

**RESTATED ARTICLES OF INCORPORATION OF  
SOUTH DAKOTA WHEAT GROWERS ASSOCIATION**

These restated Articles of Incorporation of SOUTH DAKOTA WHEAT GROWERS ASSOCIATION shall supersede existing Articles of Incorporation and any and all amendments.

**ARTICLE I**

**Name of the Cooperative**

The name of this Cooperative shall be SOUTH DAKOTA WHEAT GROWERS ASSOCIATION (herein "the Cooperative").

**ARTICLE II**

**Period of Existence**

The term for which the Cooperative is to exist shall be perpetual.

**ARTICLE III**

**Principal Office and Registered Agent**

**Section 1. Principal Office.** The post office address of the Cooperative's principal office shall be 908 Lamont Street South, Aberdeen, South Dakota 57401-5155.

**Section 2. Registered Agent.** The registered agent shall be the Chief Executive Officer of the Cooperative at the above address.

**ARTICLE IV**

**Purpose, Powers and Limitations**

**Section 1. Purpose.** The Cooperative is organized and operated on a cooperative basis under the provisions of the South Dakota Cooperative Association Act, for the purpose of carrying on a grain and agricultural supplies business, engaging in any activity or service related to the handling and sale of crop inputs, energy and agricultural supplies, and carrying on any lawful activity within the purposes for which cooperatives may be organized and operated, and all such activities shall be deemed within its purposes, subject to express limitations.

**Section 2. Powers.** The Cooperative shall have and may exercise all of the powers and rights conferred pursuant to the provisions of the South Dakota Cooperative Association Act, the Agricultural Marketing Act, the Capper-Volstead Act, by the laws of the State of South Dakota and the United States of America, and any and all acts amendatory thereof or supplemental thereto. In addition thereto, the Cooperative shall have and exercise all the powers and rights as are necessary, suitable, proper, convenient, incidental or expedient to the conduct of the Cooperative's business, affairs, or for the attainment of the purposes of the Cooperative.

**Section 3. Limitations.** The Cooperative shall not deal in the products, supplies, services and equipment with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members. All business transacted by the Cooperative for or on behalf of the United States or any of its agencies thereof shall be disregarded in determining the volume of member and nonmember business transacted by the Cooperative.

**ARTICLE V**  
**Membership**

**Section 1. Membership.** The Cooperative is organized on a membership basis and with membership control as set forth in the Bylaws of the Cooperative. The members shall constitute one class. Membership certificates shall not be issued. There shall be no membership fee.

**Section 2. Membership Stock.** The Cooperative is organized without membership stock.

**ARTICLE VI**  
**Capital and Stock**

**Section 1. General.** The Cooperative may establish and maintain non stock membership capital, equity capital, reserve capital, and revolving capital, or any combination thereof, for the benefit of members, as may be provided in the Bylaws of the Cooperative.

**Section 2. Capital Stock.** The Cooperative is organized with capital stock.

**Section 3. Class and Shares.** The authorized capital stock shall all be of one class (preferred) and shall consist of One Hundred Thousand (100,000) shares of a par value of One Thousand Dollars (\$1,000.00) each for a total of One Hundred Million Dollars (\$100,000,000.00).

**Section 4. Holders.** Shares of preferred stock may be issued to any person, association or legal entity who shall have been approved by the Board of Directors. The liability of each holder of preferred stock shall be limited to the amount, if any, remaining unpaid on such holder's preferred stock.

**Section 5. Certificates.** A certificate of preferred stock shall be issued to each holder of one or more fully paid shares of preferred stock. Each certificate shall state the name of the Cooperative, the number and par value of said shares, the name of the certificate holder, the names of the President or First Vice President and Secretary, and shall be numbered and issued in numerical order. Each certificate shall reproduce or memorialize the provisions of these Articles of Incorporation and the Bylaws of the Cooperative applicable to the shares or a statement that the Cooperative will, upon request, furnish to the holder, without cost, a statement of the respective preferences, limitations, and rights pertaining to preferred stock issued by the Cooperative.

**Section 6. Dividends.** Dividends may be declared and paid on preferred stock at such times and amounts as the Board of Directors may determine, provided, that such dividends: (i) shall not exceed eight percent (8%) annually of the par value of said stock; (ii) may be paid only from the Cooperatives' Net Proceeds or reserve capital; and (iii) shall not be cumulative.

**Section 7. No Vote.** The ownership of preferred stock shall not entitle the record holder thereof to any vote in any affairs of this Cooperative.

**Section 8. Transfers.** Transfers of preferred stock shall be made only on the books and records of the Cooperative, either by the record holder in person or by the holder's attorney-in-fact upon surrender of the outstanding certificate properly endorsed, and only with the consent of the Board of Directors, provided, that the Cooperative shall have the first privilege of purchasing any such stock if and when the same is offered for sale by the record holder thereof, and no such stock shall be transferable until after they first shall have been offered for sale to the Cooperative. Upon receiving

any such offer in writing, the Cooperative shall have ninety (90) days thereafter in which to purchase the stock offered. If the Cooperative, within said period, shall pay or tender to the record holder the price for which said stock is so offered for sale the record holder shall endorse and deliver to the Cooperative the stock certificate for said stock and said stock may be held as treasury stock or retired. If the Cooperative shall refuse said offer or fail to pay or tender said price within said period, the record holder thereupon and for a period of one (1) year thereafter shall be free to sell said stock to others at a price not less than the price at which said stock were offered to the Cooperative.

**Section 9. Retirement.** Any or all such stock 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: (i) call by the Board of Directors; (ii) thirty (30) days written notice mailed to the record holder thereof to the address as it appears on the account of record of the Cooperative; and (ii) payment or tender of par value of said stock to said record holder in person or by mailing the Cooperative's check to such record holder to said address.

## **ARTICLE VII** **Directors**

**Section 1. Management.** The business and affairs of the Cooperative shall be managed by a Board of Directors of not less than five directors as defined and set forth in the Bylaws of the Cooperative.

**Section 2. Authority.** The qualifications, nomination, election, terms, appointment, removal, officers, and authority of the Board of Directors shall be set forth in the Bylaws of the Cooperative.

## **ARTICLE VIII** **Liability, Indemnification and Insurance**

**Section 1. Liability.** To the fullest extent permitted under the South Dakota Cooperative Association Act, as the same now exists or may hereafter be amended, a present or former director of the Cooperative shall not be personally liable to the Cooperative, its members, patrons or stockholders for monetary damages for breach of fiduciary duty as a director, so long as such director (i) acted in good faith, (ii) reasonably believed in the case of conduct in an official capacity, that the conduct was in the best interests of the cooperative, and in all other cases, that the conduct was at least not opposed to the best interests of the cooperative, and (iii) in the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

**Section 2. Indemnification.** To the fullest extent permitted under the South Dakota Cooperative Association Act, as the same now exists or may hereafter be amended, a present or former director of the Cooperative, each officer, manager, employee or agent of the Cooperative or any subsidiary of the Cooperative, engaged in fulfilling the legal fiduciary duties in the business or affairs of the Cooperative or if serving with the express prior consent of the Board of Directors, shall be indemnified by the Cooperative against liability incurred by reason of serving in such capacity, so long as any such person serving in such capacity (i) acted in good faith, (ii) reasonably believed in the case of conduct in an official capacity, that the conduct was in the best interests of the cooperative, and in all other cases, that the conduct was at least not opposed to the best interests of the cooperative, and (iii) in the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful. Such person serving in such capacity shall not be indemnified by the Cooperative against liability incurred by reason of being such person and serving in such capacity, if such person (i) breached his or her duty of loyalty or care to the Cooperative, (ii) is adjudged liable for negligence or

misconduct in the performance of duty, intentionally committed misconduct or knowingly violated the law, or (iii) received an improper personal financial benefit. A director or former director is also not entitled to indemnification in connection with a proceeding by or in the right of the Cooperative, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct pursuant to SDCL §47-17-21.

**Section 3. Insurance.** The Cooperative shall purchase and maintain insurance on behalf of any person who is or was a director, officer, manager, employee, or agent of the Cooperative or is or was serving with the express prior consent of the Board of Directors, against liability asserted against and incurred by such person in such person's said capacity.

## **ARTICLE IX**

### **Membership Interests and Patronage**

Membership in, or patronage of, the Cooperative constitutes a granting by such member or patron to the Cooperative of a lien and security interest in and to all membership interests and benefits from participation in the Cooperative, including without limitation, all patronage dividends, equity credits, member deposits, credits or other payments by the Cooperative to said member or patron, now owned or hereafter acquired, including the proceeds, product and off-spring thereof, to secure any obligations due and owing to the Cooperative now or in the future (herein "Membership Interests and/or Patronage"). The Cooperative shall have the right of set-off and recoupment in such Membership Interests or Patronage from a member's or patron's participation in the Cooperative against any such obligations to the Cooperative, which rights may be exercised in its sole discretion, and, provided, however, that nothing contained herein shall give a member or patron owning or holding Membership Interests or Patronage the right to offset against such obligations. Membership Interests or Patronage in the Cooperative is non-transferable or assignable without the prior written consent of the Cooperative (which consent shall be determined in the Cooperative's sole and absolute discretion by way of resolution of the Board of Directors). To the extent the Cooperative has any obligation to make a payment to the record holder of any such Membership Interests or Patronage, as and when due, the Cooperative's sole obligation shall be to the record holder and not to any purported transferee or assignee. In all cases, the Cooperative's obligations, if any, on such Membership Interests or Patronage shall be discharged upon payment to the record holder.

## **ARTICLE X**

### **Dissolution, Disposition, Liquidation and Reorganization**

**Section 1. Dissolution.** In the event of a vote of the members that involves or is related to the dissolution of the Cooperative, pursuant to SDCL §47-18-11, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one.

**Section 2. Disposition of Assets.** In the event of a vote of the members that involves or is related to the disposition of all or substantially all of the Cooperative's fixed assets, pursuant to SDCL §47-18-9, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one. This Section shall not apply to consolidations or mergers pursuant to SDCL §47-18.

**Section 3. Liquidation.** In the event of any dissolution, liquidation or winding up of all or substantially all of the Cooperative's assets, such assets shall be liquidated and distributed in the following manner: all debts and liabilities of the Cooperative shall be paid according to their respective priorities; then all outstanding preferred stock issued by the Cooperative shall be retired in the manner provided for by these Articles of Incorporation; all patronage dividends and holders of revolving capital equity credits shall next be paid, and shall be limited to, the principal amount of said credits, unless there is insufficient assets and such remaining assets shall be distributed on a pro-rated basis; if all or any part of the reserve capital or any reserve shall have been apportioned between and credited to any persons on the books or records of the Cooperative, then the holders of such credits shall next be paid, and shall be limited to, the gross amount of their said credits, unless there is insufficient assets and such remaining assets shall be distributed on a pro-rated basis; and any remaining assets of the Cooperative shall be distributed amongst Participating Patrons, as defined in the Bylaws of the Cooperative, on the basis of their respective patronage as shown by the books and records of the Cooperative. The Cooperative retains its rights to set-off and recoup against obligations owing to the Cooperative by its members or patrons in determining the amount of distributions upon liquidation.

**Section 4. Acquisition, Consolidation, Division or Merger.**

In the event of a vote of the members that involves or is related to an acquisition, consolidation, division, merger or hostile takeover with respect to the Cooperative, unless such transaction has been approved by way of resolution of the Board of Directors, the assignment or transfer of all, substantially all, or a majority of all of the fixed assets of the Cooperative may not be completed and will not be effective until (i) the assignment or transfer of said assets is approved by at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one and (ii) the person, association or legal entity shall acknowledge and agree, in writing, as consideration for the consummation of said transaction, to retain each of the Cooperative's full-time employees for a minimum of two years from the date of the closing at the salary and benefits equal to that earned by said employees during the previous fiscal year of the Cooperative or greater or in the event a full-time employee of the Cooperative is not retained or elects not to be retained as described above, compensate such employee by paying a sum equal to two-times the previous fiscal year's gross salary paid to said employee.

**ARTICLE XI**  
**Amendments**

**Section 1. Amendments.** These Articles of Incorporation may be amended by a majority of a quorum of delegates or a majority of a quorum of members, provided that the proposed amendment (i) complies with the laws of the State of South Dakota, (ii) has been approved by way of resolution of the Board of Directors, and (iii) a statement of the proposed amendment was contained in the notice of the meeting. For purposes of this Section a quorum of members is as defined in Article I, Section 12 of the Bylaws of the Cooperative.

**Section 2. Quorum.** In the event of a vote of the members that involves or is related to an acquisition, consolidation, division, merger or hostile takeover with respect to the Cooperative, including a vote of the members on any proposed amendment to these Articles of Incorporation, or the Bylaws of the Cooperative, in connection therewith, unless such vote of the members has been approved by way of resolution of the Board of Directors, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one.