

# **Bylaws of the Breadroot Cooperative**

## **Article I: Membership**

### **1.1 Definitions**

"Member" and "membership" as used in these Bylaws shall mean members of the Cooperative who are current in their subscription stock purchases and who have not been terminated pursuant to this.

### **1.2 Designation and Qualifications**

Any human individual or organization of individuals that supports the principles, policies, and purposes of the Cooperative may qualify to be a member. The Cooperative shall have two classes of members, Regular and Associate. Regular memberships shall consist of individuals and their families or dependents, or joint memberships as defined in this Article. Associate membership shall be any partnership, firm, unincorporated association, cooperative, corporation or body politic that qualifies for membership. Associate membership shall count as one membership, and have full membership rights thereof. The governing board of the organization that is an associate member may designate a representative to vote that organization's vote.

### **1.3 Method of Acceptance**

Anyone may become a member of the Cooperative by completing a membership application and buying membership equity in the form of 40 (forty) shares of common stock. The Board of Directors must approve the application. Membership equity may be purchased on a subscription basis, with the period of subscription to be determined by the Board. Membership paid by subscription shall ensue upon purchase of two shares of common stock. The Cooperative shall keep a record of each member's subscription. Upon acceptance for membership, each member shall be given a membership number and membership card, which will serve as membership certificate. Purchase of forty shares shall constitute full payment for membership, and no further obligation will be required for membership.

### **1.4 Joint Membership**

No more than two people may apply for a joint membership, and, subject to their compliance with the requirements set forth in Section 2 of this article, may be accepted for such membership. The persons applying for a joint membership must share a household, i.e., address and kitchen. The terms "member" and "membership" as used in these Bylaws shall be deemed to include a joint membership, and any provisions relating to the rights and liabilities of membership shall apply equally with respect to holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows: (a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall have the effect of constituting a joint waiver of notice of the meeting; (b) The vote of either separately or both jointly shall constitute one joint vote; (c) A waiver of notice signed by either or both shall constitute a joint waiver; (d) Notice to either shall constitute notice to both; (e) Expulsion or withdrawal of either shall terminate the joint membership; (f) Either, but not both, may be elected or appointed as an officer or Director, provided that both meet the qualifications for such office.

### **1.5 Conversion of Membership**

A membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and the second party to the joint membership to comply with the

articles of incorporation, Bylaws and rules and regulations adopted by the Board of Directors. The outstanding membership certificate shall be surrendered, and shall be reissued by the Cooperative in such manner as shall indicate the changed membership status. Upon written request of either party to a joint membership, or upon the death of either party, such membership shall be converted to a single membership. The outstanding membership certificate shall be surrendered, and shall be reissued by the Cooperative in such manner as shall indicate the changed membership status.

### **1.6 Notice and Waiver**

Whenever notice is required by these Bylaws to be given to any member, such notice shall be given either personally, by standard mail, or by electronic mail as stipulated by the member. It shall be mailed to the addresses listed for the members on their membership applications. A signed waiver of notice is equivalent to personal notice for the members so signing. The waiver may be signed at any time.

### **1.7 Limitations**

No member may transfer a membership or any right arising therefrom, except as provided for in these Bylaws. No member may hold more than one membership in the Cooperative.

### **1.8 Membership Termination**

Any member may resign from membership in the Cooperative at any time by written resignation delivered or mailed to the Board of Directors. Any such resignation shall be effective upon receipt thereof. At any time, if a member shall fail to comply with the requirements of these Bylaws, or other duly enacted rules of the Cooperative, the Cooperative may elect to cancel the membership. Procedures for membership termination will be determined by the Board and approved by a majority vote of the members voting at a meeting called and conducted pursuant to Article 3. When a membership has ended in accordance with this Section, the balance existing in each membership's equity may be refunded, upon request of the member. The refund will be subject to the Board determining when money is available for refunds and how much may be prudently refunded each fiscal year. In the event a member shall desire to transfer their membership stock to another person, the Cooperative shall reserve the prior right to acquire the stock so offered for transfer. If the Cooperative waives its right to purchase by failing to act within sixty days, a member may then transfer the stock to anyone eligible for membership pursuant to this Article.

### **1.9 Equity Forfeiture**

If a member fails to request a refund of the membership's equity, the funds in the account may be forfeited to the Cooperative as follows: (a) No sooner than two years after the membership terminated, but no more than three years after the membership terminated, the Cooperative shall mail a reminder notice to the former membership's last known address that, according to the membership contract signed by the member, the member will be deemed to have donated the member's equity to the Cooperative, if the member fails to request a refund, as per Section 8 of this Article. (b) If the former member has not requested the refund, as per Section 8 of this Article, within three years of the date the membership terminated, the member shall thereby have indicated that the member donates all these funds to the Cooperative, and those funds shall at that time become a donation to the Cooperative.

### **1.10 Membership Equity**

The Board of Directors may propose changes to the provisions for membership equity. Any changes will be presented to the membership for approval by a majority vote of the members voting at a meeting called and conducted pursuant to Article 3.

### **1.11 Special Provisions for Membership**

The Cooperative may establish special provisions for memberships, such as discounts for purchases, volunteer working incentives, low-income memberships, and other categories as deemed appropriate by the Board of Directors. The membership shall be notified thirty days prior to such provision taking place by mail and a posting in the principal office. *Amended April 11 2015.*

## **Article II: Rights and Liabilities of Members**

### **2.1 Property Interest of Members**

In the event of dissolution of the Cooperative, after all debts and liabilities of the Cooperative have been paid, and all capital furnished through membership subscription shall have been retired as provided in these Bylaws, the remaining property and assets of the Cooperative shall be distributed among the members as a patronage dividend pursuant to Article 7.

### **2.2 Non-liability for Debts of the Cooperative.**

The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

## **Article III: Meetings of Members**

### **3.1 Place of Meeting**

The location of the membership meetings shall be in Rapid City, SD. The exact location of these meetings shall be set by the Board and posted in the principal office.

### **3.2 Annual Meeting**

The annual membership meeting shall be held within six months of the close of the fiscal year. The meeting shall be held at a time and place set by the Board and posted in the principal office.

### **3.3 Special Meetings**

Special membership meetings may be called by the President, Board of Directors, or members having at least one-fifth of the votes entitled to be cast at such meeting.

### **3.4 Notice of Meetings**

Written notice of a membership meeting of the Cooperative, stating the place, day, and hour, and in case of a special member meeting the purposes for which the meeting is called, shall be mailed to members no fewer than ten nor more than thirty days before the meeting.

### **3.5 Quorum**

The quorum at membership meetings shall be at least one-tenth of the current membership up to one hundred total members plus at least five percent of additional members. In determining a quorum at any meeting involving a question submitted to a vote by ballot, members present, as well as those represented by completed and signed ballots, shall be counted for the quorum, subject to Section 7 of this Article.

### **3.6 Organization**

The President or someone appointed by the Board shall chair the membership meetings. Minutes shall be taken by the Secretary of the Cooperative, or, in the absence of the Secretary, by someone appointed by the Chair. The order of business shall be approved by the members.

### **3.7 Voting Procedures**

All current members, whether fully paid-up or not, may vote for directors and on bylaws, amendments and other questions in person or by completed and signed ballot, at a membership meeting duly called for such business. Each member shall be entitled to only one vote upon each matter submitted to a vote of the membership. Elections for Board of Directors and any proposed changes to the Bylaws shall be conducted by ballot. The Secretary shall post the sample ballots, including the exact wording of proposed Bylaw changes, in the Cooperative's principal office no fewer than thirty days before the membership meeting. Voting shall commence with the posting of the ballots. The Secretary shall provide for the opportunity for arguments on both sides of any proposal to be presented to the membership when or before absentee ballots are distributed. Members may vote in person at the Cooperative's principal office. All members not voting in person shall be mailed a ballot at least ten days before the date of the meeting. Ballots not submitted in person at a membership meeting shall be delivered to the Cooperative no later than one day before the membership meeting is scheduled to begin and shall contain the member's name, number, signature, and date of signing. The member's name, number, signature, and date may appear across the seal of a sealed envelope containing the ballot.

## **Article IV: Directors**

### **4.1 General Powers**

The business and affairs of the Cooperative shall be managed by the Board of Directors, except as specifically modified by these Bylaws. The Board may adopt such rules, regulations and resolutions not inconsistent with the Articles and the Bylaws as it may deem proper for the conduct of its meetings and the management of the Cooperative. Specifically, these shall include, but not be limited to the following: (a) Setting rules for purchases of common stock by subscription (b) Setting policies to define and implement the purpose and goals of the Cooperative; (c) Long range financing; (d) Selection, evaluation, compensation, hiring, and firing of the Cooperative's general manager; (e) Defining the duties of the employees; (f) Employing an auditing firm; (g) Retaining legal counsel; (h) Approving basic changes in financial structure; (i) Approving major plans and commitments; (j) Setting wage and benefit structure.

### **4.2 Number and Terms of Directors**

The number of directors shall be at least 7 and at most 11. The number of directors may be increased or decreased by the membership as needed, at a membership meeting called and conducted pursuant to Article 3. The directors shall be elected at the annual meeting to the term of two years, with directors elected in groups of three and four in alternating years to provide for overlapping terms. The temporary Board named in Article 10 of the Articles of Incorporation shall serve until the first membership meeting, when the first Board shall be elected by the members. Nominations for the first Board shall specify which three directors are to serve for one year and which four are to serve for two years, to provide for overlapping terms in subsequent Board elections. *Amended April 2016*

### **4.3 Qualifications**

To qualify as a director, one must be a member of the Cooperative, or a representative of a member who is other than a natural person.

#### **4.4 Nominations**

No fewer than 70 days, and no more than 120 days, before the date of the meeting at which the directors are to be elected, the Board of Directors shall appoint a Nominating Committee, consisting of not fewer than three members of the Cooperative. The Secretary shall serve notice to the members that a Nominating Committee has been appointed. No fewer than 60 days before the meeting, the Nominating Committee shall prepare and post at the Cooperative's principal office a list of nominees for directors, which may include a greater number of candidates than are to be elected. Any 15 or more members acting together may make other nominations by petition no fewer than 40 days prior to the meeting, and the Secretary of the Cooperative shall post such nominations in the same location where the Nominating Committee's list of nominations is posted. The ballot serving the election of directors shall contain the names and addresses of the candidates, and shall specify separately the nominations made by the Nominating Committee and the nominations made by petition, if any. No nominations will be allowed at the time of the membership meeting.

#### **4.5 Resignations**

Any director may resign at any time by written notice to the Board, or by oral notice made at any meeting of the Board. The resignation shall take effect at the time the notice is received or at such a later time as is specified in the notice of resignation. The acceptance of the resignation shall not be necessary to make it effective.

#### **4.6 Removal**

The Board may remove any director who fails to attend three consecutive meetings of the Board, by a vote of two-thirds of the directors at the meeting. Any director who does not follow the code of conduct policy can be removed from the Board by a 2/3-majority vote of the remaining Board. A director may be removed upon a majority vote of members voting in a duly called membership meeting. Notice of such meeting shall include notice of the vote to remove the director.

*Amended April 2016*

#### **4.7 Vacancies**

Any vacancies shall be filled by interim appointment approved by a majority of those directors then in office unless the vacancy occurs within two months before the next annual meeting. The interim director shall serve until the next annual meeting, at which time an election will be held to fill the remainder of the vacated term, if any remains.

#### **4.8 Board Meetings**

The Board of Directors shall meet regularly at intervals to be determined by a majority of the entire Board. The time and place for regular meetings shall be determined by the Board and posted in the principal office. A quorum for Board meetings shall consist of a majority of the directors in office. Directors may participate by telephone as provided in South Dakota law. Special meetings can be called by the President, and all Board members shall receive notice in writing at least seven days prior to such a meeting.

#### **4.9 Voting**

An act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

#### **4.10 Board Committees**

The Board or President shall designate committees from time to time to carry out the responsibilities of the Board to formulate policy and oversee the general operations of the Cooperative. The membership shall be informed of the various committees created by the Board. The Board or President shall appoint the members of the committees, and shall designate the chairs of each. Appointments by the President are subject to the approval of the Board. Non-director members may be voting members of any committee of the Board, but majority of every committee shall be directors, except as otherwise specified in these Bylaws.

#### **4.11 Executive Committee**

The Board of Directors may elect an executive committee, to consist of the officers of the Cooperative. When the Board is not in session, such committee shall have all powers of the Board except in respect to: (a) Powers reserved by the Board to itself; (b) Apportionment or distribution of proceeds; (c) Election of officers; (d) Filling of vacancies in the Board; and (e) Amendments to the Bylaws. The Board may elect other directors as alternates for members of the executive committee.

#### **4.12 Directors' Compensation**

Only the members may establish compensation or other benefits for a director, not available generally to officers and employees, for services as director. Such compensations shall be established at a meeting called and conducted pursuant to Article 3.

### **Article V: Officers**

#### **5.1 Principal Officers**

The principal officers of the Cooperative shall be a President, a Vice-President, a Secretary, and a Treasurer. They shall have the usual duties associated with their offices. The offices of Secretary and of Treasurer may be held by the same person.

#### **5.2 Term of Office**

The President, Vice-President, Secretary and Treasurer shall be elected by the Board of Directors for the term of one year.

#### **5.3 Removal**

Any principal officer may be removed by a vote of a majority of the Board whenever in their judgment the best interests of the Cooperative will be served thereby.

#### **5.4 Resignation**

If the office of the President shall become vacant, the Vice-President shall become President. If the office of the Vice-President becomes vacant, the Board of Directors shall elect a Vice-President to complete the term of the office.

### **Article VI: Finances.**

#### **6.1 Budget and Finance Committee**

The Budget and Finance Committee shall consist of the General Manager, or a staff person designated

by the General Manager, and three or more members of the Board of Directors and any other persons appointed by the Board, or appointed by the President and approved by the Board.

## **6.2 Budget**

The Cooperative shall have a budget drafted by the Budget and Finance Committee and ratified by the Board. The budget shall be monitored by the Board of Directors and the General Manager. A financial review of the Cooperative shall be conducted at least every two years unless doing so would severely impair fiscal soundness of the Cooperative.

## **6.3 Unbudgeted Capital Expenditures**

Unbudgeted capital expenditures over \$500.00 are to be approved by the Board of Directors.

## **6.4 Fiscal Year**

The fiscal year of the Cooperative shall be set by the Board of Directors.

## **Article VII: Distribution of Savings**

### **7.1 Cooperative Operation.**

This Cooperative shall be operated on a cooperative basis in carrying out its business within the scope of the purpose, powers and limitations provided in the Articles of Incorporation and South Dakota law. Each patronage transaction between this Cooperative (including enterprises in which the Cooperative has an equity interest) and each member shall be subject to and shall include as a part of its terms each provision of the Articles of Incorporation and Bylaws of this Cooperative, whether or not the same be expressly referred to in said transaction. Each member for whom this Cooperative procures or markets goods or services shall be entitled to the net income arising out of said transaction as provided in this Article unless such member and the Cooperative have expressly agreed to conduct said business on a non-patronage basis. No nonmember with whom this Cooperative does business shall be entitled to the net income arising out of said transactions.

### **7.2 Determination of Net Proceeds**

The Board of Directors of the Cooperative shall annually determine and distribute net proceeds as provided in this Article. In determining net proceeds, there shall be deducted from total proceeds: a) All operating expenses and costs; b) The costs of supplies, commodities, equipment and other property or services procured or sold for patrons; c) The cost of services performed for patrons; d) All taxes and all other expenses; e) Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices. The foregoing amounts shall be determined in accordance with the accounting treatment used by the Cooperative in calculating its taxable income for federal income tax purposes; provided, however, that the Board of Directors may prospectively adopt a reasonable alternative method. Expenses and cost of goods or service shall include without limitation such amounts of depreciation, cost depletion and amortization as may be appropriate, amounts incurred for the promotion and encouragement of cooperative organization, and taxes other than federal income taxes. Such net income or net loss shall be subject to adjustment as provided in this Article relating to losses.

### **7.3 Allocation of Patronage Income**

The net proceeds of this Cooperative from patronage business for each fiscal year, less any amounts

that are allocatable to a capital reserve, educational fund, or that are otherwise allocated in dissolution, shall be allocated among the members in the ratio that the quantity or value of the business done with each member bears to the quantity or value of the business done with all patrons. The Board of Directors shall reasonably and equitably determine whether allocations shall be made on the basis of quantity, value or business done with department or divisions, or some combination thereof.

#### **7.4 Educational Fund**

The Cooperative shall create an educational fund to be used in teaching or promoting cooperative organization or principles in a manner prescribed by the Board of Directors. An amount not less than one percent nor more than five percent of the net proceeds shall be set aside for the educational fund. Such fund shall for all purposes except the computation of net proceeds be deemed an expense of operation of the Cooperative.

#### **7.5 Treatment of Patronage Losses and Write-downs**

If the Cooperative incurs a net loss in any fiscal year from patronage business, or if its net proceeds are reduced as a result of a write-down of any interest it holds in another cooperative, to the extent of the amount of such net loss or write-down, the Board of Directors, having due consideration for all of the circumstances which caused the net loss or write-down, may take one or more of the following actions: (a) Offset all or part of such net loss write-down against the capital reserve; (b) Cancel outstanding written notices of allocation; (c) Establish accounts payable by members that may be satisfied out of any future amounts that may become payable by the Cooperative to each member or; (d) Carry all or part of the loss or write-down forward to be charged against future net proceeds of the Cooperative. Any cancellation of written notices of allocation and/or establishment of accounts payable shall be made among the members in a manner consistent with the allocation of net proceeds. There shall be no right of assessment against members for the purpose of restoring impairments to capital caused by net losses or write-downs.

#### **7.6 Distribution of Net Proceeds**

The net proceeds allocated to each member shall be distributed annually to each member as a patronage refund. Because of differences in the manner in which net income is calculated for federal regular and alternative minimum tax purposes, the amount of net income allocated to a patron for regular federal income tax purposes may differ from the amount of net income allocated to a patron for federal alternative minimum tax purposes. Patronage refunds shall be distributed in cash, credits, stock, certificates of interest, revolving fund certificates or any combination thereof as qualified or non qualified notices of allocation as designated by the Board of Directors. To the extent that the Cooperative's net income as determined for federal alternative minimum tax purposes exceeds the Cooperative's net income as determined for federal regular tax purposes, the allocated patronage equity representing such excess may be designated as 'AMT-only.' The non-cash portion of a patronage refund distribution, in whatever form issued, shall conform to the requirements of and shall constitute a written notice of allocation as defined in 26 U.S.C. § 1388. For either regular income tax or alternative minimum tax purposes, the Board of Directors shall have the discretion to designate written notices of allocation as qualified written notices of allocation or as non qualified written notices of allocation as defined in 26 U.S.C. §1388 or any combination thereof; provided, that the amount designated as 'qualified' shall not exceed five times the portion of such patronage refund that is paid in cash. Written notices of allocation may be paid in whole or in part at such time, in such manner, and in such order as shall be determined by the Board of Directors in its sole discretion. The Board of Directors shall not be



required to but may establish policies for the payment of written notices of allocation upon the holder's death, retirement or reaching specified age. The distribution of patronage refunds for federal alternative minimum tax purposes shall not create an obligation upon the Cooperative to pay to members at any time in cash any amounts that are greater than the amounts of cash that would be paid if the net income from patronage was not calculated in such manner. Any written notice of allocation that is designated 'AMT-only' may be canceled by the Board of Directors to the extent that the Cooperative's net income as determined for federal regular tax purposes exceeds the Cooperative's net income as determined for federal alternative minimum tax purposes. No transfer or assignment of written notices of allocation shall be binding upon the Cooperative without its consent.

### **7.7 Capital Reserve**

The Board of Directors shall cause to be created a reasonable capital reserve for necessary purposes of the Cooperative. Any of the net proceeds may be credited to allocated or unallocated reserves, and shall be credited to members in accordance with the ratio which their patronage bears to total patronage.

### **7.8 Non-Patronage Loss**

If the Cooperative incurs a net loss on its non-patronage business, such net loss generally shall be chargeable against the capital reserve unless and to the extent the Board of Directors, having due consideration for the circumstances giving rise to such net loss, determines that it is reasonable and equitable to allocate all or part of such a net loss against the Cooperative's current or future net income from patronage business.

### **7.9 Netting and Allocation**

In the event of a loss in one or more departments or divisions of operation of the Cooperative, but not of such magnitude as to be a cause of overall loss for the fiscal year of the Cooperative, such loss or losses may be prorated against each of the remaining profitable departments or divisions on the basis of their respective percentage of the total net proceeds during such fiscal year. In the event the Cooperative shall incur a net loss in any fiscal year, the Board of Directors, in its sole discretion, may (a) charge such net loss against any earned surplus or paid-in surplus which is unallocated, or against any unallocated reserve other than valuation reserves; or (b) may recover the amount of such loss from prior or subsequent year's net margins or savings. If such loss exceeds the total of said unallocated earned surplus and unallocated reserves, or in any event, if the Board of Directors so elects, the amount of such loss may be recovered from prior or subsequent years' net margins or savings. In no event shall the Board of Directors have the authority to make any assessment against the members or patrons. This section shall not be construed or administered in such a way as to deprive the Cooperative of the right to carry back or carry forward net operative losses to past or future years, in accordance with the applicable provisions of the Internal Revenue Code or state taxing statutes.

### **7.10 Non-qualified Written Notices of Allocation**

The Cooperative is authorized to issue an unlimited amount of patronage surplus as patronage refunds in the form of non qualified written notices of allocation, as defined in 26 U.S.C. 1388 (d). Non qualified written notices of allocation (patronage surplus) will generally be retired only upon the distribution of assets on liquidation or dissolution of the Cooperative and shall be treated as unallocated surplus for all purposes other than distribution of assets on liquidation or dissolution. However, at the end of any fiscal year, the Board may, in its discretion, pay out these non qualified written notices on an equitable basis so long as the Board is first satisfied the Cooperative has sufficient financial resources for such a

payment and that the Cooperative has, for that year, sufficiently retired qualified written notices of allocation.

**Article VIII: Consent to the Taking of Patronage Distributions into Income 8.1**

Each person (including individuals, partnerships, and business of cooperative corporations) who hereafter applies for and is accepted for membership in this Cooperative (directly or indirectly through an enterprise in which the Cooperative has an equity interest) shall, by this act alone, consent that the amount of any distributions with respect to patronage which are made in qualified written notices of allocation (as defined in 26 U.S.C. 1388), and which are received by the member from this Cooperative, will be taken into account by the member at their stated dollar amounts in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which qualified written notices of allocation were received--it being the intent of this Bylaw to provide a consent binding on all members who retain or obtain membership in this Cooperative after the adoption of this Bylaw and receipt of a written notification and copy of this Bylaw, for the purpose of making such distribution "qualified written notices of allocation" within the meaning of the United States Income Tax laws. This consent extends further to each member receiving distributions from the redemption of non qualified written notices of allocation. A member's written consent on file at the Cooperative shall substitute for receipt of a written notification and copy of this Bylaw.

**Article IX: Books and Records 9.1**

The Cooperative shall keep a correct and complete record of accounts for the Cooperative, and the Board of Directors shall keep copies of the minutes of the membership meeting and meetings of the Board of Directors.

**Article X: Seal 10.1**

The Cooperative shall have a seal.

**Article XI: Amendments 11.1**

Bylaws may be adopted, amended, or repealed only by the members, unless the members adopt a bylaw which permits the Board to make and amend specified Bylaws. The Board may propose changes to these Bylaws for consideration by the members. Any bylaw proposed for adoption, amendment, or repeal by the Board shall be reported at the next member meeting. Any such bylaw shall be submitted to a vote of the members, and the voting shall be conducted in accordance with Article 3.

**Article XII: Severability 12.1**

If any section, clause, provision, or portion of these Bylaws is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Bylaws shall not be affected thereby.

*Adopted December 8<sup>th</sup> 2000.*

*Amendments adopted as noted on affected articles.*