

**BYLAWS  
OF  
MINNESOTA CLIMBING COOPERATIVE**

**(Adopted by the Board of Directors on October 11<sup>th</sup>, 2010)**

**ARTICLE 1.  
GENERAL**

1.1 Name. The name of the Cooperative shall be “Minnesota Climbing Cooperative” (the “Cooperative”) and the business shall be conducted under the name “Minnesota Climbing Cooperative” or under such other name or names as the Board of Directors may determine. The Board of Directors of the Cooperative (the “Board of Directors”) is authorized to execute and deliver or file such documents and to take such actions as it may consider advisable to permit the Cooperative to use and to ensure the Cooperative’s right to use such name or names.

1.2 Principal Place of Business. The principal place of business of the Cooperative shall be such place as the Board of Directors may from time to time determine (the “Principal Office”). The Cooperative may maintain offices and places of business at such other place or places within or outside the State of Minnesota as the Board of Directors deems advisable. The Board of Directors is authorized and directed to execute and deliver or file such documents and to take such actions as it may consider advisable to permit the Cooperative to conduct its business in such states.

**ARTICLE 2.  
MEMBERS**

2.1 Member Register. The Cooperative shall maintain a membership register at its Principal Office or by a duly appointed agent of the Cooperative setting forth the name, address, and membership interest of each Member, and it shall be modified from time to time to reflect the admission of new Members and the resignation or termination of Members.

2.2 Qualifications. Individuals or legal entities who (i) patronize or otherwise contribute their resources to the Cooperative under conditions established by the Board of Directors and (ii) are eligible to become a member of the Cooperative may, upon approval by the Board of Directors (which such approval may be illustrated by execution of a Membership Agreement by an authorized signatory of the Cooperative), become members of the Cooperative (“Members”, or each a “Member”) by:

- (a) Paying a one-time, non-refundable fee of \$20.00 to the Cooperative;
- (b) entering into a Membership Agreement with the Cooperative in a form specified and approved by the Board of Directors from time to time (the “Membership Agreement”); and
- (c) meeting other membership criteria or requirements established from time to time by the Board of Directors.

Each transaction between the Cooperative and each Member shall be subject to and shall include as a part of its terms each provision of the Cooperative's Articles of Incorporation (the "Articles") and these Bylaws (the "Bylaws") and reasonable policies adopted from time to time by the Board of Directors and disclosed to the Members ("Membership Policies"), whether or not the same be expressly referred to in said transaction. In admitting Members to the Cooperative, the Board of Directors may delegate authority to accept membership applications to a committee or to management of the Cooperative with such limits on authority as the Board of Directors may determine.

2.3 Classes of Members. In accordance with the Articles, the Board of Directors is hereby granted the right to establish new classes of Members at the discretion of the Board of Directors from time to time by written resolution, such resolution shall fix the qualification and privileges of any new Member class.

2.4 Duties of Members. The only duties of the Members to the Cooperative or to each other with respect to the Cooperative shall be those established in these Bylaws, the Membership Agreement, and Membership Policies or any other contractual agreement between a Member and the Cooperative, and there shall be no other express or implied duties of the Members to the Cooperative or to each other with respect to the Cooperative.

2.5 Certificates for Membership. Membership in the Cooperative shall be certificated by the Membership Agreement or another form of certification as determined by the Board of Directors.

2.6 Lien. The Cooperative shall have a first lien upon and security interest in all property of a Member held by the Cooperative and upon all property rights and interests of a Member in the Cooperative, however evidenced, and upon any amounts payable to the Member, to the extent of any amount that the Member may be indebted or obligated to the Cooperative on any accounts or claims whatsoever, liquidated or otherwise. The lien and security interest may be enforced through the immediate application of such property to such debt or obligation or by the sale of such property or the Member's property rights and interests in the Cooperative after five days' notice in writing served upon the Member. The Cooperative shall also have the right, exercisable at the option of the Board of Directors, to set-off such indebtedness against any amounts payable to the Member, provided, however, that nothing contained herein shall give any Member any right to have such a set-off made.

2.7 Termination of Membership Upon Termination of Membership Agreement. If the Membership Agreement of a Member is validly terminated pursuant to the terms of the Membership Agreement, these Bylaws, any Membership Policies or applicable law, the membership of the affected Member shall likewise be terminated effective as of the termination of the Membership Agreement.

2.8 Member Dues. The Board of Directors may establish membership dues from time to time (the "Member Dues") and as further described in the Membership Agreement.

2.9 No Capital Calls. No Member shall be required under any circumstances to contribute additional capital to the Cooperative except as provided in Article 3 of these Bylaws,

even if the funds of the Cooperative are insufficient to meet its operating expenses or the Cooperative incurs or experiences losses.

2.10 Loans. The Cooperative may, as determined by the Board of Directors, borrow money from one or any of the Members or third persons. Subject to the limitations set forth in these Bylaws, a Member may lend money to and transact other business with the Cooperative. Subject to any applicable law or agreement with the Member, such Member has the same rights and obligations with respect thereto as a third party non-member. Any loan by a Member to the Cooperative with the required approval of the Board of Directors shall be separately entered on the books of the Cooperative as a loan to the Cooperative and not as a capital contribution by the lending Member, shall bear interest at such rate as may be mutually agreed upon by the lending Member and the Board of Directors, and shall be evidenced by a promissory note duly executed on behalf of the Cooperative and delivered to the lending Member. Such interest and repayment of the amounts so loaned may be secured by the assets of the Cooperative and shall be entitled to priority of payment over the division and distribution of capital contributions and profit among Members.

2.11 Withdrawal of Capital. No Member shall have the right to withdraw any part of its equity contribution made pursuant to Section 3.1 or otherwise prior to the dissolution of the Cooperative, except as provided in these Bylaws. Except dividends with respect to Class C Stock, no Member shall have the right to receive any interest on its capital contributions or to receive any property other than cash in return for its capital contribution. Each Member expressly waives the right (if any) to bring an action for partition of any property in which the Cooperative may have an interest.

### **ARTICLE 3. METHOD OF OPERATION**

#### 3.1 Cooperative Operation.

(a) Operation on Patronage Basis. The Cooperative shall be operated on a cooperative or Patronage Basis. Upon conducting business with the Cooperative, each Member shall be entitled to Patronage Refunds as defined in this Article arising out of any such patronage transaction.

(b) Patronage Basis; Member Business; Nonmember Business. As used in this Section 3.1, the following definitions shall apply:

(1) The term "Patronage Basis" means the conduct of business by a Member with the Cooperative in a manner entitling the Member the right to receive his, her or its pro rata share of the Cooperative's earnings from Member Business, as defined in this subsection, in accordance with Section 3.1(d). The Cooperative shall conduct all business with Members on a Patronage Basis unless otherwise specifically provided in writing.

(2) The term "Member Business" means the purchase by a Member from the Cooperative of yearly access passes and, to the extent approved by the Board of Directors from time to time, certain other access passes; provided, the

Board of Directors shall have the discretion to include within the definition of Member Business additional business conducted by Members with the Cooperative.

(3) The term “Nonmember Business” means business done by the Cooperative that does not constitute Member Business.

(c) Determination of the Patronage Income or Loss. The net income or net loss of the Cooperative from Member Business for each fiscal year shall be the sum of (1) the gross revenues directly attributable to Member Business, less (2) all expenses and costs of goods or services directly attributable to Member Business. In determining the net income or net loss of the Cooperative, there shall be taken into account the Cooperative’s share of the net income or net loss of any unincorporated entity in which it owns an equity interest, patronage dividends distributed by other cooperatives of which it is a patron and, to the extent determined by the Board of Directors, its share of the undistributed net income or net loss of any corporation in which it owns an equity interest. The foregoing amounts shall be determined using the accounting methods and principles used by the Cooperative in preparation of its annual audited financial statements; provided, however, that the Board of Directors may prospectively adopt a reasonable alternative method. Expenses and cost of goods or services shall include without limitation such amounts of depreciation, cost depletion and amortization as may be appropriate, amounts incurred for the promotion and encouragement of cooperative organization, taxes other than taxes based on income, and reasonable and necessary additions to reserves for depreciation, depletion, obsolescence of physical property, doubtful accounts and other valuation reserves, all established and computed in accordance with generally accepted accounting principles (“GAAP”). Such net income or net loss shall be subject to adjustment as provided in this Section 3.1 relating to losses.

(d) Allocation of Patronage Income. The net income of the Cooperative from Member Business for each fiscal year, less any amounts thereof that are otherwise allocated in dissolution pursuant to Article 7 and amounts allocated to capital reserve pursuant to Section 3.1(k), shall be allocated among the Members in the ratio that the quantity or value of the Member Business done with or for each such Member bears to the quantity or value of the Member Business done with or for all Members (each, a “Patronage Refund”); provided, however, that in the event the Cooperative has net income in a fiscal year attributable to activities or conduct over the life of the Cooperative or an historical period other than such fiscal year (as opposed to activities or conduct clearly attributable solely to such fiscal year), the Board of Directors shall have the discretion to allocate such income to Members based upon the average patronage of each Member over the life of the Cooperative or any other historical period.

(e) Treatment of Patronage Losses.

(1) Methods for Handling Patronage Losses. If the Cooperative incurs a net loss in any fiscal year from Member Business, the Cooperative may take one or more of the following actions:

- (i) Establish accounts payable by Members that may be satisfied out of any future amounts that may become payable by the Cooperative to each such Member;
- (ii) Carry all or part of the loss forward to be charged against future net income;
- (iii) Offset all or part of such net loss against a capital reserve account; or
- (iv) Cancel outstanding Patrons' Equities.

(2) Allocation of Net Loss Among Members. Any cancellation of equities and/or establishment of accounts payable pursuant to Section 3.1(e) shall be made among the Members consistent with the allocation of net income to Members from Member Business for the fiscal year of the patronage loss.

(3) Board Discretion. The provisions of Section 3.1(e) hereof shall be implemented by the Board of Directors, having due consideration for all of the circumstances which caused the net loss, in a manner that it determines is both equitable and in the overall best interest of the Cooperative.

(4) No Cash Assessments against Members or Non-Members. There shall be no right of cash assessment against Members or non-members for the purpose of restoring impairments to equities caused by net losses.

(f) Distribution of Net Income. The net income allocated to Members pursuant to Section 3.1(d) hereof shall be distributed annually or more often to Members as a Patronage Refund during a period beginning with the first day of the fiscal year and ending with the fifteenth (15<sup>th</sup>) day of the ninth (9<sup>th</sup>) month following the close of such year; provided, however, that no distribution need be made where the amount otherwise to be distributed to a patron is less than a de minimis amount, as established from time to time by the Board of Directors.

(g) Form of Patronage Refunds. Patronage Refunds shall be distributed in cash, Class B Stock, revolving fund certificates, or any combination thereof designated by the Board of Directors (all such cash and non-cash items referred to collectively in these Bylaws as "Patrons' Equities").

(h) Written Notice of Allocation. The non-cash portion of a Patronage Refund distribution that is attributable to patronage business shall constitute a written notice of allocation as defined in 26 U.S.C. Section 1388 which shall be designated by the Board of Directors as a qualified written notice of allocation, as a nonqualified written notice of allocation or any combination thereof as provided in that section.

(i) No Voting Rights. Patrons' Equities shall not entitle the holders to any voting or other rights to participate in the affairs of the Cooperative (which rights are reserved solely for the Members of the Cooperative).

(j) Revolvement Discretionary. No person or entity shall have any right whatsoever to require the retirement or redemption of any Patrons' Equities or of any allocated capital reserve. The redemption or retirement is solely within the discretion of and on the terms as described by the Board of Directors from time to time. The Board of Directors may adopt and maintain in writing a redemption policy to guide the retirement or redemption of Patrons' Equities.

(k) Capital Reserve. The Board of Directors shall cause to be created an unallocated capital reserve and may, in its discretion, annually add to the capital reserve the sum of the following amounts:

(1) The annual net income of the Cooperative attributable to Nonmember Business; and

(2) Annual net income from Members who are unidentified or to whom the amount otherwise to be distributed is less than the de minimus amount provided in Section 3.1(f).

(3) A reasonable amount, as specified by duly adopted resolution of the Board of Directors prior to the beginning of the fiscal year, of the distributable net income from Member Business.

(l) Allocation and Distribution of Nonmember Income and Loss.

(1) Nonmember Income. The Board of Directors shall have the discretion to allocate and distribute to Members, amounts of the Cooperative's annual net income attributable to Nonmember Business that would otherwise be added to the capital reserve pursuant to Section 3.1(k). Amounts so allocated to Members shall be made on a Patronage Basis using such method as the Board of Directors determines to be reasonable and equitable.

(2) Nonmember Loss. If the Cooperative incurs a net loss on its Nonmember Business, such net loss generally shall be chargeable against the capital reserve unless and to the extent the Board of Directors, having due consideration for the circumstances giving rise to such net loss, determines that it is reasonable and equitable to allocate all or part of such a net loss to Members. Any such loss allocated to Members shall reduce such Member's net income from Member Business.

### 3.2 Separate Allocation Units

(a) Establishment of Allocation Units. Allocation units may be established by the Board of Directors from time to time by a simple majority vote on a reasonable and equitable basis for purposes of determining and allocating the net income, gains, expenses and losses of the Cooperative. Allocation units may be established based on membership classes, purchasing groups, joint venture initiatives, categories of services, or other business arrangements, or they may be based on any other functional, divisional, departmental, geographic or other criteria as determined by the Board of Directors. If

more than one allocation unit is established, the Board of Directors shall adopt such reasonable and equitable accounting procedures as will, in the judgment of the Board of Directors, equitably allocate among the allocation units the Cooperative's income, gains, expenses and losses.

(b) Board of Advisors. The Board of Directors may also create a committee to serve as a board of advisors (each a "Board of Advisors") for any such separate allocation pool or for a group of related allocation units, with the number of advisors, method of election of advisors, and rules and procedures governing any Board of Advisors' activities to be established by the Board of Directors.

(c) Board Authority. In all cases, the Board of Directors shall have the authority to dissolve, or re-organize any of the separate allocation units within the Cooperative, subject to the provisions of any written agreement between the Cooperative and the Members of the separate allocation units.

3.3 Class C Stock. It shall be the Cooperative's goal to redeem outstanding Class C Stock to the extent deemed reasonable by the Board of Directors and at all times consistent with the Cooperatives' other obligations, including without limitation any loan covenants. Therefore, upon the occurrence of a determination by the Board of Directors that the Cooperative has reached a reasonable level of success and financial stability, the Board of Directors shall adopt a Class C Stock redemption program to redeem then-outstanding shares of Class C Stock.

3.4 Consent. Each prospective member which hereafter applies for and is accepted to membership in the Cooperative and each Member of the Cooperative as of the effective date of this bylaw who continues as a Member after such date shall, by such act alone, consent that the amount of any Patronage Refunds which are made in qualified written notices of allocation (as defined in the Internal Revenue Code of 1986, as amended, (the "Code"), and which are received by the Member from the Cooperative, will be taken into account by that Member at their stated dollar amounts in the manner provided in the Code in the taxable year in which such written notices of allocation are received by the Member. The Code provides that Patronage Refunds that are (i) attributable to personal, living, or family items, or (ii) properly taken into account as an adjustment to basis of property, shall not be included in a Member's gross income. It is anticipated that a majority of Patronage Refunds paid by the Cooperative will be eligible for one or the other of these exemptions.

3.5 Consent Notification to Members and Prospective Members. Written notification of the adoption of Section 3.4, a statement of its significance and a copy of the provision shall be given separately to each Member (in the Membership Agreement or otherwise) and prospective member before being approved for membership in the Cooperative.

## **ARTICLE 4.**

### **MANAGEMENT OF THE COOPERATIVE**

4.1 General Powers. The business and affairs of the Cooperative will be managed under the direction of the Board of Directors, which may exercise all powers of the Cooperative

and do all things that are not required to be exercised or done by the Members under the Act, the Articles, or these Bylaws.

4.2 Initial Board. The initial Board of Directors shall consist of the directors designated in the Articles (the “Initial Board”). The Initial Board shall serve for the term as designated in the Articles, at which time the members of the Board of Directors shall be elected as provided in Section 4.3. Prior to the first Board of Directors election, (a) if a vacancy occurs in the Initial Board, the vacancy may be filled by appointment by a majority vote the remaining members of the Initial Board, and (b) the members of the Initial Board may not be removed except for cause as determined by a two-thirds majority of the other members of the Initial Board.

4.3 Election; Number; Qualification; Term of Office. From and after the term of the Initial Board, the number of directors (the “Directors”, and each a “Director”) that shall constitute the whole board shall be nine (9), elected by a majority vote of the Members at a duly held Member meeting. The term of each Director shall be two (2) years, except that in the initial election, the Board of Directors may provide for staggered terms so that approximately an equal number of Director positions come up for election each year. Each Director shall hold office until such Director’s successor shall have been elected at the conclusion of the term of office of such Director, or until the earlier death, resignation, removal or disqualification of such Director. Each Director’s term shall commence upon his or her election by the vote of and terminate at the first annual meeting held following the third fiscal year after his or her election and upon his or her successor’s election and qualification. Each Director must be a Member of the Cooperative. Directors shall be limited to two (2) terms of two (2) years and are thereafter not eligible for re-election unless (i) such person has not served as a Director of the Cooperative during the preceding twenty-four (24) months, or (ii) a majority of then-sitting Directors approve an additional term for such Director. The Board of Directors may from time to time establish reasonable policies and procedures governing the election or appointment of Directors, and reasonable eligibility criteria for qualification of persons serving on the Board of Directors.

4.4 Committees of Directors. The Board of Directors may designate one or more committees, each committee to consist of one or more Directors. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified committee members. To the extent provided by the Board of Directors, a committee may exercise all the power and authority of the Board of Directors in the management of the Cooperative, but no committee will have the power or authority to amend the Articles, adopt an agreement of merger or consolidation, recommend to the Members the sale, lease or exchange of all or substantially all of the Cooperative’s assets, recommend to the Members a dissolution of the Cooperative or a revocation of a dissolution, or amend the Bylaws; and, unless the Board of Directors, the Bylaws, or the Articles expressly so provide, no committee will have the power or authority to declare a patronage dividend or to authorize new Members. Committees will keep regular minutes of their proceedings and report to the Board of Directors when required. If the Board of Directors does not designate a separate sub-committee to serve as the Audit Committee, then the Board of Directors as a whole shall serve as the Audit Committee.

4.5 Compensation of Directors. Directors may receive compensation for their services as a Director to the extent established by resolution of the Members. This limitation



will not preclude Directors from receiving compensation for services in any other capacity. Directors will be reimbursed reasonable expenses for attending regular or special Board meetings, unless otherwise established by resolution of the Members.

#### 4.6 Removal.

(a) Except for the Initial Board, a Director may be removed by the Members at any time for cause related to the duties of the position of Director. In case of removal by action of the Members, the Members shall fill the vacancy for the unexpired term of such Director by special election.

(b) A Director may be removed by the Board of Directors at any time for cause related to the duties of the position of Director by a vote of three-fourths (3/4) of all of the remaining Directors. In case of removal of a Director by action of the Board of Directors, the Board of Directors may fill the resulting vacancy until the next meeting of the Members.

(c) No Director shall be removed from office under this Section 4.6 unless he or she has been informed of the meeting at which the matter is to be considered at least ten (10) days before such meeting. Such notice shall be given by certified mail addressed to him or her at his or her last known address, and he or she shall be entitled to be heard at such meeting.

4.7 Liabilities of Directors. No Director shall be personally liable to the Cooperative or the Members for monetary damages for breach of fiduciary duty as a Director except:

- (a) for any breach of the Director's duty of loyalty to the Cooperative;
- (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or
- (c) for any transaction from which the Director derived an improper personal benefit.

No amendment to or repeal of this Section 4.7 shall apply to or have any effect on the liability or alleged liability of any Director for or with respect to any acts or omissions of such Director that occurred before such amendment or repeal.

4.8 Transactions with the Directors, Officers or their Affiliates. The Board of Directors, on behalf of the Cooperative, may enter into contracts with the Directors, officers or Members (or their Affiliates, as defined in the Membership Agreement), provided that any such transactions shall be on terms no more favorable to the Directors, officers or Members (or their Affiliates) than generally afforded to non-affiliated parties (or in the case of a Member, to other Members) in a similar transaction.

4.9 Officers. The officers of the Cooperative shall consist of a Chair of the Board of Directors ("Chair"), a Vice-Chair of the Board of Directors ("Vice-Chair"), a Secretary and a Treasurer, and any other officers and agents as the Board of Directors may designate from time

to time by resolution. The positions of Secretary and Treasurer may be held by the same person (“Secretary-Treasurer”). The Board of Directors shall elect the officers annually, at the meeting of the Board of Directors at which the Cooperative’s completed financial reports are reviewed and approved by the Board of Directors. The offices of Chair and Vice-Chair shall be held by members of the Board of Directors. The duties of the Chair, Vice-Chair, Secretary and Treasurer shall be as established by the Board of Directors from time to time.

4.10 Compensation. The officers of the Cooperative who are employees of the Cooperative shall receive such compensation for their services as may be determined from time to time by the Board of Directors.

4.11 Removal and Vacancies. Any officer may be removed from his or her office with or without cause upon a vote of a majority of the Board of Directors. Such removal shall be without prejudice to the contract rights of the person so removed. A vacancy among the officers by death, resignation, removal or otherwise shall be filled for the unexpired term by the Board of Directors, unless such office is eliminated.

4.12 Books and Records.

(a) The Cooperative shall maintain complete and accurate books of account in accordance with GAAP, consistently applied, at the Principal Office. The Cooperative’s books shall be kept on the accrual method of accounting, provided that another method may be applied for financial statement reporting purposes with the advice of the Cooperative’s accountants. The Cooperative’s fiscal and taxable year shall be determined by the Board of Directors prior to end of its then-current fiscal year.

(b) The Cooperative shall keep at the Principal Office:

(1) true and full information regarding the business and financial condition of the Cooperative;

(2) copies of the Cooperative’s federal, state and local income tax returns and reports, if any, for each year;

(3) a current list of the full name and last known business, residence or mailing address of each Member and each Director, both past and present;

(4) copies of the Articles and Bylaws of the Cooperative, and all amendments to the above referenced documents;

(5) true and full information regarding the amount of cash and a description of cash and a description and statement of the agreed value of any other property or services contributed by each Member and which each Member has agreed to contribute in the future, and the date on which each became a Member;

(6) minutes of every meeting of the Members, the Board of Directors and committees, and any action taken by the Members, Directors and committees without a meeting; and

(7) other information regarding the affairs of the Cooperative as is just and reasonable.

(c) Upon reasonable written request, any Member or its authorized representative shall have the right to inspect and copy any of the Cooperative's books and records required to be kept pursuant to Section 4.12(b) during ordinary business hours. The Member shall pay any actual costs of such inspection and copying (including costs of converting to written form records not kept in written form). Such inspection shall be conducted at a time and in a manner so as not to interfere with the operations of the Cooperative. The Cooperative shall have a reasonable time to produce such records, taking into account the form and location in which the records are maintained, but in any event no more than ten business days from the date of receipt of the request. The Cooperative shall not be required to prepare compilations or summaries that are not customarily maintained by the Cooperative. The Board of Directors may adopt reasonable policies limiting the use of the Cooperative's books and records as a condition to the foregoing right of inspection.

## **ARTICLE 5. MEETINGS AND VOTING**

### 5.1 Meetings of the Board of Directors.

(a) The Board of Directors may establish meeting dates, places and notice requirements, adopt rules of procedure it deems consistent with these Bylaws, and meet by means of conference telephone or similar communications equipment. Notice of any meeting may be waived in writing by the Directors and shall be deemed waived by any Director participating in the meeting. The Board of Directors shall meet regularly at such times and places as the Board of Directors may determine. An annual organizational meeting of the Board of Directors, for the installation of new Directors and election of officers, shall be held within five (5) months after the date of the close of the fiscal year of this cooperative and subsequent to the annual meeting of members. Any three (3) Directors or the Chair shall have the right to call a special meeting of the Board of Directors by giving five (5) business days' advance written notice of the time, date and location of such meeting to the other Directors.

(b) The presence at any meeting of the Board of Directors of a majority of the number of Directors shall constitute a quorum for the taking of any action.

(c) Each Director shall be entitled to one vote on each matter that comes before the Board of Directors. Unless otherwise set forth in these Bylaws, all questions shall be decided by a majority vote of the Directors present and voting (in person or by proxy) at any meeting at which a quorum is present.

(d) Minutes of each meeting of the Board of Directors shall be prepared and filed in the Principal Office. Written consents to any action taken by the Board of Directors without a meeting shall be filed with the minutes.

(e) Meetings of any committee established by the Board of Directors shall be governed by and subject to the same operating rules and procedures (including the rules and procedures relating to voting) as are set forth in this Section 5.1 for the Board of Directors, unless otherwise modified by any such committee and approved by the Board of Directors.

5.2 Action Without Meeting. Any action which may be taken at a meeting of the Board of Directors or of a lawfully constituted committee thereof may be taken without a meeting if set forth and approved in a writing signed by all Directors or by all committee Members, as the case may be, and such act shall be effective on the date on which the last signature is placed on such writing, or such earlier effective date as is set forth therein.

5.3 Meetings of Members.

(a) Regular meetings of the Members shall be held at least annually, at a time and place as determined by the Board of Directors. The Board of Directors may establish meeting dates, places and notice requirements, and adopt rules of procedure consistent with these Bylaws for meetings of the Members, and may provide for meeting by means of conference telephone or similar communications equipment. Meetings of the Members may be called by the Board of Directors or by 20% of the Members, by giving ten (10) business days' advance written notice of the time, date and location of such meeting to the Members). Notice of any meeting may be waived in writing by the Members.

(b) Each Member will have one vote on each matter submitted to a vote of the Members, and all such matters shall be determined by a majority of the Members voting on the matter. Voting by proxy and cumulative voting are not permitted. Action required or permitted by the Act to be taken at a meeting of the Members may be taken without a meeting if such action is evidenced by one or more written consents describing the action taken and signed by Members having at least the minimum number of votes that would be required to approve the action at a meeting at which all Members entitled to vote thereon were present and voted. Voting by mail shall be allowed in cases in which, in the notice of the meeting, the Board of Directors shall have submitted a specific issue or issues for a mail vote. Members may also vote on any matter by electronic means if an electronic vote is authorized by the Board of Directors.

(c) At any regular or special meeting of the Members, a quorum necessary for the transaction of business shall be at least ten (10) Members or ten percent (10%), whichever is greater, of the total number of voting Members. Should the voting Members reach or exceed 500 Members, the quorum shall be fifty (50) Members. Only Members in actual attendance at the meeting shall count towards a quorum, except for matters submitted to the membership by mail or by electronic means.

(d) In any Member vote, each Member that is not a natural person shall be represented by a person designated by the Member pursuant to procedures adopted by the Board of Directors.

(e) Minutes of each meeting of the Members shall be prepared and shall be filed in the Principal Office. Written consents to any action taken by the Members without a meeting shall be filed with the minutes.

## **ARTICLE 6. CHANGES IN MEMBERSHIP**

6.1 Transfer of Membership. A Member's membership may not be transferred, assigned, encumbered, or alienated in any way, voluntarily or involuntarily, in whole or in part, except with the written consent of the Board of Directors.

6.2 Resignation of Member.

(a) A Member may resign from the Cooperative at any time by giving 60 days' advance written notice to the Cooperative, with such resignation to become effective at the end of the fiscal year in which notice was given.

(b) Upon resignation, a Member shall be entitled to receive a sum equal to the Member's any net profits allocated to the Member for the current year adjusted to and including the effective date of resignation; provided, however, this sum shall be paid when and in such amounts at the discretion of the Board of Directors (without interest or carrying charge). Such Member's Class B Stock and Class C Stock shall remain subject to redemption according to the terms hereof. Upon resignation, the membership of the resigned Member in the Cooperative shall cease and terminate, and the resigned Member shall only be entitled to the payments provided above and any amounts as they are or become payable under any previously issued Patrons' Equities.

(c) Other than the Membership Agreement, the resignation of a Member shall not result in termination of such Member's contracts with or commitments to the Cooperative, except as otherwise provided in such contracts or consented to by the Cooperative in writing.

6.3 Expulsion of a Member.

(a) A Member may be expelled from the Cooperative upon the occurrence of any of the following events:

(i) intentionally or repeatedly violated any bylaw, policy or standard of this Cooperative;

(ii) breached any contract with this Cooperative;

(iii) willfully obstructed any lawful purpose or activity of this Cooperative;

(iv) remains indebted to this Cooperative for 90 days after such indebtedness becomes payable; or

(v) failed to patronize this Cooperative for a period of one year.

(b) Upon the occurrence of an event described in Section 6.3(a), subject to Section 6.3(c), the violating Member shall be given notice of the proposed termination and provided an opportunity to address the Board of Directors, if requested by the Member within 15 days of the termination notification. The Board of Directors shall vote on expulsion of the violating Member within 15 days of the (A) Member's address to the Board of Directors, or (B) the date by which the Member was required to request an opportunity to address the Board of Directors. Expulsion shall require a two-thirds (2/3) vote of the Board of Directors.

(c) Upon the occurrence of an event described in 6.3(a)(v) and without (i) any right to address the Board of Directors, or (ii) vote to expel by the Board of Directors, the violating Member may be automatically expelled from the Cooperative at the option of the Cooperative at any time from the occurrence of such event until the violating Member again patronizes the Cooperative.

(d) Upon expulsion in accordance with this Section 6.3, the expelled Member shall have no further rights as a Member of the Cooperative, except to receive a sum equal to any net profits allocated to the Member for the current year adjusted to and including the effective date of termination; provided, however, this sum may, at the discretion of the Board of Directors, be paid to the terminated Member in installments over a period of not more than five (5) years (without interest or carrying charge).

(e) Other than the Membership Agreement, the expulsion of a Member pursuant to this Section 6.3 shall not result in termination of such Member's other contracts with or commitments to the Cooperative, except as otherwise provided in such contracts or consented to by the Cooperative in writing.

## **ARTICLE 7. MERGER, CONSOLIDATION, OR DISSOLUTION**

7.1 Liquidating Event. The Cooperative shall be dissolved and commence liquidating upon the affirmative vote of at least two-thirds of the Members.

7.2 Distributions Upon Liquidation. Upon the dissolution of the Cooperative, the Board of Directors or any other liquidator designated by the Members shall act as liquidator to wind up the affairs of the Cooperative. The liquidator shall have full power and authority to sell, assign and encumber any or all of the Cooperative's assets and to wind up and liquidate the affairs of the Cooperative in an orderly and businesslike manner and on such terms and conditions as the liquidator deems necessary or advisable, without the consent of the Members. All proceeds from liquidation shall be applied in the following order of priority:

(a) To the payment of debts and liabilities of the Cooperative according to their respective priorities, including any loans or advances to the Cooperative by any Member, and the costs and expenses of liquidation;

(b) To the holders of shares of Class C Stock in an amount equal to the value of the consideration for which the shares of Class C Stock were issued, in such priority of series of such shares as may have been established upon the issuance of the shares and on a pro rata basis within a series if necessary;

(c) To the holders of shares of Class B Stock in an amount equal to the value of the consideration for which the shares of Class B Stock were issued, in such priority of series of such shares as may have been established upon the issuance of the shares and on a pro rata basis within a series if necessary;

(d) To the establishment of such reserves as the liquidator deems necessary or advisable;

(e) To return the face amount, without appreciation or goodwill, of all Patrons' Equities allocated to any Member pursuant to Article 3 and not previously paid or retired (and if the liquidation proceeds are insufficient to pay all such Patrons' Equities in full, the Patrons' Equities shall be paid on a first allocated, first paid basis); and

(f) The remaining proceeds shall be paid to the Members based upon the average patronage of each Member over the life of the Cooperative or any other historical period reasonably selected by the Board of Directors.

7.3 Distribution in Kind. If any Cooperative assets are to be distributed in kind to the Members, the liquidator shall carry out an informational appraisal of the fair market value of such assets at a date reasonably close to the date of liquidation. The assets shall be distributed in kind to the Members in accordance with Section 7.2 as if the assets had been sold for the appraised value. Assets distributed in kind may, in the discretion of the liquidator, be distributed to the Members as tenants-in-common.

7.4 Merger or Consolidation. If the terms of a merger or consolidation of which the Cooperative is a party do not provide the Members of the Cooperative with an economic interest in the surviving entity that is substantially similar to the economic interest possessed by such Members in the Cooperative immediately before such merger or consolidation, the value of the consideration received shall be divided among them in the same manner as a comparable amount of net liquidation proceeds would be distributed pursuant to Section 7.2. This shall not be construed to prevent issuance of differing forms of consideration to different groups of Members to the extent allowed by law.

## **ARTICLE 8.**

### **STOCK CERTIFICATES; RESTRICTIONS ON SALES AND TRANSFERS**

8.1 Stock Certificates. Certificates of stock shall be issued to each holder of fully paid Class B Stock and Class C Stock as determined by the Board of Directors. On each stock certificate, there shall be stated the name of the Cooperative, the class of stock, the par value of

the stock, the number of shares represented, and the name of the Member to which it is issued. Each certificate shall bear the signature of the Secretary or Secretary-Treasurer.

8.2 Replacement of Stock Certificates. When existing stock certificates are to be replaced, they must be surrendered before new certificates are issued. Each surrendered certificate shall be canceled, with the date of cancellation noted on the certificate.

8.3 Restrictions on Transfer. For purposes of this Section 8.3, the term “transfer” shall mean, as a noun, any voluntary or involuntary transfer, sale, assignment, or other disposition and, as a verb, to voluntarily or involuntarily transfer, sell, assign or otherwise dispose of. No holder of capital stock of the Cooperative may transfer all or any portion of such holder’s shares except as otherwise expressly permitted by these Bylaws. The capital stock of the Cooperative may not be sold or transferred without the approval of the Board of Directors, and then only if the conditions and restrictions described in this Article 8 (as applicable) are met. No capital stock shall be transferred unless any and all indebtedness owed to the Cooperative by the holder of the stock shall first be paid. Any purported transfer other than a transfer in accordance with these Bylaws shall be null and void and of no force or effect whatever. The Board of Directors may withhold its consent and approval to proposed transfers of capital stock in its sole discretion.

## **ARTICLE 9. AMENDMENT**

These Bylaws may be amended by an instrument in writing signed by a majority of the Members or as provided by the Act or by a vote of the majority of the Members at a Member meeting. No course of dealing between the parties will modify, amend, waive or terminate any provision of these Bylaws or any rights or obligations of any party under or by reason of these Bylaws.

## **ARTICLE 10. MISCELLANEOUS PROVISIONS**

10.1 Fiscal Year. The fiscal year of the Cooperative shall be determined by the Board of Directors from time to time prior to end of its then-current fiscal year.

10.2 Depositories. The Board of Directors or an officer designated by the Board of Directors will appoint banks, trust companies, or other depositories in which the money or securities of the Cooperative will be deposited.

10.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Cooperative will be signed by the officer or officers or agent or agents designated by the Board of Directors or by an officer appointed by the Board of Directors.

10.4 Contracts and Other Instruments. The Board of Directors may authorize any officer, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative and such authority may be general or confined to specific instances.



10.5 Method of Notices. Any notice or document required to be given to any Member, the Board of Directors, any committee member or the Cooperative shall be in writing and shall be deemed given:

- (a) upon personal delivery;
- (b) upon telephonically confirmed delivery by fax;
- (c) upon receipt of an e-mail or other electronically transmitted form of communication;
- (d) on the first business day after receipted delivery to a courier service that guarantees next-business-day delivery, under circumstances where such guaranty is applicable; or
- (e) on the third business day after mailing, by certified or registered mail.

Notices given to the Cooperative shall be addressed to the Cooperative at the address of the Principal Office. The Cooperative shall maintain a record of names and addresses (including e-mail addresses) of the Members, Directors and committee members, to be updated by such Members, Directors and committee members in writing from time to time, and any notice given the Members, Directors or committee members shall be given according to the names and addresses on such record.

10.6 Captions. The captions in Bylaws are for convenience only and shall not affect the construction of the Bylaws.