sufficient quantities so that each member attending such meeting may have a copy. The treasurer shall submit such monthly reports as may be required by the Board of Directors. The Board of Directors may substitute the report of a disinterested accountant who has made the audit of this cooperative's records and accounts.

(d) The Board of Directors may delegate the duties enumerated in this section to some employees or agents of this cooperative.

Section 5. (Secretary-Treasurer) In the event that the offices of secretary and treasurer are combined, then the duties of the secretary-treasurer shall be a combination of the duties of the secretary and the treasurer and the office shall be known as secretary-treasurer.

ARTICLE VI. CAPITAL STOCK

Section 1. The amount of authorized capital stock of this cooperative shall be one million three hundred thousand (1,300,000) shares and shall be divided into three classes. Class A stock shall consist of one hundred thousand (100,000) shares of voting stock with a par value of ninety dollars (\$90.00) per share. Class B stock shall consist of one million one hundred thousand (1,100,000) shares of non-voting stock with a par value of ten dollars (\$10.00) per share. Class C stock shall consist of one hundred thousand (100,000) shares of non-voting stock with a par value of one hundred dollars (\$100.00) per share.

Section 2. (Stock Transferred) Capital stock shall be transferable only in accordance with Article II, Section 9 hereof.

ARTICLE VII. REVOLVING FUND AND RECORDS

Section 1. (Revolving Fund) In order to further the cooperative character of this cooperative and provide a means whereby its current and active patrons can finance it, this cooperative is authorized to issue Class B stock and Class C stock, equity reserve or capital interest certificates, or any other media as determined by the Board of Directors and as permitted by the laws under which this cooperative is organized. Funds arising from the issue of such stock or certificates or other media may be used to create a revolving fund for the purpose of amassing an amount of working capital to meet this cooperative's financing needs, and capital improvements, expansion and/or other needs as the Board of Directors may from time to time deem necessary. Such funds, or funds derived by this cooperative from any other sources, may be devoted to retiring Class B stock or Class C stock, liquidating equity reserves or capital interest certificates or certificates of interest, or any other certificates of indebtedness, or any other media previously issued to evidence patronage refunds if so directed by the Board of Directors. If this cooperative determines that funds are available for that purpose, all or any Class B stock and/or Class C stock, certificates of indebtedness or interest, or any other media, may be retired in full or on a pro-rata basis. The Board of Directors may retire all or part of each class of stock as it so determines thus creating a preference for one class of stock over the other in accordance with these Bylaws, subject only to the liquidation and dissolution preferences set forth in the Articles. The two methods of retiring stock that the Board may use, either for one class of stock or both, are (1) to retire the oldest outstanding stock in the order of issuance by years, in which case all of the stock issued in a single year shall, as nearly as practicable, be retired at the same time; or (2) on the basis of a percentage of all of the outstanding stock, in which case the same percentage of the stock of said class held by each person shall be retired at the same time. The Board may, in its discretion, choose one method for one class of stock and the other method for the other class of stock. However, only one method may be used for each class of stock.

Section 2. (Books and Records) The books and records of this cooperative shall be kept on a fiscal year basis, and in such a manner that the patronage refunds of each patron of this cooperative may be ascertained at any time. Whenever this cooperative determines that its capital and reserves are in excess of the amount reasonably necessary for its operations on a sound financial basis, such excess, or so much thereof as shall be deemed proper by this cooperative, may be applied to retiring the outstanding capital and reserve contributions of members.

Section 3. (Dissolution) Upon dissolution or liquidation of this cooperative, the debts and liabilities of this cooperative shall first be paid according to their respective priorities. When those debts and liabilities are satisfied, members shall then be paid the par value of their shares and payment shall be made in the order of preference as stated in the Articles of Incorporation. The remainder of the property, if any, shall be distributed among the members and stockholders in accordance with their interests in the reserves and surplus as shown on the records of this cooperative.

ARTICLE VIII. PATRONAGE DIVIDENDS, RESERVE FUNDS

Section 1. (Annual Net Income)

(a) **Gross Receipts.** Gross receipts of this cooperative from all business done with members and nonmembers shall be all proceeds from the sale of goods and services to members and nonmembers, all sums received (including patronage dividends received) which reduce costs and expenses incurred in connection with these activities and all nonpatronage income.

(b) **Deductions from Gross Receipts.** This cooperative shall reduce from "gross receipts" all expenses incurred in generating the "gross receipts" including, but not limited to, marketing expenses, costs of goods or services sold, taxes, depreciation, reserves for doubtful accounts and all other necessary expenses.

(c) **Total Annual Net Earnings.** The amount remaining after reducing the "gross receipts" by the deductions contained in Section 1(b) of this Article shall constitute the annual net earnings of this cooperative.

Section 2. (Member Patronage Income)

(a) **Member Patronage.** Total annual net earnings of this cooperative shall be divided into (1) annual net earnings from member patronage and (2) annual net earnings from nonmember patronage and nonpatronage sources. Annual net earnings from member patronage shall be determined by taking the percentage of gross receipts attributable to business done with or for members (including patronage dividends, etc.) and multiplying that percentage to total annual net earnings. The amount resulting shall be annual net earnings from member patronage, and shall be distributed to the member-patrons of this cooperative in proportion to the amount of business done by them with this cooperative, subject only to the deductions there from and the exceptions provided in Section 3 and 4 of this article.

(b) **Nonmember Patronage and Nonpatronage Income.** The difference between total annual net earnings and net earnings from member patronage shall be annual net earnings from nonmember patronage and nonpatronage sources.

Section 3. (Educational Reserve) The Board of Directors may set aside a sum not to exceed five percent (5%) of the total annual net earnings as an educational fund which shall be used for the purpose of promoting and encouraging cooperative associations.

Section 4. (Capital Reserve)

(a) The Board of Directors shall annually set aside as a capital reserve all annual net earnings from nonmember patronage and nonpatronage sources less any deductions for the educational reserve. In addition, the Board of Directors may also place into such a capital reserve fund all annual net earnings from member patronage attributable to member patrons who are unidentified, all annual net earnings from member patronages attributable to member-patrons who do not consent to take into account patronage dividends from this cooperative in the manner provided in 26 U.S.C. Section 1385; and all annual net earnings from member patronage attributable to member-patrons who so consent, but who have not made at least One Hundred Dollars (\$100.00) in purchases in the fiscal year. Following the adoption of these Bylaws, the amounts so set aside shall not be allocated to the member-patrons of this cooperative and shall be kept in the general reserve.

(b) Amounts which have been placed in any Reserve prior to the effective date of this amendment, and which have been allocated, shall remain allocated on the books of this cooperative unless and until retired or disbursed.

(c) Notwithstanding anything in this Section to the contrary, the Board of Directors may, by resolution duly adopted prior to the beginning of the fiscal year to which such savings are attributable, determine to set aside such other reasonable amount as a capital reserve but not more than fifty percent (50%) of the total annual net earnings.

Section 5. (Patronage Dividend Distribution)

(a) The annual net earnings from member patronage, less any deductions therefrom or excep-

tions thereto as determined by Section 3 or 4 of this Article, shall be distributed annually to the member-patrons of this cooperative who consent to take into account patronage distributions from this cooperative in the manner provided in 26 U.S.C. 1385, on the basis of their respective patronage percentage in accordance with these Bylaws, and said member-patrons shall be notified thereof.

(b) Patronage dividends shall be distributed in cash or in equity (usually in the form of Class B stock) or by any combination thereof designated by the Board of Directors. Such equity may be paid or redeemed in whole or in part at such time, in such manner and in such order as shall be determined by the Board of Directors in its sole discretion. Without limiting the generality of the foregoing, the Board of Directors shall not be required to but may by resolution establish policies and programs for the payment of or redemption of such equities. No transfer or assignment of such equity shall be binding upon this cooperative without its consent.

Section 6. (Allocation of Losses) If this cooperative sustains a loss in annual net earnings, the Board of Directors shall have the power and authority to allocate such loss to the member-patrons for such year or years on a patronage basis and apply the same against the equity credits of said member-patrons, or to carry forward such loss.

ARTICLE IX. MEMBER TAX CONSENT

Each member of this cooperative shall, by becoming a member, consent that the amount of any distributions with respect to such member's patronage occurring in any fiscal year which are made in written notices of allocation (as defined by 26 U.S.C. 1388, the Internal Revenue Code) and which are received by such member from this cooperative, will be included in such member's income in the manner provided in 26 U.S.C. 1385 in the taxable year in which such written notices of allocation are received. It is the intent of this Bylaw to provide a consent binding on all members who retain or obtain membership in this cooperative after the adoption of this Bylaw and receipt of a written notification and copy of this Bylaw, for the purpose of making such distributions "qualified written notices of allocation" within the meaning of the U.S. Internal Revenue Code.

ARTICLE X. LIMITED LIABILITY AND INDEMNIFICATION

Section 1. (Indemnification) This cooperative shall indemnify each person who is or has been a director, officer, or employee of this cooperative, and each person who is serving or who has served at the request of this cooperative as a director, officer, or employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her to the fullest extent of his or her right to indemnity under current Minnesota Corporation Law.

Section 2. (Limited Liability) A director is not personally liable to this cooperative or its members for monetary damages for breach of fiduciary duty except in the following circumstances: a) for a breach of the director's duty of loyalty to this cooperative or its members; b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; c) for a transaction from which the director derived an improper personal benefit; or d) for an act or omission occurring prior to the date these amended articles of incorporation became effective.

ARTICLE XI. SUNDRY PROVISIONS

Section 1. (Fiscal Year) The fiscal year of this cooperative shall begin on the first day of July and close on the last day of June of the year.

Section 2. (Amendments) These Bylaws may be amended, repealed or altered, in whole or in part, as provided by law, by a majority vote of the members voting in person or by mail at any annual meeting of the members or at any special meeting of the members when such action has been duly announced in the call of the special meeting.

