

# **Silverton Food Co-op Bylaws**

(Adopted May 14, 2019)

## **Article I. Organization**

### **Section 1.1 – Name**

The name of the cooperative is Silverton Food Co-op, referred to in these bylaws as “the Co-op.”

### **Section 1.2 – Purposes**

The Co-op is formed to provide groceries and related consumer goods to its owners and other patrons and to engage in any other lawful activities for which cooperatives may be organized. The Co-op is organized and shall be operated exclusively on a cooperative basis. The mission of the Co-op is to provide high quality and fairly priced food and other household goods and personal items; to offer education and information on cooperative principles and practices, food and food sources, health, and nutrition; to serve as a model of cooperation, democracy, and self-reliance; to invest in an environmentally and economically sustainable local food system; to cultivate fair and trusting relationships between consumers and producers; and to cooperate with other cooperatives whenever possible; all for the mutual benefit of its member owners.

### **Section 1.3 – Principal office**

The principal office of the Co-op shall be located in Silverton, Oregon.

## **Article II. Directors and Officers**

### **Section 2.1 – Number and Qualifications of Directors**

The business of the Co-op shall be controlled by a board of directors, each of whom shall be a member of this Co-op and a natural person. Business member entities of the Co-op may not serve on the board. Principals of business member entities may serve on the board of directors if they themselves are individual members of the Co-op. The board shall consist of no fewer than three (3) or more than eleven (11) directors. The number of directors serving on the board shall be set by a majority vote of the directors each year at least 30 days before the annual meeting of the Co-op. Neither the Manager nor any employees of the Co-op who are directly supervised by the Manager shall be eligible to serve as directors.

The board of directors shall not have more than one (1) employee of the Co-op serving at any time. No person shall be eligible for the office of director if he or she has an overriding conflict of interest with the Co-op. If a majority of the board of directors of the Co-op finds at any time following a hearing that a director has such a conflict of interest, he or she shall be removed as a director.

### **Section 2.2 – Election of Directors**

Directors shall be elected at each annual meeting of members. Directors may be nominated by the current board of directors or by petition signed by no fewer than twenty (20) members of the Co-op. The petition shall be submitted to the board of directors no fewer than seven (7) days prior to the commencement of the proposed election.

In an election of Directors, each member shall have the number of votes corresponding to the number of director seats to be filled. No member may cast more than one (1) vote for any single director seat to be filled. The nominee receiving the greatest number of votes shall be elected to the first open director seat, the nominee receiving the second greatest number of votes shall be elected to the next open director seat, and so on until each open seat has been filled.

### **Section 2.3 – Staggered Terms for Directors**

Each director shall be elected and serve a term of three (3) years. Directors shall serve staggered terms such that, whenever possible, no more than one-third of the directors' terms expire at any annual election. To manage the staggered terms of directors, the board may designate a shorter term for any director position open for election.

### **Section 2.4 – Termination of Directors**

Directors may be removed upon a majority vote of all members voting at a duly called and noticed member meeting if written reason for removal of the director is included in the notice of the meeting and the director whose removal is sought has had an opportunity to answer the reasons at the meeting.

Directors may resign their positions by writing to the board's Secretary. The board may remove directors by a two-thirds vote of all the directors on the board at a meeting duly called and noticed to all Co-op members, provided that written reasons for the removal are included in a notice of the board meeting to the Co-op members and provided that the directors whose removals are sought have had an opportunity to answer the reasons at the meeting.

### **Section 2.5 – Election of Officers**

The board of directors shall meet within twenty-one (21) days after each annual election, and shall, by majority vote, elect from among the directors a president, vice president, secretary, and treasurer (or a secretary-treasurer in the event that board consists of only three directors).

Officers shall hold office for terms of one (1) year or until election and qualification of a successor, unless earlier removed by death, resignation, expiration of director term, or by the board acting in the best interests of the Co-op. Employees of the Co-op are not eligible to serve as principal officers.

### **Section 2.6 – Vacancies**

Whenever a vacancy occurs on the board of directors, other than from expiration of a term of office, the remaining directors may appoint a member to fill the vacancy. If a vacancy would result in a board composed of fewer than three directors, the board shall appoint a member to fill the vacancy. Appointed directors shall serve until the next annual meeting, at which time they may stand for

election by the members.

### **Section 2.7 – Regular Board meetings**

Regular meetings of the board of directors shall be held monthly or at other times determined by the board. All board meetings shall be held within Oregon.

### **Section 2.8 – Special Board Meetings**

A special meeting of the board of directors shall be held whenever called by the president or by a majority of directors. Any and all business may be transacted at a special meeting. Each call for a special meeting shall be in writing, signed by the person or persons making it, addressed and delivered to the secretary, and shall state the time and place of the meeting.

### **Section 2.9 – Notice of Board Meetings**

Regular meetings of directors shall require no notice. Special meetings of directors shall require written or oral notice. Written notice shall be mailed or emailed to each director at least seven (7) days prior to the meeting. Alternatively, oral notice shall be given in person or by a telecommunications device at least forty-eight (48) hours prior to the meeting.

Notice of board meetings shall be posted in a timely manner and in a conspicuous place in the Co-op's store and on the Co-op's website.

### **Section 2.10 – Action without a meeting**

Any action required or permitted to be taken at a meeting of the board may be taken without a meeting if each board member gives written consent to acting without a meeting. Both the written consents and the votes cast, if any, shall be recorded in the minutes of the next meeting of the board.

### **Section 2.11 – Compensation**

The compensation, if any, of members of the board of directors and of the executive committee shall be determined by members of the Co-op at any annual or special meeting of the Co-op. No officer or employee who is a director may take part in any vote on the compensation of the officer or employee for services rendered or to be rendered to the Co-op.

### **Section 2.12 – Quorum of Board Members**

A majority of the board of directors shall constitute a quorum at any meeting of the board.

## **Article III. Duties of Directors**

### **Section 3.1 – Management of Business**

The board of directors shall have general supervision and control of the business and affairs of the Co-op. The board shall make all rules and regulations not inconsistent with law or with these bylaws for the management of business and guidance of the members, officers, employees, and agents of the

Co-op. The board shall have in place an accounting system adequate for the requirements of the business of the Co-op, and it shall be the duty of the board to require proper records to be kept of all business transactions.

### **Section 3.2 – Employment of Manager**

The board of directors shall have the power to employ or to authorize employment of a store Manager (“Manager”) and any other employees as may be deemed necessary, and to fix their compensation. The Manager shall have charge of the business of the Co-op under the direction of the board of directors. No director shall serve as Manager.

### **Section 3.3 – Bonds and Insurance**

The board of directors shall require the Manager and all other officers, agents, and employees charged by the Co-op with responsibility for custody of any of its funds or negotiable

instruments to give adequate bond. These bonds, unless cash security is given, shall be furnished by a responsible bonding company and shall be approved by the board of directors, and the cost shall be paid by the Co-op.

The board of directors shall provide for adequate insurance of property of the Co-op, and property which may be in the possession of the Co-op, or stored by it, and not otherwise adequately insured. The board shall provide adequate insurance covering liability for accidents to the public and all employees of the Co-op.

### **Section 3.4 – Examination of Co-op Books**

Any member of the Co-op, upon written notice to the Secretary stating the purposes thereof, may request to examine for any proper purpose any books or records pertinent to the purpose specified in the notice and may make extracts therefrom, all in accordance with any reasonable conditions prescribed by the board restricting the disclosure, dissemination or use by any member of any information therein contained.

The board may deny a request to examine books and records if the board determines that the purpose is not directly related to the business or affairs of the Co-op and is contrary to the best interests of the Co-op.

### **Section 3.5 – Agreements with Members**

The board of directors shall have the power to carry out all agreements of the cooperative with its members in every way advantageous to the cooperative representing members collectively.

### **Section 3.6 – Depository**

The board of directors shall have the power to select one or more banks to act as depositories of funds of the cooperative and to determine the manner of receiving, depositing, and disbursing funds of the cooperative and the form of checks and the person or persons by whom they shall be signed, with power to change the banks and the person or persons signing the checks and the form at will.

### **Section 3.7 – Membership Certificate**

The board of directors shall issue appropriate certificates of membership.

## **Article IV. Duties of Officers**

### **Section 4.1 – Duties of President**

The president shall:

- preside over all meetings of the cooperative and of the board of directors;
- call special meetings of the board of directors;
- appoint such committees as the board of directors may deem advisable for the proper conduct of the Co-op; and
- perform all acts and duties usually performed by a presiding officer.

### **Section 4.2 – Duties of Vice President**

In the absence of the president, the vice president shall perform the duties of the president; provided, however, that in case of death, resignation, or disability of the president, the board of directors may declare the office vacant and elect a successor.

### **Section 4.3 – Duties of Secretary**

The secretary shall keep a complete record of all meetings of the Co-op and of the board of directors, and shall have general charge and supervision of the books and records of the cooperative. The secretary shall sign papers pertaining to the Co-op as authorized or directed by the board of director. The secretary shall serve all notices required by law and by these bylaws, and shall make a full report of all matters and business pertaining to the office to the members at the annual meeting. The secretary shall keep correct and complete books and record of accounts, and shall keep minutes of the proceedings of its members, board, and executive committee. The secretary shall also keep record of the names and addresses of all members.

The secretary shall keep the corporate seal, if any, and all books of blank certificates, complete and countersign all certificates issued, and affix the corporate seal to all papers requiring a seal. Further, the secretary shall keep complete stock ownership records; shall make all reports required by law; and shall perform such other duties as may be required by the Co-op or the board of directors.

Upon the election of a successor, the secretary shall turn over all books and other property belonging to the Co-op.

### **Section 4.4 – Duties of Treasurer**

The treasurer shall be responsible for keeping and disbursing all monies of the Co-op and shall keep accurate books of accounts of all transactions of the Co-op. The treasurer shall perform such duties with respect to the finances of the Co-op as may be prescribed by the board of directors. At the expiration of the term of office, the treasurer shall promptly turn over to the successor treasurer all monies, property, books, records, and documents pertaining to the office or belonging to the Co-op.

## **Article V. Executive Committee**

### **Section 5.1 – Powers and Duties**

The board of directors may in its discretion appoint an executive committee of three (3) or more directors. The executive committee shall have and may exercise all the authority of the board in the management powers and duties as may, from time to time, be prescribed by the board of directors, except that the executive committee may not exercise authority over the:

- apportionment or distribution of net proceeds, savings, or losses;
- selection of officers; or
- filling of vacancies in the board or the executive committee.

Copies of minutes of any meeting of the executive committee shall be distributed to all directors within seven (7) days following the meeting.

## **Article VI. Duties of Manager**

### **Section 6.1 – In General**

Under the direction of the board of directors, the Manager shall have general charge of the ordinary and usual business operations of the Co-op, including purchasing, marketing, and handling of all products, supplies, and equipment handled by the Co-op. The Manager shall, so far as practicable, endeavor to conduct business in a manner that the members will receive just and fair treatment. The Manager shall deposit all monies belonging to the Co-op in the name of the cooperative in a bank selected by the board of directors and, if authorized to do so by the board of directors, shall make all disbursements by check for the ordinary and necessary expenses of the business in a manner and form prescribed by the board of directors. Upon appointment of a successor, the Manager shall deliver to the Co-op all money and property that belongs to the Co-op and in his or her possession or control.

### **Section 6.2 – Duty to Account**

The Manager shall maintain records and accounts in such a manner that the Board may ascertain the true and correct condition of the business at any time. The Manager shall render annual and periodical statements in a form and in a manner prescribed by the board of directors and shall carefully preserve all books, documents, correspondence, and records pertaining to the business.

### **Section 6.3 – Control of Employees**

Subject to the approval of the board of directors, the Manager shall employ, supervise, and dismiss all agents and employees of the Co-op not specifically employed by the board of directors.

## **Article VII. Members**

### **Section 7.1 – Qualification**

Any natural person may apply for membership in the Co-op. Legal persons such as business entities

and nonprofit organizations or associations may also apply for membership. Such legal person members shall designate in writing to the board a non-member natural person authorized to cast votes for the entity. An applicant may become a member of this Co-op by completing a board-approved membership application and purchasing one share of common stock or enrolling in a board-approved payment plan to purchase one share of common stock. The board may reject a membership application for any reason consistent with these bylaws or Oregon law. The terms “member” and “owner” are used equally to refer to a member of the Co-op.

### **Section 7.2 – Membership Certificate**

The Co-op shall issue a certificate of membership to each member which shall be in the form prescribed by the board of directors. Certificates of membership shall not be transferable except by board approval.

### **Section 7.3 – Member Information**

The secretary shall keep a complete list of the names and postal and email addresses of all members as given by the members. Each member shall notify the secretary within ten (10) days of any change of address. Until the secretary receives the notice from the member, the Co-op may treat the name and addresses appearing on the Co-op’s list as correct for purposes of giving notices and for all other purposes.

### **Section 7.4 – Member Voting Rights**

Each member shall be entitled to only one vote at any meeting of the members, regardless of the number of shares of stock held. Legal person members, that is business entities or nonprofit organizations and associations, may cast votes only when they have designated in writing to the board a natural person authorized to cast votes on their behalf.

### **Section 7.5 – Transfer of Membership or Member Share**

Membership in the Co-op is a personal and not a property right and is not transferable except as provided herein. With the approval of the board, a deceased member’s share of common stock may be transferred to a new owner who resides in the deceased member’s household and who completes a membership application.

### **Section 7.6 – Suspension and Termination of Membership**

The board of directors may, by majority vote of the directors present at a meeting, suspend the membership of any member who fails to make monthly payments toward the purchase of a membership share of common stock, who fails to patronize the Co-op in any 12-month period, or who fails to notify the board of a change of address. The board shall give a member written notice of the suspension at the last known email or postal address. Suspended members lose the privileges and benefits of membership in the Co-op until the reasons for the suspension have been cured and the board has reinstated the membership. If suspended members do not cure the suspension within 30 days of the date of the suspension notice or give the board notice that they do not intend to cure the suspension, the board may, by majority vote of the directors present at a meeting, terminate the

member's membership at any time following the expiration of 30 days from the date of the suspension notice.

### **Section 7.7 – Expulsion of Member**

A member may be expelled from the Co-op for breach of contract, for failure to abide by these bylaws, or for acts injurious to the Co-op. The board shall notify the accused member, in writing, of the charge at least fifteen (15) days before the date of a proposed hearing when the charges shall be considered by the board. Upon the affirmative vote of two-thirds of the directors present and constituting a quorum, the person accused shall be denied further benefit of membership privileges except to conclude unfinished transactions.

Whenever a member is expelled from membership or the member's agreement is canceled, all membership rights and privileges shall automatically terminate.

### **Section 7.8 – Withdrawal of Member**

Any member may withdraw from the Co-op by giving ten (10) days' written notice to the board of directors at any time. Upon expiration of the ten (10) days from the delivery of notice in person or by email or postal mail, and payment of all sums due and owing between the member and the Co-op, membership of the member withdrawing shall cease and all membership rights and privileges shall automatically terminate.

### **Section 7.9 – Member Share Redemption**

Upon written request to the board by a former member following termination of membership, the board shall redeem the share of common stock that the requesting former member only after replacement capital has been secured by the Co-op from other owners and not before the Co-op opens a store. The Board need not redeem shares of common stock on demand and may schedule share redemptions to proceed on a periodic basis: monthly, quarterly, or annually. Shares of common stock may also be redeemed under other compelling circumstances as determined and approved by the Board.

Shares of common stock shall be redeemable at the lesser of their purchase price or, in the case of the Co-op's dissolution, their net book value. Shares of common stock do not increase in value and do not accrue interest. Reapplication for ownership after redemption shall be subject to full repayment of redemption proceeds and a reasonable processing fee, if any, as determined by the Board.

Payments toward the purchase of a member share of common stock made by members on a board-approved share of common stock payment plan are deposits toward the purchase of a share of common stock. Such deposits may be refunded to a terminated member upon written request, less a reasonable processing fee, if any, as determined by the board. Deposits toward the purchase of a share of common stock do not increase in value and do not accrue interest.

### **Section 7.10 – Member Complaint**



If any member has any complaint to make of the goods or services of the Co-op or the conduct of any of the employees of the Co-op, he or she shall send the complaint first to the Manager. If not satisfied, he or she may appeal to the board of directors. The board of directors shall investigate the complaint, decide upon it, and enter its decision in the minutes. If the member still is not satisfied, he or she may appeal to a general or special meeting of the members.

## **Article VIII. Meetings**

### **Section 8.1 – Annual Meeting of Members**

The annual meeting of members of this Co-op shall be held in Oregon at a location and on a date that the board of directors shall fix.

### **Section 8.2 – Special Meeting of Members**

Special meetings of members of the Co-op may be called at any time by order of the president or the board of directors, and shall be called by the secretary at any time on written request of at least ten percent (10%) of members. The request shall state the time, place, and business of the meeting.

### **Section 8.3 – Notice of Meetings**

Written or printed notice of every regular and special meeting of members shall be prepared and mailed or emailed to the last-known address of each member not less than seven (7) days before that meeting. The notice shall state the purpose, time, and place of meeting and, in the discretion of the board of directors, may be given by publishing at least seven (7) days prior to the meeting in a newspaper of general circulation in the town where the principal place of business of the Coop is located. No business shall be transacted at special meetings other than that referred to in the notice.

### **Section 8.4 – Absentee Voting**

Voting by proxy shall not be permitted, but absent members may vote on specific questions by ballots transmitted to the secretary by mail or electronic means. These ballots shall be counted only in the meeting at the time in which the vote is taken, provided that all members have been notified in writing, pursuant to action by the board of directors, of the exact wording of the motion or resolution upon which the vote is taken, and a copy is forwarded with and attached to the vote of the member voting.

### **Section 8.5 – Quorum of Members**

Those members present at any annual or special member meeting shall constitute a quorum for the transaction of business of the Co-op except for business transactions concerning which a different quorum is specifically provided by law or these bylaws. However, in the event a quorum is not present, the meeting may be adjourned from time to time by those present until a quorum is obtained.

### **Section 8.6 – Order of Business**

The order of business at the annual meeting shall be determined by the board.

## **Article IX. Capitalization**

### **Section 9.1 – Common Stock**

The Board may issue one share of common stock to each member. The holders of common stock shall be the Members of this Co-Op with the power to vote in its affairs; only the holders of common stock of this Co-Op shall have such voting power, and each holder of common stock shall be restricted to only one vote. Each holder of common stock shall be referred to as a “member” and shall be subject to all the conditions, rights and liabilities of membership as provided by the Articles, these Bylaws, and applicable law. The Board may determine how many shares of common stock the Co-Op is authorized to issue. Common stock shall pay dividends based upon the member’s patronage as determined under Article X, may not be transferred, and may be redeemed only as set forth herein.

### **Section 9.2 – Preferred Stock**

The Board shall have the authority and power to establish and issue one or more than one series of non-voting preferred stock of the Co-Op, to set forth the designation of such stock and to fix the relative rights, preferences, privileges and limitations of each such series of preferred stock. Transfer shall be restricted in the same means as shares of common stock.

### **Section 9.3 – Unclaimed Equity**

Any distribution of proceeds or redemption of, or payment based upon, any security by a domestic cooperative, excluding all credit unions, which remains unclaimed six years after the date authorized for retirement or payment in cash or other property, may be forfeited by the Board. Any amount forfeited shall revert to the Co-Op, as contributed capital, if, at least six months prior to the declared date of forfeiture, notice that such payment is available has been mailed to the last-known address of the member.

### **Section 9.4 – Set-Off**

The Co-op may set off any claims it may have against any patron not to exceed the amounts which the Co-op may owe the patron.

## **Article X. Allocation of Net Savings**

### **Section 10.1 – Definitions**

All sums received (1) for supplies, commodities, equipment and other property procured for patrons; (2) for services performed by patrons; (3) as patronage savings returns from other cooperative associations; and (4) from any other source shall be deemed to be gross receipts and shall be received and held by the Co-op for its patrons. Gross receipts are subject to the following deductions:

- the actual cost of all supplies, commodities, equipment, and other property procured for patrons;
- the actual cost of all services performed for patrons;
- all taxes, except income taxes and other obligations and necessary expenses; and

- amounts for reserves for any necessary operating purpose, including but without being limited to, provision for depreciation for physical property, doubtful accounts, and other possible losses.

The balance of gross receipts remaining after deductions, calculated upon a fiscal-year basis, shall be deemed to be net savings. At the moment of receipt by the Co-op, the net savings are received with the understanding that they are furnished by the patrons as capital and are to be used as capital until they are allocated as provided below.

### **Section 10.2 – Allocation to Net Savings**

Each year, as soon as practical after the books reflect the fiscal year's operation, the board of directors shall allocate the net savings of the Co-op consistent with state law and these bylaws.

### **Section 10.3 – General Reserve**

Ten percent (10%) of the net savings shall be placed in a reserve fund, called the General Reserve, until the General Reserve shall equal at least fifty percent (50%) of the issued shares of common stock. After that, amounts not greater than ten percent (10%) of the net savings shall be placed in the General Reserve only to the extent necessary to keep it equal to fifty percent (50%) of the fully paid shares of issued common stock.

The Co-op may use the General Reserve in the general conduct of the business and may reduce it by the amount of any operating loss in any fiscal year. The amounts placed in the general reserve shall be allocated on the books of the Co-op on a patronage basis, or in lieu thereof; the books and records of the Co-op shall afford a means for doing so, in order that upon dissolution, or earlier if deemed advisable, the general reserve may be returned to the members who have contributed it.

### **Section 10.4 – Members' Equity Reserve**

An additional portion of the net savings may be placed in a reserve account called the Members' Equity Reserve. The amounts placed in it shall be allocated on the books on a patronage basis to the members who have contributed it. All amounts evidenced by credits to the Members' Equity Reserve shall have the same status as though the Co-op had paid them in cash to the members in pursuance of a legal obligation to do so and the members had then furnished corresponding capital to the cooperative.

One or more years of the Members' Equity Reserve may be returned to the members, provided that:

- all amounts credited in any one fiscal year be paid out at the same time; the amounts credited in the earliest year be returned first; and
- the proportionate amount shall be returned in cash.

No amounts shall be held in the Members' Equity Reserve more than twenty (20) years. If a member withdraws from the Co-op as provided by law and the bylaws of the cooperative, his or her portion of the Members' Equity Reserve shall be returned. The board of directors shall determine the use or distribution of any proportionate amount of the Members' Equity Reserve of unidentified members.

### **Section 10.5 – Patronage Savings Return**

The remainder of the net savings shall be deemed to be patronage savings returns, and shall be allocated at the same uniform rate to all members of the cooperative in accordance with the ratio which each member's patronage during the period involved bears to the total patronage by all members during that period. Patronage shall be understood to mean goods and services purchased from the Cooperative and shall be measured in terms of its dollar amount. Notwithstanding any of the above provisions, any cash savings returns payable to members shall apply first on account of debts, if any, due from the respective members to the cooperative. After the members have allocated the net savings, the secretary shall notify each member by mail or email to his or her last-known address of the amount of savings credited and payment shall be made in those amounts due to members.

### **Section 10.6 – Member Consent to Distribution**

Each person who applies for and is accepted to membership in the cooperative, and each member of the cooperative on the effective date of these bylaws who continues as a member after that date shall, by such act alone consent that the amount of any distributions with respect to patronage which are made in written notices of allocation (as defined in I.R.C. § 1388) and are received from the cooperative, will be taken into account at their stated dollar amounts in the manner provided in I.R.C. § 1385(a) in the taxable year in which the written notices of allocation are received.

## **Article XI. Indemnification**

### **Section 11.1 – Standards of Conduct**

A director shall discharge the duties of a director, including the duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the cooperative.

In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements including financial statements and other financial data, if prepared or presented by:

- one or more officers or employees of the cooperative whom the director reasonably believes to be reliable and competent in the matters presented;
- legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

A director is not acting in good faith if the director has knowledge concerning the matter in question that makes such reliance unwarranted.

A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

### **Section 11.2 – Authority to Indemnify**

Except as provided in this Section, the Co-op shall indemnify an individual against liability incurred

in a proceeding to which the individual was made a party because the individual is or was a director if:

- the conduct of the individual was in good faith;
- the individual reasonably believed that the individual's conduct was in the best interests of the Co-op, or at least was not opposed to the Co-op's best interests ; and
- in the case of a criminal proceeding, the individual did not have reasonable cause to believe the conduct of the individual was unlawful.

A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of this Section.

Terminating a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or the equivalent of nolo contendere does not, of itself, determine that the director did not meet the standard of conduct described in this Section.

The Co-op may not indemnify a director under this Section in connection with:

- a proceeding by or in the right of the Co-op in which the director was adjudged liable to the Co-op; or
- a proceeding that charged the director with and adjudged the director liable for improperly receiving a personal benefit.

Indemnification permitted under this Section in connection with a proceeding by or in the right of the Co-op is limited to reasonable expenses incurred in connection with the proceeding.

The Co-op may not amend the Articles of incorporation or these Bylaws so as to eliminate or impair a director's right to indemnification after an act or omission occurs that subjects the director to a proceeding or to liability for which the director seeks indemnification under the terms of the Articles of Incorporation or these Bylaws.

### **Section 11.3 – Mandatory Indemnification**

Unless limited by the Articles of Incorporation, the Co-op shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the Co-op, against reasonable expenses incurred by the director in connection with the proceeding.

### **Section 11.4 – Advance for Expense**

The Co-op shall pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- the director furnishes the Co-op a written affirmation of the director's good faith belief that the director has met the standard of conduct described under Section 11.1; and
- the director furnishes the Co-op a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is ultimately determined not to have met the standard of conduct.

The undertaking required by this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

An authorization of payments under this Section may be made by resolution of the board of directors or by contract.

The Co-op may not amend or rescind the Articles of Incorporation, these Bylaws, or the resolution that authorizes the payments so as to eliminate or impair a director's right to payments after an act or omission occurs that subjects the director to a proceeding for which the director seeks payment.

### **Section 11.5 – Determination and Authorization of Indemnification**

The Co-op may not indemnify a director under Section 11.1 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 11.1.

A determination that indemnification of a director is permissible must be made:

- by the board of directors by majority vote of a quorum consisting of directors who are not at the time parties to the proceeding;
- if a quorum cannot be obtained under this Section, by a majority vote of a committee duly designated by the board of directors, consisting solely of two or more directors not at the time parties to the proceeding;
- by special legal counsel selected by the board of directors or its committee in the manner prescribed under this Section or, if a quorum of the board cannot be obtained and a committee cannot be designated, the special legal counsel will be selected by majority vote of the full board of directors including directors who are parties to the proceeding; or
- if the Co-op is a mutual benefit corporation, by the members, but directors who are at the time parties to the proceeding may not vote on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses will be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses will be made by those entitled under this Section to select counsel.

### **Section 11.6 – Indemnification of Officers, Employees, and Agents**

Unless the Articles of Incorporation provide otherwise:

- an officer of the Co-op is entitled to mandatory indemnification under Section 11.3 to the same extent as a director; and
- the Co-op may indemnify and advance expenses under this Section to an officer, employee or agent of the Co-op to the same extent as to a director.

### **Section 11.7 – Non-Exclusivity of Rights**

The indemnification and provisions for advancement of expenses provided in this Section will not be deemed exclusive of any other rights to which directors, officer, employees, or agents may be entitled under the Articles of Incorporation or these Bylaws, any agreement, general, or specific

action of the board of directors, vote of members or otherwise, and will continue as to a person who has ceased to be a director, officer, employee, or agent and will inure to the benefit of the heirs, executors, and administrators of such a person.

### **Section 11.8 – Report to Members and Other Persons of Indemnification**

If the Co-op indemnifies or advances expenses to a director under this Section in connection with a proceeding by or in the right of the Co-op, the Co-op will report the indemnification or advance in writing to:

- the members with or before the notice of the next meeting of members; and
- any person having the right to designate or appoint the director no later than 90 days after the first indemnification or advance.

## **Article XII. Miscellaneous Provisions**

### **Section 12.1 – Fiscal Year**

For accounting purposes this Co-op shall follow the calendar year.

### **Section 12.2 – Writing and Notice**

Any reference in these bylaws to written communication or notice shall mean any writing in electronic or paper form. Written communication or notice may be given in electronic or paper form, that is, by email, text message, postal mail, or any other electronic or paper form, and written notice may be given by electronic notification, that is, by provision of an electronic link to a writing.

### **Section 12.3 – Bylaws Posted**

After adoption, these bylaws shall be posted on the Co-op's website and be available for viewing and downloading.

### **Section 12.4 – Dissolution of the Co-op**

Upon the dissolution or winding up of the Co-op in any manner, the assets of the Co-op shall be liquidated and distributed in the following order:

- (a) To pay the costs of dissolution;
- (b) To pay any debts and liabilities (specifically including all promissory notes);
- (c) To redeem the paid in capital attributable to all Common and Preferred Stock issued and outstanding;
- (d) To redeem any allocated patronage credits of members; and
- (e) Any remaining assets shall be distributed among the active Members in good standing on the basis of such Members' patronage.

### **Section 12.5 – Severability**

In the event that any provision of these bylaws is determined to be invalid or unenforceable under any statute or rule of law, such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or rule of law without affecting the validity or enforceability of any other provision of these bylaws.

### **Section 12.6 – Disputes**

The Co-op and its current and former members agree to submit all manner of disputes, controversies, differences, claims, or demands of any kind relating to or arising out of the patronage of, or membership in, the Co-op (collectively, “claims”) to a dispute resolution process administered by an unbiased, neutral mediator. The board of directors shall have the authority to hire a mediator to resolve claims. No party shall have recourse to litigation (in court or before a private arbitrator) until after the mediation process has concluded.

## **Article XIII. Amendments**

### **Section 13.1 – Amendment of Bylaws**

These bylaws may be amended at any special or annual meeting of members upon the affirmative vote of two-thirds of the members present and constituting a quorum, provided that the proposed alteration or amendment is fully described in the notice of the meeting.