

**AMENDED AND RESTATED BYLAWS  
OF  
MINNESOTA ELDERBERRY COOPERATIVE**

(Adopted by the Board of Directors on June 4, 2016 with  
Paragraph 3.1(f) was amended on February 22, 2019.)

**1.**

**GENERAL**

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

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

**2.**

**MEMBERS – GENERAL PROVISIONS**

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

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

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

duties of the Members to the Cooperative or to each other with respect to the Cooperative.

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

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

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

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

2.8. No Capital Calls. No Member shall be required under any circumstances to contribute additional capital to the Cooperative except as provided in Article 3 of these Bylaws, even if the funds of the Cooperative are insufficient to meet its operating expenses or the Cooperative incurs or experiences losses.

2.9. Loans. The Cooperative may, as determined by the Board of Directors, borrow money from one or any of the Members or third persons. Subject to the limitations set forth in these Bylaws, a Member may lend money to and transact other business with the Cooperative. Subject to any applicable law or agreement with the Member, such Member has the same rights and obligations with respect thereto as a third party non-Member. Any loan by a Member to the Cooperative with the required approval of the Board of Directors shall be separately entered on the books of the Cooperative as a loan to the Cooperative and not as a capital contribution by the lending Member, shall bear interest at such rate as may be mutually agreed upon by the lending Member and the Board of Directors, and shall be evidenced by a promissory note duly executed on behalf of the

Cooperative and delivered to the lending Member. Such interest and repayment of the amounts so loaned may be secured by the assets of the Cooperative and shall be entitled to priority of payment over the division and distribution of capital contributions and profit among Members.

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

### 3.

#### CLASS A STOCK

3.1. Eligibility for Membership. Membership in the Cooperative shall be limited to persons or entities that:

- (a) Are producers of elderberries (or a legal entity of such producers);
- (b) Have purchased and own one full share of the Cooperative's Class A stock, the purchase price of which shall be determined by the Board of Directors from time to time, provided that the purchase price shall not be less than the par value (i.e., \$500.00/share) thereof;
- (c) Have signed the Cooperative's current form of Membership Agreement;
- (d) Have agreed to abide by the Articles of Organization, Bylaws, rules and regulations of the Cooperative and all amendments thereto;
- (e) Have been accepted for membership by the Cooperative's Board of Directors; and
- (f) Class A shareholders have the option of purchasing shares of the Cooperative's Class C stock for each pound (or portion thereof) of elderberries the Member has the right to deliver to the Cooperative pursuant to the Membership Agreement with such purchase.

3.2. Entitlement. In no event shall an applicant be entitled to become a Member.

3.3. Termination of Membership.

(a) If at any time the Board of Directors determines that a Member has ceased to be eligible for membership, the Cooperative shall have the right to immediately redeem such Member's share of Class A stock at the \$500.00 par value thereof payable in not more than three (3) years from the date of redemption, whereupon such membership and all rights incident thereto (except any interest such Member may then have in the Cooperative's Class C stock) shall terminate.

(b) The membership of any Member may be terminated for cause, including violation of a delivery contract or any other material agreement with the Coop, failure to adhere to any reasonable policy adopted by the Board and applicable to members, or failure to comply with the provisions of the articles and bylaws, and after a hearing upon a two-thirds (2/3) vote of the Board of Directors. Such action by the Board of Directors is subject to appeal to the membership of the Cooperative by the Member so terminated at the next regular or special meeting of the Members of the Cooperative and shall require the vote of two-thirds (2/3) of the total membership votes to be overturned. Upon such termination, such terminated Member's right to vote and otherwise participate in the Cooperative shall cease and the Cooperative shall have the right to immediately redeem such terminated Member's share of Class A stock at the \$500.00 par value thereof, payable in not more than three (3) years from the date of redemption, whereupon such membership and all rights incident to membership (except any interest such terminated Member may have in the Cooperative's Class C stock) shall terminate.

3.4. Class A Stock Certificate. Membership may or may not be evidenced by a certificate of Class A stock to be issued by the Cooperative in such manner, form, and device as the Board of Directors may prescribe.

3.5. No Dividends. No dividends shall be paid on the Cooperative's shares of Class A stock.

3.6. Voting. Every Member shall be entitled to one vote for its one share of Class A stock.

3.7. Transferability. A share of Class A stock (and the membership evidenced thereby) shall be nontransferable except to a person who will become a Member (a "Permitted Transfer") and then upon the consent of the Board of Directors. The Board may refuse to consent to any transfer which the Board determines is not in the best interests of the Cooperative, and no Member shall be entitled to compensation of any kind by reason of such refusal.

3.8. Class A Stock Redemption. The Cooperative may and it hereby reserves the right at any time, or from time to time, to call, redeem, retire, cancel, or reissue any or all of the then outstanding shares of Class A stock, for any reason, by paying to the respective holders thereof the \$500.00 par value thereof payable in not more than three (3) years from the date of redemption, whereupon such membership and all rights incident thereto

(except any interest such Member may then have in the Cooperative's Class C stock) shall terminate. Written notice of such deposit shall be given to the holders of record of Class A stock purchased or called by mailing such notice to their last known address as shown by the records of the Cooperative.

3.9. Entities As Members. A legal entity applying for membership must provide proof satisfactory to the Cooperative that the legal entity has been validly formed and is in good standing in its state of formation. A legal entity which becomes a Member is entitled to: (a) vote as provided in Section 3.6 above; (b) one check for any patronage dividend as provided in Article 6, and one Cooperative newsletter or set of correspondence. The legal entity must designate a single contact person as provided in Article 8.3(d).

4.

**DELIVERY RIGHTS – CLASS C STOCK**

4.1. Delivery Rights. The right and obligation to deliver one (1) pound (or portion thereof) of elderberries to the Cooperative for processing and marketing shall be known as a “delivery right.” A delivery right is possessed by owning one share of \$0.10 par value, non-voting Class C stock to which such delivery right is incident. A delivery right incident to a share of Class C stock may not be transferred separate from such share and any Permitted Transfer of such share of Class C stock shall be subject to the limitations on transfer set forth in these Bylaws.

4.2. Purchase Price. The Board of Directors shall determine the purchase price of this share of Class C stock from time to time, provided that the purchase price shall not be less than the par value (i.e., \$ 0.10/share) thereof.

4.3. Class C Stock Certificate. Delivery rights may or may not be evidenced by a certificate of Class C stock to be issued by the Cooperative in such manner, form, and device as the Board of Directors may prescribe.

4.4. No Dividends. No dividends shall be payable on the Cooperative's shares of Class C stock.

4.5. No Vote. The holders of shares of Class C stock shall have no vote or voice in the management or control of the Cooperative by virtue of their ownership of shares of Class C stock as such, nor shall they have any preference in dividends or distribution of assets except as provide in these Bylaws.

4.6. Transferability. Shares of Class C stock shall be non-transferable except to an existing Member or person or entity who will become a Member, and in any event, upon the consent of the Board of Directors. The Board may refuse to consent to any transfer of a share of Class C stock which the Board determines is not in the best interests of the

Cooperative and no Member shall be entitled to compensation of any kind of reason of such refusal.

4.7. Class C Stock Redemption. The Cooperative may and it hereby reserves the right at any time, or from time to time, to call, purchase, redeem, retire, cancel or reissue, for any reason, any or all of its then outstanding shares of Class C stock in such amounts as the Board of Directors may determine by paying to the respective holders thereof or by depositing to their order at the office of the Cooperative a sum or sums equal to the par value thereof. Written notice of such deposit shall be given to the holders of record of the stock so purchased or called by mailing such notice to their last known address as shown by the records of the Cooperative.

5.

**ASSOCIATE MEMBERS**

5.1. Definition. A non-voting Associate Member is a person or entity who wants to support the Cooperative and/or be involved in the success of the Cooperative, but will not be a voting Member.

5.2. Eligibility. A person or entity may become a nonvoting associate Member as follows:

(a) Agreeing to abide by the Articles of Organization, Bylaws, rules and regulations of the Cooperative and all amendments thereto; and

(b) Being accepted for associate membership by the Cooperative's Board of Directors.

5.3. Entitlement. In no event shall an applicant be entitled to become an associate Member.

5.4. Associate Membership Fee. Associate Members shall pay an annual fee of such amount as the Board of Directors shall determine from time to time.

5.5. Opportunity to Deliver Elderberries. If and when the Cooperative seeks to purchase elderberries from nonmembers, the Cooperative may, at its sole discretion, offer to purchase elderberries from an Associate Member at a price and in such quantity as determined by the Cooperative.

5.6. Rights. Associate Members shall not have the right to vote in, or be a director or officer of, the Cooperative, and shall have such qualifications, rights, and obligations as provided in these Bylaws as the same now exist or may hereafter be amended. Associates may be designated "associate members" but the word "Member" as used in the

Cooperative's Articles of Organization and these Bylaws shall refer only to a voting Member. Associate memberships shall be nontransferable.

5.7. Rollover of Annual Fee into Purchase of Class A Stock. An Associate Member shall have the option to apply a portion of his or her Associate Membership fees toward the purchase of a share of Class A stock in accordance with the conversion schedule as set from time to time by the Board of Directors.

6.

**METHOD OF OPERATION**

6.1. Cooperative Operation.

(a) Operation on Cooperative Basis. The Cooperative shall be operated on a cooperative basis, such that each Patron doing business with the Cooperative shall be allocated a pro rata share of the Cooperative's Net Patronage Income based on the Patron's patronage. As used in these Bylaws, the term "Patron" means each Member of the Cooperative and each non-Member of the Cooperative with whom the Cooperative has agreed in writing to do business on a cooperative basis prior to conducting such business. Each transaction between the Cooperative and its Patrons shall be done on a cooperative basis and shall be subject to and include as part of its terms each provision of the Cooperative's Articles of Incorporation and Bylaws, unless a Patron expressly agrees in writing in writing to conduct such transaction or transactions on a noncooperative basis. The Cooperative shall be operated on a cooperative or Patronage Basis. Upon conducting business with the Cooperative, each Member shall be entitled to Patronage Refunds as defined in this Article arising out of any such patronage transaction.

(b) Determination of Net Patronage Income. For each taxable year, the Cooperative shall calculate its "Net Patronage Income," which means the Cooperative's Gross Patronage Income less its Patronage Expense for the taxable year, determined using the accounting methods and principles used by the Cooperative in preparation of its annual audited financial statements; provided, however, that the Board of Directors may prospectively adopt a reasonable alternative method of accounting. If calculation of the Cooperative's Net Patronage Income yields a negative amount (a "Net Patronage Loss"), such Net Patronage Loss shall be subject exclusively to the treatment specified in Section 6.1(f). As used in this Section 6.1, the following definitions shall apply:

(1) "Gross Patronage Income" for the taxable year means the sum of (a) gross revenue from goods or services marketed or procured by the Cooperative for Patrons, and (b) income of the Cooperative from any source that is directly related to or actually facilitates the Cooperative's activities on behalf of its Patrons, including without limitation patronage dividends distributed to the Cooperative by other cooperatives, the Cooperative's share of the net income or net loss of any unincorporated entity in which it owns an equity interest, and, to

the extent determined by the Board of Directors, the Cooperative's share of the undistributed net income or net loss of any corporation in which it owns an equity interest. Gross Patronage Income does not include the amount of any Per-Unit Retains retained by the Cooperative in accordance with Section 6.5.

(2) The "Patronage Expense" for the taxable year means the sum of (a) all expenses which are directly related to or actually facilitate the Cooperative's activities on behalf of its Patrons, and (b) such amounts of depreciation, cost depletion and amortization as may be appropriate, amounts incurred for the promotion and encouragement of cooperative organizations, taxes other than taxes based on income, and reasonable and necessary additions to reserves for depreciation, depletion, obsolescence of physical property, doubtful accounts and other valuation reserves, all established and computed in accordance with generally accepted accounting principles. Patronage Expense does not include any amounts paid during the year as dividends on capital stock or other proprietary capital interests of the Cooperative, which dividends (if any) shall be treated, as permitted by Code Section 1388(a), as in addition to amounts otherwise payable to Patrons which are derived from business done with or for Patrons during the taxable year.

(3) Net Patronage Income shall be subject to adjustment as provided in Section 6.1(f) relating to Net Patronage Losses.

(c) Allocation of Net Patronage Income. The Cooperative's Net Patronage Income for each taxable year, less any amounts allocated to the Capital Reserve account pursuant to Section 6.4, shall be allocated annually among Patrons in the ratio that the quantity or value of the business done by a Patron with the Cooperative bears to the quantity or value of the business done by all Patrons with the Cooperative. The amount of the Cooperative's Net Patronage Income allocated to a Patron is described in these Bylaws as a "Patronage Refund."

(d) Distribution of Net Patronage Income. The Net Patronage Income allocated to Patrons shall be distributed annually or more often to Patrons as Patronage Refunds during the period beginning on the first day of the taxable year and ending with the fifteenth day of the ninth month following the close of such year; provided, however, that no distribution need be made where the amount otherwise to be distributed to a patron is a de minimis amount, as defined from time to time by the Board of Directors, or where the Patron who would otherwise be paid such Patronage Refund cannot reasonably be located, which undistributed amounts shall be added to the Capital Reserve account 6.4.

(e) Extraordinary Transaction. Notwithstanding any other provision in this Article 6, Net Patronage Income produced by an extraordinary transaction (such as income from the sale or exchange of capital assets) which is directly related to the



Corporation's business will be deemed to be patronage-sourced income and may be distributed to Members (and any other Patrons with whom the Corporation has contracted to deal on a patronage basis) in proportion, insofar as is practicable, to their patronage during any period to which such Net Patronage Income is attributable, as determined by the board of directors.

(f) Form of Patronage Refunds; Patrons' Equities. Patronage Refunds shall be distributed in cash, Patrons' Equities, or any combination thereof designated by the Board of Directors. Patrons' Equities represent the right to receive cash or other property at a stated dollar amount upon redemption by the Cooperative and shall be in the form of book entries. Patrons' Equities form part of the capital of the Cooperative, do not bear interest, and are not subject to redemption at the request of a Patron or any other person. Patrons' Equities distributed by the Cooperative shall satisfy all requirements needed to qualify as written notices of allocation within the meaning of Code Section 1388, and shall be designated by the Board of Directors as qualified written notices of allocation, nonqualified written notices of allocation, as defined in Code Section 1388, or any combination thereof. Patrons' Equities may be transferred only with the consent and approval of the Board of Directors. The redemption of Patrons' Equities is solely within the discretion of and on the terms described by the Board of Directors from time to time. The Board of Directors shall adopt and maintain in writing a redemption policy to guide the retirement or redemption of Patrons' Equities...

(g) Treatment of Net Patronage Losses. If calculation of the Cooperative's Net Patronage Income for the taxable year gives rise to a Net Patronage Loss, the Cooperative may take one or more of the following actions: (a) establish an account receivable for each Patron that patronized the Cooperative in the taxable year of the Net Patronage Loss, which account receivable may be satisfied by the Cooperative out of any future amounts that may become payable by the Cooperative to such Patron; (b) carry all or part of the Net Patronage Loss forward to be charged against future Net Patronage Income; (c) offset all or part of such Net Patronage Loss against the Capital Reserve account; or (d) cancel outstanding Patrons' Equities. The Board of Directors, having due consideration for all of the circumstances which caused the net loss, has the discretion to take one or more of these actions in a manner that it determines is both equitable and in the overall best interest of the Cooperative.

(1) Allocation of Net Loss Among Member Patrons. Any cancellation of Patrons' Equities and/or establishment of accounts receivable pursuant to Section 6.1(f) shall be made among the Patrons consistent with each Patron's patronage of the Cooperative during the taxable year of the Net Patronage Loss.

(2) No Cash Assessments against Patrons. The Board of Directions may not levy a cash assessment on Patrons to recover a Net Patronage Loss.

6.2. Net Nonpatronage Income or Loss. The Cooperative's "Net Nonpatronage Income" shall be its Gross Nonpatronage Income less its Nonpatronage Expense for the taxable year. The Cooperative's "Gross Nonpatronage Income" means income of the Cooperative from any source that does not constitute Gross Patronage Income, and the Cooperative's "Nonpatronage Expense" means the sum of all expenses of the Cooperative that do not constitute Patronage Expense. The Cooperative shall calculate its Net Nonpatronage Income using the accounting methods and principles used by the Cooperative to calculate its Net Patronage Income. If calculation of the Cooperative's Net Nonpatronage Income yields a negative amount (a "Net Nonpatronage Loss"), such Net Nonpatronage Loss shall be subject exclusively to the treatment specified in Section 6.2(b).

(a) Allocation and Distribution of Net Nonpatronage Income. The Board of Directors shall have the discretion to allocate and distribute to Patrons amounts of the Cooperative's Net Nonpatronage Income that would otherwise be added to the Capital Reserve account pursuant to Section 6.4. Amounts so allocated to Patrons shall be made in accordance with the patronage of each Patron using such method as the Board of Directors determines to be reasonable and equitable.

(b) Treatment of Net Nonpatronage Loss. If the Cooperative incurs a Net Nonpatronage Loss for the taxable year, such loss shall be (a) chargeable against the Capital Reserve account, (b) treated as a net operating loss and carried forward or backward to offset Net Nonpatronage Income in other years as permitted by the Code, or (c) allocated in whole or part to Patrons to the extent the Board of Directors determines that it is reasonable and equitable to do so, giving due consideration for the circumstances giving rise to such Net Nonpatronage Loss.

6.3. Separate Allocation Units.

(a) Establishment of Allocation Units. Allocation units may be established by the Board of Directors from time to time on a reasonable and equitable basis for purposes of determining and allocating the income, gains, expenses and losses of the Cooperative. Allocation units may be established based on membership classes, purchasing groups, joint venture initiatives, categories of services, or other business arrangements, or they may be based on any other functional, divisional, departmental, geographic or other criteria as determined by the Board of Directors. If more than one allocation unit is established, the Board of Directors shall adopt such reasonable and equitable accounting procedures as will, in the judgment of the Board of Directors, equitably allocate among the allocation units the Cooperative's Gross Patronage Income, Patronage Expense, Gross Nonpatronage Income, and Nonpatronage Expense.

(b) Board of Advisors. The Board of Directors may also create a committee to serve as a board of advisors (each a "Board of Advisors") for any such separate allocation pool or for a group of related allocation units, with the number of advisors,

method of election of advisors, and rules and procedures governing any Board of Advisors activities to be established by the Board of Directors.

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

6.4. Capital Reserve Account. The Board of Directors shall cause to be created an unallocated Capital Reserve account and may, in its discretion, annually add to it the following amounts:

(a) Net Nonpatronage Income for the taxable year;

(b) Net Patronage Income that would otherwise be distributed to Patrons who cannot reasonably be located, Patrons to whom the amount otherwise to be distributed is equal to or less than the de minimis amount provided in Section 6.1(d), or Patrons who revoke the consent described in Section 6.6(b); and

(c) An additional amount not to exceed 10% of Net Patronage Income.

6.5. Per Unit Retains

(a) From time to time, the Board of Directors may require Patrons to invest in the capital of the Cooperative by providing to the Cooperative a specified amount, on a per unit basis, from the proceeds of products marketed by the Cooperative for Patrons (“Per-Unit Retains”). Per-Unit Retains, if required, shall be made on products delivered for marketing in the same amount per unit and shall not become part of the Cooperative’s Gross Patronage Income.

(b) Per-Unit Retains shall be accounted for separately in a Per-Unit Retain Account set up on the books of the Cooperative. All Per-Unit Retains shall be received and retained by the Cooperative with the understanding that they are furnished by Patrons as capital. Within a reasonable time after the close of its taxable year, the Cooperative shall notify each Patron of the amount of Per-Unit Retains credited to the Patron in the Per-Unit Retain Account.

(c) When the Board of Directors determines in its sole discretion that the Cooperative has sufficient working capital, Per-Unit Retains shall be redeemed at their stated dollar amount. Per-Unit Retains may be paid, redeemed, or revolved in whole or in part at a time and manner determined by the Board of Directors.

6.6. Consent

(a) Members. Each person that applies for and is accepted to membership in the Cooperative shall, by such act alone, consent that the stated dollar amount of any Patronage Refunds distributed in the form of qualified written notices of allocation and any Per Unit Retains distributed in the form of qualified per-unit retain certificates, as these terms are defined in Section 1388 of the Code, will be taken into account by the Member in the manner provided in the Code in the taxable year in which such written notices and certificates are received by the Member. Written notification of this Bylaw, a statement of its significance and a copy of the Bylaw shall be given separately to each Member and prospective Member before being approved for membership in the Cooperative.

(b) Nonmembers. If the Cooperative obligates itself to do business with a nonmember on a cooperative basis, such nonmember Patron must agree in writing, prior to any transaction conducted on a cooperative basis, that the stated dollar amount of any Patronage Refunds distributed in the form of qualified written notices of allocation and any Per-Unit Retains distributed in the form of qualified per-unit retain certificates, as these terms are defined in Section 1388 of the Code, will be taken into account by the nonmember Patron in the manner provided in the Code in the taxable year in which such notices and certificates are received, and, further, that any revocation of such written agreement will terminate this Cooperative's obligation to distribute Patronage Refunds or Per-Unit Retains to such nonmember Patron with respect to the taxable year in which the revocation is received.

## 7.

### **MANAGEMENT OF THE COOPERATIVE**

7.1. General Powers. The business and affairs of the Cooperative will be managed under the direction of the Board of Directors, which may exercise all powers of the Cooperative and do all things that are not required to be exercised or done by the Members under the Act, the Articles, or these Bylaws.

7.2. Election; Number; Qualification; Term of Office. The number of directors (the "Directors", and each a "Director") that shall constitute the whole board shall be not less than five (5) and not more than seven (7), elected by a majority vote of the Members at a duly held Member meeting. The term of each Director shall be three (3) years. The terms shall be staggered so that approximately an equal number of Director positions come up for election each year. Each Director shall hold office until such Director's successor shall have been elected at the conclusion of the term of office of such Director, or until the earlier death, resignation, removal or disqualification of such Director. Each Director's term shall commence upon his or her election by the vote of and terminate at the first annual meeting held following the third fiscal year after his or her election and upon his or her successor's election and qualification. Each Director must be a Member of the Cooperative. At least three Directors must be elderberry growers. The Board of Directors may from time to time establish reasonable policies and procedures governing

the election or appointment of Directors, and reasonable eligibility criteria for qualification of persons serving on the Board of Directors.

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

7.4. Compensation of Directors. Directors may receive compensation for their services as a Director to the extent established by resolution of the Members. This limitation will not preclude Directors from receiving compensation for services in any other capacity. Directors will be reimbursed reasonable expenses for attending regular or special Board meetings, unless otherwise established by resolution of the Members.

7.5. Removal.

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

(b) A Director may be removed by the Board of Directors at any time for cause related to the duties of the position of Director by an affirmative vote of not less than fifty-five percent (55%) of all of the remaining Directors. In case of removal of a Director by action of the Board of Directors, the Board of Directors may fill the resulting vacancy until the next meeting of the Members.

(c) No Director shall be removed from office under this Section 7.5 unless he or she has been informed of the meeting at which the matter is to be considered at least ten (10) days before such meeting. Such notice shall be given by certified mail addressed to him or her at his or her last known address, and he or she shall be entitled to be heard at such meeting.

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

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

No amendment to or repeal of this Section 7.6 shall apply to or have any effect on the liability or alleged liability of any Director for or with respect to any acts or omissions of such Director that occurred before such amendment or repeal.

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

7.8. Officers. The officers of the Cooperative shall consist of a President; a Vice President, if any; a Secretary and a Treasurer, and any other officers and agents as the Board of Directors may designate from time to time by resolution. The positions of Secretary and Treasurer may be held by the same person ("Secretary-Treasurer"). The Board of Directors shall elect the officers annually, at the meeting of the Board of Directors at which the Cooperative's completed financial reports are reviewed and approved by the Board of Directors. The President, Secretary and Treasurer shall be members Board of Directors and the President shall be the Chairperson of the Board of Directors. The duties of the President, Vice President, Secretary and Treasurer shall be as established by the Board of Directors from time to time.

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

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

7.11. Books and Records.

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

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

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

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

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

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

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

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

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

(c) Upon reasonable written request, any Member or its authorized representative shall have the right to inspect and copy any of the Cooperative's books and records required to be kept pursuant to Section 7.11(b) during ordinary business hours. The Member shall pay any actual costs of such inspection and copying (including costs of converting to written form records not kept in written form). Such inspection shall be conducted at a time and in a manner so as not to interfere with the operations of the Cooperative. The Cooperative shall have a reasonable time to produce such records, taking into account the form and location in which the records are maintained, but in any event no more than ten business days from the date of receipt of the request. The Cooperative shall not be required to prepare compilations or summaries that are not customarily maintained by the Cooperative. The Board of Directors may adopt

reasonable policies limiting the use of the Cooperative's books and records as a condition to the foregoing right of inspection.

8.

**MEETINGS AND VOTING**

8.1. Meetings of the Board of Directors.

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

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

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

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

(e) Meetings of any committee established by the Board of Directors shall be governed by and subject to the same operating rules and procedures (including the rules and procedures relating to voting) as are set forth in this Section 8.1 for the Board of Directors, unless otherwise modified by any such committee and approved by the Board of Directors.

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



### 8.3. Meetings of Members.

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

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

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

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

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

## 9.

### **MERGER, CONSOLIDATION, OR DISSOLUTION**

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

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

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

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

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

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

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

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

9.3. Distribution in Kind. If any Cooperative assets are to be distributed in kind to the Members, the liquidator shall carry out an informational appraisal of the fair market value of such assets at a date reasonably close to the date of liquidation. The assets shall be distributed in kind to the Members in accordance with Section 9.2 as if the assets had been sold for the appraised value. Assets distributed in kind may, in the discretion of the liquidator, be distributed to the Members as tenants-in-common.

9.4. Merger or Consolidation. If the terms of a merger or consolidation of which the Cooperative is a party do not provide the Members of the Cooperative with an economic interest in the surviving entity that is substantially similar to the economic interest possessed by such Members in the Cooperative immediately before such merger or consolidation, the value of the consideration received shall be divided among them in the same manner as a comparable amount of net liquidation proceeds would distributed pursuant to Section 9.2. This shall not be construed to prevent issuance of differing forms of consideration to different groups of Members to the extent allowed by law.

**10.**

**AMENDMENT**

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

**11.**

**MISCELLANEOUS PROVISIONS**

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

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

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

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

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

- (a) upon personal delivery;
- (b) upon telephonically confirmed delivery by fax;

(c) upon receipt of an e-mail or other electronically transmitted form of communication;

(d) on the first business day after receipted delivery to a courier service that guarantees next-business-day delivery, under circumstances where such guaranty is applicable; or

(e) on the third business day after mailing, by certified or registered mail.

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

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