

**RESOLUTION AMENDING BYLAWS  
OF  
SOUTH DAKOTA WHEAT GROWERS ASSOCIATION**

**BE IT RESOLVED**, that the Bylaws of South Dakota Wheat Growers Association be amended in their entirety to read as follows:

**ARTICLE I.**

**Member Representation**

**Section 1. Districts Defined.** This organization will have districts for representation of members set by Board of Director policy.

The members of this Association shall be represented by delegates apportioned territorially as permitted by SDCL 47-16-13. The boundaries of each such district shall be determined by the Board of Directors. (See Article III, Section I relative to director apportionment by district.)

Each district's boundaries will be established in an effort to include the geographic diversity of members. The Board of Directors will review the district boundaries at least every five years and will make such adjustments as are appropriate to maintain such geographic diversity. All members will be notified of any district boundary changes at least three (3) months prior to the effective date of such changes.

Members vote in the district in which they are a resident when voting to elect a director or delegate to represent that district. However, if they patronize a facility of this Association, which is located in another district, such member may make a written request to the Association's Board of Directors to vote in that district. All such requests to vote in another district other than the district of residence must be submitted 60 days prior to the annual meeting(s) and approved by the Board of Directors at least 40 days prior to the annual meeting(s). If permitted, such members will then continue to vote in the district so designated unless and until such notice is withdrawn. A member may not vote in two different districts. Redistricting will void all such notices relating to the affected districts and require an application to vote in a certain district. Nothing in this paragraph shall bear on the eligibility requirements of a nominee for director.

**Section 2. Annual Members' Meeting(s).** A meeting(s) of all members shall be held once each year at a time and place as is determined by the Board of Directors and designated in the notice of the meeting(s). The purpose of the meeting(s) shall be solely informational and based upon an agenda specified by the Board of Directors. No issue or resolution shall be considered at said annual members' meeting(s) unless the proponents have met the same conditions as required for calling a special members' meeting as provided in Section 3 below.

**Section 3. Special Members' Meetings.** A special members' meeting to consider a particular issue may be called in the following manners:

- a. At any time by resolution of the Board of Directors; or
- b. Upon presentation to the Board of Directors of a petition signed by 100 members requesting the discussion and/or resolution of one specific issue or question, upon receipt of which petition the Board of Directors shall set a time and place for the holding of such special meeting within the following 45 days.

**Section 4. Notice of Annual and Special Meetings.** Both annual and special meetings shall be mailed to each and every member at the member's last known post office address at least ten (10) days but not more than thirty (30) days previous to the date of the meeting(s). A signed waiver of notice is equivalent to personal notice to the person so signing.

**Section 5. Votes.** Each member shall be entitled and restricted to one vote at meetings and in mail ballots. Any meeting where members are invited to vote, a member may submit a signed vote in a mail ballot if the member was previously notified in writing of the exact motion or resolution upon which the vote is taken. There shall be no voting by proxy.

**Section 6. Quorum.** Except as provided in Section 12 of this Article I, a quorum of any members' meeting shall be the minimum number of members required by the laws of South Dakota (SDCL 47.15.7). The Chair of any meeting with less than a quorum shall have the power to adjourn such meeting to another time and place.

**Section 7. Nominating Committees.** The Board of Directors shall appoint a nominating committee from each district.

**Section 8. Nomination and Election of Delegates.** At least forty (40) days prior to each annual members' meeting(s) at which the term of any delegate from any district shall expire, the nominating committee, as provided in Section 7 of this Article, shall place in nomination one or more qualified members for each delegate to be elected and shall also place in nomination any member who has completed the petition process set out in Section 10, hereinafter. The election of the delegate positions will be staggered so that, as near as possible, an equal number of delegates will be elected each year. All delegate position terms will be three (3) years in duration except in cases involving redistricting, realignment, or vacancies. The nominee for each delegate position receiving the greatest number of votes from the members of each district shall serve the term for which the delegate was elected and until their successor or successors shall have been duly elected. A tied election shall be determined by the casting of lots by the tied nominees.

**Section 9. Nomination and Election of Directors.** At least forty (40) days prior to each annual meeting(s) at which the term of any director shall expire, the nominating committee shall place in nomination one or more qualified members assigned to said district for election of the office of said director. Members' names may also be placed in nomination in the manner permitted by Section 10, hereinafter. All elected director position terms will be three (3) years in duration except in cases involving redistricting,

realignment, or vacancies. The nominee of each director position receiving the greatest number of votes from the members of each district shall serve the term for which the director was elected until their successor or successors shall have been duly elected. A tied election shall be determined by the casting of lots by the tied nominees.

**Section 10. Voting for Delegates and Directors.** Delegate and director positions shall only be elected by mail ballot. The ballot shall contain the names of the candidates for the positions of delegates or directors as determined by the respective nominating committees or by the petition process set out hereafter. The ballot shall contain a space opposite the name of the nominee in which the member may place a mark to indicate the nominee for whom the member is voting. The ballot may be cast only in a sealed envelope, which is authenticated by the member's signature. Members may only vote for directors and delegates who reside in the member's district unless the member's district is changed subject to Article 1 Section 1 of the Bylaws. If any member shall present to the administrative office of the Association located in Aberdeen, SD at least forty (40) days prior to the scheduled annual meeting(s) a petition signed by at least twenty-five (25) qualified members placing the petitioner's name in nomination for delegate or director from petitioner's district, that person's name shall be included on the mail ballot.

**Section 11. Other Business.** At any annual meeting(s), the members may, receive reports from the Board President and Chief Executive Officer and may make non-binding suggestions for action to be taken by either the delegates or the Board of Directors, or both. Results of balloting on resolutions, or Bylaw amendments or recommendations maybe brought to the annual meeting(s).

**Section 12. Disposal of Assets.** The sale, transfer, or other disposition of all or substantially all of the fixed assets of this cooperative association may not be completed and will not be effective until each of the following conditions have been fully met:

- a. The sale, transfer or other disposition of all or substantially all of the fixed assets of the association has been approved by seventy-five per cent (75%) of the members voting at a special meeting where the quorum requirement shall be a number equal to 50% of the total membership plus one.
- b. The Association's Board of Directors has approved such sale, transfer, or other disposition of all or substantially all of the fixed assets of this cooperative association.
- c. An informational membership meeting will be held at least thirty (30) days prior to the special membership meeting described in Subsection a, above, for the purpose of explaining the various aspects of such proposed sale, transfer, or other disposition of all or substantially all of said fixed assets of the association.
- d. The acquiring person, association, or other entity shall, in writing, as a part of his or its offer to acquire such fixed assets, promise and agree to:
  - (i) retain each of this association's full time employees for a minimum of two years from the date of the closing of such transaction with a salary and benefits equal to that earned by said employees during the last full calendar year or greater; or
  - (ii) to pay to each then full time employee of this association a sum equal to two times the last calendar years gross salary paid to said full time employee unless

said employee elects, and the acquiring entity promises, to continue his/her employment with the acquiring entity for a minimum two years from the date of the closing of such transaction with a salary and benefits equal to that earned by said employee during the last full calendar year or greater.

The Board of Directors, in its sole discretion, may waive the conditions found in subsections c and d on a case by case basis.

## **ARTICLE II.**

### **Delegates**

**Section 1. Apportionment of Delegates.** There will be no more than three delegate positions for each director position as determined by the Board of Directors.

**Section 2. Annual Meeting.** The **annual meeting** of the delegates shall be held annually within six (6) months after the fiscal year-end, at such place as may be determined by the Board of Directors and designated in the notice of the meeting. The delegates shall, at any such meeting, consider any business or matters properly before the meeting.

**Section 3. Special meetings** of the delegates may be called at any time by the Board of Directors or upon petition by at least twenty percent (20%) of the delegates and may be held at such time and place as may be designated in the call of the meeting. The delegates shall, at any such meeting, consider any business or matters properly before the meeting.

**Section 4. Notice of the Delegates' Meetings,** both annual and special, shall be mailed to each and every delegate at least ten (10) days but not more than thirty (30) days prior to the date of said meeting. A signed waiver of notice is equivalent to personal notice to the person so signing.

**Section 5. Votes.** Each delegate who is present in person shall be entitled and restricted to one vote at each annual or special meeting of the delegates.

**Section 6. Quorum.** Fifty percent (50%) of the delegates shall constitute a quorum for the purpose of transacting business at any meeting of the delegates, but any number less than a quorum shall have the power to adjourn such meeting to another time and place.

## **ARTICLE III.**

### **Board of Directors**

**Section 1. Apportionment of Directors.** There shall be not less than one (1) nor more than four (4) directors for each district.

**Section 2. Election, Terms and Age.** No member may be elected or appointed as a director after attaining age seventy (70). The directors shall be elected as provided in Section 9 of Article I of these Bylaws each and until their respective successors shall have been elected.

Unless his/her term as director has ended, no director may be removed from this association's board of directors except (1) by the affirmative vote of 80% of the Board of Directors at a special meeting called for that purposes or (2) by eighty per cent (80%) of a quorum of members of said director's district voting at a special district meeting called for that purpose.

If a vacancy should occur on the Board of Directors before the term of a director expires, the Board may appoint a qualified member to serve until the next director election where members from that district shall elect a director for the unexpired term of the director position.

**Section 3. Meetings.** The Board of Directors shall meet regularly at such times and places as the Board may determine. Special meetings may be called by the Board President or a majority of the directors.

**Section 4. Notice of Meetings.** Written notice of directors' meetings, stating date, hour and place thereof, shall be mailed to each director at the director's last known address by the Secretary, at least five (5) days prior to the meeting, unless the Board of Directors, by resolution adopted prior to the meeting, provides for a shorter or different method of notice.

**Section 5. Quorum.** A quorum shall consist of a majority of the directors. A majority vote of the directors present shall decide all questions, except where a greater vote is expressly required by law or these Bylaws.

**Section 6. Compensation.** The compensation, if any, of the directors and officers may be fixed at each annual meeting of the delegates of this Association; but upon any failure of the delegates to do so, the Board of Directors may do so.

**Section 7. Bonds.** The Board of Directors shall require each officer, agent and employee having control or custody of any of this Association's funds or property to furnish a surety bond or equivalent security satisfactory to said Board and the cost thereof shall be paid by this Association.

**Section 8. Audits.** The Board of Directors shall have the books of this Association audited at least once each fiscal year by a certified public accountant; and a report of such audit shall be made at the next annual meeting of the delegates.

**Section 9. Borrowings.** The Board of Directors shall have power, which may be exercised only by a vote of a majority of all of the directors, to authorize and approve the borrowing of money and the pledging and mortgaging of any or all of the assets of this Association as security for the sums so borrowed.

**Section 10. Corporate Seal.** The Board of Directors may adopt, alter or abandon the use of a corporate seal.

**Section 11. Executive Committee.** The Board of Directors may appoint an Executive Committee of not less than three (3) directors, one of whom shall be the Board President. Said committee shall have such powers and duties as the Board of Directors may delegate to or require of it except such committee shall not have any authority either (1) to fill any vacancy either in any elective office or in its own membership or in the Board of Directors, or (2) to employ a Chief Executive Officer for this Association or (3) to call any meeting of the members or (4) to meet or otherwise act at any time when either the Board of Directors or the members are holding a meeting or (5) to do anything which is required by law to be done only by the Board of Directors and which said Board cannot lawfully delegate to such a committee (Refer to SDCL 47.17.12)

## **ARTICLE IV.**

### **Officers**

**Section 1. Election of Officers.** Promptly following each annual meeting of the delegates of this Association, the Board of Directors shall elect from among the directors a Board President and a Board Vice President, and shall at the same time elect a Board Secretary and a Board Treasurer who may, but need not, be directors. The offices of Board Secretary and Board Treasurer may be held by the same person and, when so held, may be termed Board Secretary-Treasurer. The Board of Directors may appoint such additional officers with such titles, powers, and duties and for such terms, as said Board may determine.

**Section 2.** The Board President shall:

- a. Preside over all meetings of the delegates and of the Board of Directors and of the Executive Committee; and
- b. Have all authority ordinarily held by the Board President of a corporation, but he shall not be obligated either to devote full-time to the business of this Association or to actively supervise all of its ordinary business.

**Section 3.** The Board Vice President, in the absence or disability of the Board President, shall perform the duties of the Board President.

**Section 4.** The Board Secretary shall:

- a. Take or supervise the taking of complete minutes of all meetings of the delegates and of the Board of Directors and of the Executive Committee; and
- b. Have custody of this Association's minute book and of its corporate seal; and
- c. Give, or cause to be given, all notices as required by law or these Bylaws; and
- d. Perform such additional duties as may be required of the Board Secretary by the Board of Directors.

**Section 5.** The Board Treasurer shall:

- a. Supervise the safekeeping of all funds and property of this Association; and
- b. Supervise the keeping of complete books and records of all financial transactions of this Association; and
- c. Perform such additional duties as may be required of the Board Treasurer by the Board of Directors.

**Section 6. Chief Executive Officer.** The Board of Directors shall employ a Chief Executive Officer, who may also use the title of General Manager, and fix the Chief Executive Officer's compensation and all other terms of the Chief Executive Officer's employment. The Chief Executive Officer shall actively supervise all of the ordinary business of this Association, and shall employ and discharge all other employees of this Association, and shall perform such additional duties and shall have such additional powers as the Board of Directors may require of or may delegate to the Chief Executive Officer.

**Section 7. Indemnification.** The Association shall indemnify any director for any cash damages or attorney fees incurred by said director when engaged in any of the conduct described in SDCL 47-17-21.

This Association shall also indemnify each officer, manager, employee, or agent of this Association engaged in fulfilling the legal fiduciary duties in the business of the Association or if serving with the express prior consent of the Board of Directors, as reflected in the Board minutes, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person to the fullest extent to which such officers and employees of a cooperative Association may be indemnified under the terms of any insurance policies acquired and maintained pursuant to Section 8 hereafter.

**Section 8. Insurance.** This Association shall purchase and maintain insurance on behalf of any person who is or was a director, officer, manager, employee, or agent of this Association, or is or was serving with the express prior consent of the Association's Board of Directors as a director, officer, manager, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity.

## **ARTICLE V.**

### **Members**

**Section 1. Classes.** The members shall constitute one class.

**Section 2. Eligibility.** See Article V of the Articles of Incorporation for membership eligibility requirements.

**Section 3.** There shall be no **membership fee**.

**Section 4. Membership certificates** will not be issued.

**Section 5. Reserves.** The records of this Association shall show the interest of the patrons in the reserves; but no member, as such, shall have any right, title or interest of any kind in or to any equity capital, or any reserve capital, or any revolving capital, either upon liquidation or otherwise.

**Section 6. No dividend, interest, income, financial gain, or profit** shall be declared or paid or otherwise result to any member by reason of membership in this Association.

**Section 7. Votes.** Each member shall be entitled and restricted to one vote in the affairs of this Association as provided in Article I, Section 5, of these Bylaws.

**Section 8. No Transfer.** No membership in the Association shall be transferable under any circumstances, nor may any membership be converted, transferred, or conveyed to any member and/or other persons as joint tenants with rights of survivorship. Upon the death of any member, or the appointment of any guardian, receiver or trustee of the estate of any member, or any event which would in the absence of this Bylaw result in a transfer of such member's membership by operation of law, said membership shall then and thereby be automatically terminated.

**Section 9. Withdrawal.** Any member may withdraw from this Association and terminate membership upon (1) delivery to the Secretary of written notice of the member's withdrawal, and (2) either acceptance of the member's withdrawal by the Board of Directors or the expiration of one (1) year from the member's said delivery of said notice of withdrawal.

**Section 10. Expulsion.** Whenever any member shall have failed to patronize this Association at any time during the previous fiscal year or shall have intentionally or repeatedly violated any Bylaw, or shall have remained indebted to this Association for more than ninety (90) days after such indebtedness became payable, or shall have breached any contract between the member and this Association, or shall have willfully obstructed any purpose or proper activity of this Association, or failed to do \$5,000.00 in annual business in the previous fiscal year, then in any such event the Board of Directors may expel such member and the membership shall then and thereby be terminated.

## **ARTICLE VI.**

### **Patrons, and Patrons' Net Proceeds**

**Section 1. Patrons.** Each person who either (1) sells or consigns or otherwise delivers any agricultural products to this Association or contracts to do so, or (2) purchases or otherwise receives any agricultural products or supplies or equipment or services from this Association or contracts to do so, shall thereby become and be a "patron"; and each such transaction shall be a "patronage transaction"; provided, that no federal or state government, or any agency or any governmental subdivision thereof shall be a "patron"; and no such transaction with the United States, any state government, or any agency or

governmental subdivision thereof shall be a “patronage transaction.” Only (1) those patrons whose patronage would otherwise entitle them to a share of patrons’ net proceeds of less than Twenty Dollars (\$20.00); (2) those patrons who have expressly disclaimed in writing all rights to any share of the patrons’ net proceeds; and (3) those categories of patrons who have been designated by the Board of Directors, on a consistent basis, as not entitled to patronage or patrons’ net proceeds, shall be non-participating patrons. Each patronage transaction between this Association and each patron shall be subject to and shall include as a part of its terms, each provision of this Article VI whether it be expressly referred to in said transaction or not; and no person shall have any authority to accept for this Association any patronage from any patron on any terms inconsistent with this Article VI. Upon selling, or otherwise delivering any agricultural products to this Association, or contracting to do so, and upon buying or otherwise receiving any agricultural products or supplies or equipment or services from this Association, or contracting to do so, each patron, with, or without, then executing any writing or doing any other act thereby:

- a.** Shall, as further consideration owed to the patron by this Association on account of such patronage, become entitled to have paid to the patron (and this Association thereby shall promise to pay to the patron) an amount of money equal to the patron’s proportionate share of the patrons’ net proceeds, all as more particularly hereinafter defined and provided, and
- b.** Shall, in consideration of similar subscriptions by others in the same fiscal year, irrevocably subscribe and agree to pay to this Association an amount of money equal to the amount of the patron’s share of the patrons’ net proceeds for credits in the revolving capital, having a principal value equal to said amount of money; and the patron’s said subscriptions shall become payable by the patron in cash, without any notice or call for payment, upon acceptance of all or any part of the patron’s said subscriptions by the Board of Directors, at any time during the next succeeding fiscal year.
- c.** So long as required to be in compliance with the accepted intent of 26 U.S.C.A. No. 1381 through No. 1388, as amended, at least twenty percent (20%) of the net proceeds (or patronage dividend) of each patron of this Association shall be paid to the patron in cash within thirty (30) days after the close of the payment period for the taxable year of the Association, for which such patronage dividend or payment is paid, and written notice of the allocation of the remainder of said net proceeds shall be given to each patron with said payment. There shall be endorsed on each check made by the Association for such payment, a statement that the endorsement and cashing of the check constitutes consent of the payee to include in the patron’s gross income, as provided in the Federal income tax laws, the stated dollar amount of the written Notice of Allocation, which is a part of the patronage dividend, of which the check is also a part.

Each present member of this Association and each person who obtains or retains membership in this Association, by such act alone, thereby consents that the amount of

any net proceeds (or patronage dividend) paid to the patron with respect to the patron's patronage or allocated to the patron in a written notice of allocation as defined in 26 U.S.C.A. No. 1388, will be taken into account by the patron as the stated dollar amounts as provided in 26 U.S.C.A. No. 1385(a) relating to Federal income taxes in the taxable year in which such payments and written notices are received by the patron.

**Section 2. Computation of Patrons' Net Proceeds.** The patrons' net proceeds shall be computed upon the basis of each fiscal year as follows:

- a. Total Proceeds.** All proceeds of all sales of products marketed for patrons, plus all sums received for supplies and equipment and service procured for patrons, plus all income from all other sources, shall be deemed to be "Total Proceeds".
- b. Net Proceeds.** This Association shall deduct from said total proceeds the sum of all costs and expenses and other charges which are lawfully excludable or deductible from this Association's gross income for the purpose of determining the amount of any income or related taxes payable by this Association, except the amount of the patrons' net proceeds and any amount which may be both deductible from the net proceeds pursuant to subsection "c" and also excludable or deductible from this Association's gross income for the aforesaid tax purpose; and with respect to any costs or expenses or other charges only part of which is deductible for the aforesaid tax purpose, deduct the amount thereof in excess of said part. The balance of said total proceeds, which remains after the foregoing deductions shall be deemed to be the "Net Proceeds".
- c. Association's Net Proceeds.** This Association shall deduct from said net proceeds the sum of the following items:
  - (1) such an amount, if any, as the Board of Directors may determine to provide a reasonable reserve for losses or other necessary purposes, and the amount deducted pursuant to this clause (2) shall be transferred to the capital reserve; and
  - (2) in the event of a loss in one or more departments, divisions of operations, or functions of this Association which is not of such magnitude as to cause an overall loss to the Association for the fiscal year, the loss shall be prorated against each of the remaining profitable departments, divisions or operation or functions on the basis of their respective percentage of the total annual net savings during said fiscal year.

In the event that this Association shall incur a net loss in any fiscal year, said net loss shall be charged first against any capital reserve. If the loss exceeds the amount of the capital reserve, the Board of Directors may elect to recover the loss from prior or subsequent years' total annual net savings. The Board of Directors shall not have the authority to make an assessment against members; however, it shall have the authority to apply losses to members' individual patronage credit accounts. This section shall not be construed or administered so as to deprive this

Association of the right to carry back or carry forward net operating losses to past or future years in accordance with the applicable provisions of the Internal Revenue Code or state taxing statutes.

- (3) In the event that this Association shall have a write-down of any investments that it holds in another cooperative (hereinafter called a “Federated Cooperative”), said write-down shall be accounted for in the following manner.

The Board of Directors shall have the discretion to apply the write-down to the outstanding reserves of this Association, or to allocate the write-down to the members’ individual patronage credit accounts. The Board of Directors shall have the authority to divide the write-down between the Association’s reserves and the members’ individual patronage credit accounts. The Board of Directors shall have the authority to divide the write-down between the Association’s reserves and the members’ individual patronage credit accounts in any manner that it chooses.

- d. Patrons’ Net Proceeds.** The balance of said net proceeds which remains after the deduction of the Association’s net proceeds shall be deemed to be the “Patrons’ Net Proceeds”. All of the patrons’ net proceeds shall, as received by this Association, belong to and be held by it for its respective patrons and shall be apportioned between and paid to them as hereinafter provided.

**Section 3. Apportionment of Patrons’ Net Proceeds.** The patrons’ net proceeds shall be apportioned between the several patrons on the basis of their respective patronage and may be apportioned on the basis of their respective patronage of and the net proceeds resulting from the operations of the various departments of this Association and from the various kinds, qualities, grades, quantities, and values of products marketed for patrons or supplies or equipment or services procured for patrons; but there shall be no discrimination between patrons who are members and patrons who are not members.

**Section 4. Non-qualified Notices of Allocation.** The Association is authorized to issue an unlimited amount of patronage refunds (net proceeds) in the form of non-qualified written notices of allocation (as defined in 26 U.S.C. 1388(d)). The Board of Directors may, in its sole discretion, pay out non-qualified written notices on an equitable basis so long as the board is first satisfied the Association has sufficient resources for such payment.

**Section 5. Payment of Patrons’ Net Proceeds.** Each patron’s share of the patrons’ net proceeds (other than non-qualified written notices of allocation) shall be payable to the patron in cash at the close of each fiscal year as provided in paragraphs (a) and (b) of Section 1 of Article VI of these Bylaws.

## **ARTICLE VII.**

### **Equity Capital**

**Section 1. Purpose.** This Association may establish and maintain equity capital for the purpose of acquiring and maintaining non-stock capital, to supplement its membership capital, to finance its properties and business.

**Section 2. Contributions.** This Association may accept contributions to its equity capital from any person approved by the Board of Directors; and this Association shall issue to such person an equity capital credit equal to the amount of the person's contribution. This Association may issue equity capital certificates to evidence such credits and such certificates shall be in such form and contain such terms and conditions not inconsistent with this Article as the Board of Directors may prescribe. Contributions to the equity capital need not be segregated from, but on the contrary may be invested in or commingled with, any other assets of this Association.

**Section 3. Lien.** This Association shall have a first lien on each equity capital credit for all indebtedness of the holder thereof to this Association.

**Section 4. Dividends** may be declared and paid on equity capital credits at such times and amounts as the Board of Directors may determine; provided, that such dividends (1) shall not exceed eight percent (8%) annually on the principal amount of such credits, and (2) may be paid only from the Association's net proceeds or reserve capital, and (3) shall not be cumulative.

**Section 5. No Vote.** Credits in the equity capital shall not entitle the holder to any vote in any affairs of this Association.

**Section 6. Transfers of Equity Capital Credits** shall be made only on the books of this Association, either by the record holder in person or by the patron's attorney-in-fact upon surrender of the outstanding certificate (if any) properly endorsed, and only with the consent of the Board of Directors; provided, that said credits shall remain subject to this Association's lien thereon; and provided, further, that this Association shall have the first privilege of purchasing any credits in the equity capital if and when the same are offered for sale by the record holder thereof, and no such credit shall be transferable until after they first shall have been offered for sale to this Association. Upon receiving any such offer in writing, this Association shall have ninety (90) days thereafter in which to purchase the credits offered. If this Association, within said period, shall pay or tender to the holder the price for which said credits are so offered for sale the holder shall endorse and deliver to this Association the patron's certificate (if any) for said credits, and said credits may be held as treasury credits or retired. If this Association shall refuse said offer or fail to pay or tender said price within said period, the holder thereupon and for a period of one (1) year thereafter shall be free to sell said credits to others at a price not less than the price at which said credits were offered to this Association.

**Section 7. Retirement.** Any or all such equity capital credits as the Board of Directors, in its sole discretion, may select and designate may be called either for repurchase or for

retirement, as the Board of Directors may determine, at any time upon (1) call by the Board of Directors, and (2) thirty (30) days written notice mailed to the record holder thereof at the person's address as it appears on the records of this Association, and (3) payment or tender of the principal amount of said credits to said record holder; and such tender may be made to any such holder either in person or by mailing this Association's check to such holder at the person's said address.

**ARTICLE VIII.**  
**Reserve Capital**

This Association shall establish and maintain a reserve capital for the purpose of providing a reserve against which this Association may charge losses and other charges, which properly could be charged against the surplus of a business corporation for profit.

**ARTICLE IX.**  
**Revolving Capital**

**Section 1. Purpose.** This Association shall establish and maintain revolving capital for the purpose of acquiring and maintaining non-stock capital, to supplement its equity capital, adequate to finance its properties and business. The account which theretofore was designated as patrons' equity reserve shall, after the adoption of this Article, thenceforth be designated as the revolving capital; and holder of credits in said account shall thenceforth have like credits in the revolving capital subject to the provisions of this Article; provided, that said credits shall be deemed to represent contributions to the revolving capital as of the dates when the amount for which said credits were issued were transferred to said account.

**Section 2. Contributions.** This Association may accept contributions to its revolving capital from any person approved by the Board of Directors; and this Association shall issue to such person a revolving capital credit in a principal amount equal to the amount of the person's contributions. Proper entries shall be made in the books and records of this Association so that the principal amount and the book value, if less than the principal amount, of the credit issued to each contributor for the person's contribution to the revolving capital in each fiscal year can be ascertained at any time. This Association may issue revolving capital certificates to evidence such credits, and such certificates may be in such form and contain such terms and conditions not inconsistent with this Article as the Board of Directors may prescribe.

**Section 3. Operation.** Contributions to the revolving capital need not be segregated from, but on the contrary may be invested in or commingled with any other assets of this Association. No dividend, interest, or any other income shall be declared or paid on account of any credits in the revolving capital. This Association shall have a first lien on each revolving capital credit for all indebtedness of the holder thereof to this Association. If and when there shall have been a deficit balance in the reserve capital for five (5) consecutive full fiscal years next the following year in which this Association sustained a loss, the Board of Directors may (at any time during the sixth consecutive full fiscal year or thereafter) charge against the revolving capital an amount not exceeding so much of such deficit balance as of the close of the fifth such consecutive full fiscal year as is equal

to the difference between the amount of said loss less the sum of all amounts which were credit to the reserve capital pursuant to Section 2-c(2) and (3) of Article VI during said five consecutive full fiscal years. If and when the revolving capital shall have been impaired (that is to say, whenever the sum of the principal amounts of all revolving capital credits then issued and outstanding exceeds the balance in the revolving capital), then the Board of Directors may reduce the principal amount of such revolving capital credits as said Board may in its sole discretion select and designate so that the reduced principal amounts of said credits shall equal the book value of said credits.

**Section 4. Transfers of Revolving Capital Credits** shall be made only on the books of this Association, either by the record holder in person or by the person's attorney-in-fact, and only with the consent of the Board of Directors; provided, that said credits shall remain subject to this Association's lien thereon.

**Section 5. Conversion.** The Board of Directors may from time-to-time convert the whole or any part of any or all such revolving capital credits as said Board may in its sole discretion, select and designate into equity capital or reserve capital or any combination thereof, as said Board may determine, as shall be equal to the principal amount of said revolving capital credits which are so converted.

**Section 6. Retirement.** If and when the sum of the balance in the revolving capital plus the amount of the paid-up equity capital plus the balance in the reserve capital shall exceed the amount of capital reasonably needed by this Association, it shall apply such excess to the retirement, in full or pro rata, of any or all such credits in the revolving capital as the Board of Directors may in its sole discretion select and designate. The Board of Directors, in its discretion, may establish uniform policies and procedures for the payment of or redemption of revolving capital credits. Whenever this Association shall have received any cash from any other cooperative Association in payment of any patronage refunds, credits, or securities issued by such other cooperative Association, then the Board of Directors may apply all or part of such cash to the retirement, in full or pro rata, of any or all such credits in the revolving capital as said Board may designate. Revolving capital credits may be retired, as above required or authorized, by (1) motion or resolution of the Board of Directors, and (2) payment or tender to the record holder of said credits of the book value of said credits as of the close of this Association's fiscal year next preceding the adoption of such motion or resolution; and such tender may be made to any such holder either in person or by mailing this Association's check to such holder at the person's address according to the records of this Association.

## **ARTICLE X.**

### **Fiscal Year**

The fiscal year of this Association shall begin on August 1<sup>st</sup> in one (1) year and end on July 31<sup>st</sup> in the following year.

## **ARTICLE XI.**

### **Amendments**

Any Bylaw may be adopted, amended or altered, in whole or in part, as provided by law, at any regular meeting or special meeting of the delegates called for that purpose provided that the following conditions are met: (1) The proposed amendment or alteration complies with the laws of the State of South Dakota, and (2) the proposed amendment or alteration has been approved by the Association's Board of Directors; and (3) a statement or resolution containing the proposed amendment or alteration is included on the mail ballot sent to each member within forty-five (45) days after approval by the Association's Board of Directors; and (4) such statement or resolution containing the proposed amendment or alteration is approved by a majority of the eligible members voting provided that at least a quorum of members have voted by mail ballot.

In addition, the Board of Directors shall have the power and authority to amend the following bylaws, namely Section 1 of Article I, "Districts Defined", and Sections 1 and 2 of Article III, "Board of Directors", and to adopt any bylaws fixing the number and tenure of directors of the association. Any such bylaw amended or adopted by the Board of Directors shall be reported at the next regular delegate meeting and shall be at any time subject to amendment or repeal by the delegates or members.