

**BYLAWS**  
**OF**  
**CBH COOPERATIVE**

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, have this day adopted Restated Bylaws of CBH COOPERATIVE under and pursuant to Chapter 47-15 of the South Dakota Codified Laws of the State of South Dakota and all Acts amendatory thereof and supplemental thereto and to that end hereby adopt the following Restated Bylaws which shall supersede the existing Bylaws and Amendments thereto:

**BYLAW I**  
**MEMBER MEETING**

**Section 1. Annual Meeting.** The annual meeting of the members of this cooperative will be held within six months after the close of the fiscal year and designated in the notice of meeting at such time and place as may be determined by the Board of Directors.

**Section 2. Fiscal Year.** The fiscal year of this cooperative shall commence on the first day of October and end on the thirtieth day of September of each year.

**Section 3. Notice.** The secretary shall give notice of the annual meeting or special meetings to members not less than ten days or more than sixty days before the date of such meeting. The notice shall include the place, date, hour and for special meetings the purpose for which the meeting is called. The place of the meeting may be virtual if the written notice specifies a means of communication to conduct the meeting. A virtual meeting is any means of communication through which members may communicate and vote at the meeting.

**Section 4. Quorum** A quorum at a meeting of the members shall be fifty (50) members. Once a member is represented for any purpose at a meeting, such member is deemed present for quorum purposes for the remainder of the meeting. The chair of any meeting of the members shall have the power to adjourn a meeting of the members for lack of a quorum.

**Section 5. Votes** A majority vote of a quorum of members shall decide all questions, unless there is a greater threshold required or provided for under the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative, or these Bylaws.

**Section 6. Order of Business.** At such annual meeting, reports covering the business of the company for the previous fiscal year shall be submitted to the members by the officers. The order of business shall be substantially as follows:30

- (1) Registration and Call to Order,
- (2) Reading of minutes,
- (3) Reports of officers and committees,
- (4) Unfinished business,
- (5) New business,
- (6) Report director election results,
- (7) Adjournment.

**Section 7. Special Meetings.** Special meetings of the members may be called by the chairman, or board of directors of the cooperative or upon the written petition of at least twenty percent of the voting members.

**Section 8. Technology, Virtual Meetings, and Governance.** The Board of Directors is encouraged to adopt technology to enhance member participation in the governance process, most particularly notice of a member meeting, meeting participation, transparency, recordkeeping, and minutes. Advancements in technology are usually an “add on” to an existing practice that is unchanged, in which case add-ons are always permissible. For example, adding an internet or virtual meeting alternative does not exclude attendance by those members who attend the meeting in person. Moreover, the law sometimes requires that an enhancement (electronic ballots for absent members, for example) must be accompanied by an existing practice (signed written ballots for absent members). Policies that adopt technology at the exclusion of an existing practice may be lawful but exclusion of practices that, for example, deprive some members of notice and participation must be compelling, such as a pandemic with the danger of person-to-person transmission and infection, and the analysis of compelling should include consideration of never before used technologies such as smartphones or land-line phones balanced against the exigencies of the business and its members. Influences outside of the cooperatives control, like a pandemic, may lead to a board of director’s decision to suspend or postpone member meetings out to and as long as to the next regularly scheduled member meeting, and such decisions shall be acceptable under these bylaws and would supersede Bylaw 1, Section 1. Such change should be communicated through newsletters and/or correspondence.

**Section 9. Signed Ballot.** Any and all votes of the members under Article X of the Articles of Incorporation of the Cooperative shall only be considered by way of signed ballot or electronic means, as determined by the Board of Directors, mailed or electronically transmitted to each member as provided for under Section 3 of this Article. Such a signed ballot, if received within the time required by the laws of the State of South Dakota and as provided for with the notice of the meeting of the members, shall be counted as if the member were present and voting in-person on each motion or resolution provided for with said notice. A signed mail ballot shall only be valid if properly marked by the member or member’s principal officer, cast in a sealed envelope, and authenticated by the signature of such member or member’s principal officer. In the event that future technology is adopted by CBH for electronic ballots, a signed electronic ballot shall only be valid if properly marked by the member or member’s principal officer and authenticated as shall be determined by written policy of the Board of Directors.

## **BYLAW II.** **BOARD OF DIRECTORS**

### **Section 1. Number.**

The Board of Directors shall comprise of not less than seven (7) directors elected by the members. The Board of Directors may adjust the number of directors at the Board’s discretion for, including but not limited to, mergers, acquisitions, changes in the cooperative’s geography, patron’s representation, and future board operations. The Board shall establish territorial districts, which may be adjusted from time to time by the Board, for the purpose of determining director representation across all trade areas. The Board shall review the boundaries of each territorial district at least every 5 years and make such adjustments as necessary to apportion the

membership between the territorial districts by reviewing and considering (i) membership in the Cooperative, (ii) Patron equity in the Cooperative, and (iii) Cooperative assets, infrastructure and sales.

**Section 2. Nominations.** No later than ninety (90) days prior to the annual meeting of the members, the Board of Directors shall appoint a nominating committee for the purpose of nominating one or more members or a principal officer of a member for each director position. A member or the principal officer of a member may self-nominate himself or herself for a director position if they submit to the nominating committee a completed director application form (90) days prior to the annual meeting of the members, provided such member or principal officer of a member has met the qualifications of Section 3 of this Article II. No later than sixty (60) days prior to said annual meeting of the members, the nominating committee shall place into nomination one or more members or a principal officer of a member, including self-nominated members or principal officer of a member, for each director position.

**Section 3. Director Qualifications.** No member or principal officer of a member may be nominated, elected, appointed, or serve as a director if such member ceases to be a member. No member or principal officer of a member may be nominated, elected or appointed as a director at or above the age of seventy (70) or if they are not an active producer as defined in these bylaws. A director shall not be regularly employed by the Cooperative. A director shall not have any loyalty to other organizations that transcend or interfere with the director's loyalty to the Cooperative. A director shall not, at any time during the term of such director, serve as an officer, director or manager of, or advisor to, any organization which, in the sole determination of the Board of Directors, is significantly competing with the Cooperative. Directors shall transact at least the minimum amount of patronage-based business as determined by the Board of Directors and outlined in the Director's policy handbook, at its sole discretion from time to time.

**Section 4. Removal.** The members or Board of Directors may at any meeting called for that purpose, by a majority vote of the members, or the Board of Directors, remove any director or officers for cause upon notice and hearing as provided by law; and in case of such removal to fill the vacancy. Any director, who violates any of the following, shall be disqualified from the Board by a majority vote of directors; (a) who missed a total of six (6) regular or special meetings within the cooperative's fiscal year;(b) whose account remains delinquent for more than 90 days; (c) flagrant and continuous non-use of services offered by the cooperative; and (d) if a majority of the Directors find after hearing that any Director is in significant competition with or is affiliated with any enterprise that is in significant competition with this Cooperative, such person shall cease to be a Director.

**Section 5 Term.** A director's elected term shall be for a period of three (3) years. The term of each director shall commence upon the adjournment of the annual meeting of the members. A director's term shall expire upon the adjournment of the annual meeting of the members at the end of his or her three (3) year term. The terms of the directors shall be staggered so that as nearly as possible, an equal number of directors are elected at each annual meeting. Each director shall serve until (i) a qualified successor shall have been duly elected or appointed, (ii) the director's death, (iii) the director's resignation, or (iv) the removal of a director in the manner provided for in Section 4 of this Article II. The board may, from time to time, establish a term that is other than three years to achieve staggered terms.

**Section 6. Vacancies.** Any vacancy in the board, other than by expiration of a term of office may be filled by a majority vote of the remaining directors. In case a vacancy in the Board of Directors extends beyond the next annual meeting, such vacancy may be filled until such meeting, at which meeting a director shall be chosen by the members for the unexpired term of such vacancy in accordance with these bylaws otherwise, the vacancy may be filled by the directors for the unexpired term.

**Section 7. Directors' Policy Handbook.** Each Director shall fully comply with the Directors' policy handbook established and amended from time to time by the Board of Directors. The Board of Directors, not including a director thought to be in violation of the handbook, may remove a director who is disqualified by the policies in that handbook. This discretion of removal supplements removal in Section 4 above. The remaining Directors may also fill any vacancy caused by such removal until the next annual meeting of the members

**Section 8. Regular Board Meetings.** Regular meetings of the board shall be held at such time and place as may be determined by the board of directors. As approved by a majority of directors, individual directors may participate in a meeting of such board or committee by means of teleconference or similar technology that allows all persons participating in the meeting to communicate and vote. Director participation constitutes presence in person at a meeting.

**Section 9. Special Board Meetings.** Special meetings of the board of directors may be held at any time upon the call of the chairman or by a majority of the board. Each member of the Board of Directors shall be duly notified of all such meetings.

**Section 10. Quorum.** A majority of the members of the board shall constitute a quorum. Unless otherwise provided by law or these Bylaws, the decision of a majority of the directors made when duly assembled in person or participating by board approved teleconference or similar technology shall be valid.

**Section 11. Action Without Meeting.** Any action which may be taken at a meeting of the Board of Directors, or of a lawfully constituted committee, may be taken without a meeting if set forth and approved by all directors or by all committee members, as the case may be. The action shall be effective on the date specified, or if no date is specified, on the date on which the last signature is placed on the writing, which may include electronic records created by texts or emails.

**Section 12. Executive Committee.** The Executive Committee shall consist of the Chairman, Vice Chairman and Secretary. The committee shall exercise authority as designated by the Board but shall not have the power to apportion or distribute proceeds, election of officers, filling of vacancies in the board, and amendments of the bylaws.

**Section 13. Bonds and Insurance.** The Board of Directors may require the officers, agents, or employees charged by this cooperative with responsibility for the custody of any of its funds or property to give adequate bonds. Such bonds, unless cash security is given, shall be furnished by a responsible bonding company and approved by the Board of Directors and the cost thereof shall be paid by this cooperative. The Board of Directors shall provide for the adequate insurance of the property of the cooperative, or property which may be in the possession of this cooperative, or stored by it, and not otherwise adequately insured, and in addition adequate insurance covering liability for accidents to all employees and the public.

**Section 14 Duties and Powers.** The board of directors, subject to restrictions of law, the Articles of Incorporation, or these Bylaws, shall exercise all the powers of this cooperative and perform all acts which said board may deem in the best interests of this cooperative and its members. The powers of the board of directors include the authority to declare the patronage refunds, the manner and time of distribution to patrons, and the power to manage allocated or unallocated reserves. The powers of the board of directors shall include, without limiting in any other way any other powers which said board shall have in accordance with the laws of the State of South Dakota, the Articles of Incorporation, and the Bylaws of this cooperative, the power to sell, lease, mortgage, or otherwise dispose of all or any part of the property of this cooperative and to perform all acts which said board may deem in the best interests of the cooperative or its members, or of the cooperative movement in general.

**Section 15. Compensation.** The compensation of the directors may be determined by the Board of Directors.

**Section 16. Governance.** The Board of Directors shall have the power and authority to adopt and enact policies, rules, and procedures governing any and all of the business or affairs of the Cooperative that are not inconsistent with the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative or these Bylaws.

### **BYLAW III.** **OFFICERS**

**Section 1. Election.** The officers of this cooperative shall be a chairman, vice chairman, secretary, and treasurer to be elected by the directors from among their number, although the secretary and treasurer need not be directors. The term of all officers shall be until the next annual meeting of the directors and/or until their successors are elected and qualified.

**Section 2. Chairman.** The chairman shall (1) preside over all meetings of the cooperative and of the board of directors, (2) call special meetings of the cooperative and of the board of directors, (3) perform all acts and duties usually performed by an executive and presiding officer and (4) sign all stock certificates and such other papers of the cooperative as chairman may be authorized or directed to sign by the board of directors, provided that the board of directors may authorize any person to sign any or all checks, contracts, and other instruments in writing on behalf of the cooperative. The chairman shall perform such other duties as may be prescribed by the board of directors.

**Section 3. Vice-Chairman.** In the absence or disability of the chairman, the vice chairman shall perform the duties of the chairman, provided, however, that in case of death, resignation or disability of the chairman, the board of directors may declare the office vacant and elect a successor.

**Section 4. Secretary.** The secretary shall keep a complete record of all meetings of the cooperative and of the board of directors and shall have general charge and supervision of the books and records of the cooperative. The Secretary shall sign all stock certificates with the Chairman and such other papers pertaining to the cooperative as they may be authorized or directed to do so by the board of directors. The Secretary shall serve all notices required by law and by these Bylaws and shall make a full report of all meetings and business pertaining to the office to the members at the annual meeting. The Secretary shall keep the corporate seal and the stock records of the cooperative, complete and countersign all certificates issued and affix the corporate seal to all papers requiring such seal. The Secretary shall keep a proper stock record, showing the name of each member of the cooperative, the number of the stock certificates and date of issuance, surrender, cancellation or forfeiture. The Secretary shall make all reports required by law and shall

perform such other duties as may be required of the Secretary by the cooperative or by the board of directors. Upon the election and qualification of the successor, the secretary shall turn over to them all books, and other property belonging to the cooperative that may have in their possession. The Secretary may delegate any and all duties to any employee of the cooperative with the approval of the board of directors except such duties as are specifically required by law to be performed by the treasurer.

**Section 5. Treasurer.** The treasurer shall be the custodian of all funds, securities, and property of the cooperative. The Treasurer shall deposit all funds in the name of the cooperative and disburse the same upon the authority of the board of directors and the Treasurer shall perform such other duties as may be prescribed by the board of directors. The Treasurer may delegate any and all duties to any employee of the cooperative with the approval of the board of directors except such duties as are specifically required by law to be performed by the treasurer.

**Section 6. Secretary-Treasurer.** Whenever the board of directors may so order, the offices of secretary and treasurer may be held by the same person, and such person shall be designated as secretary-treasurer. The secretary-treasurer may delegate any and all duties to any employee of the cooperative with the approval of the board of directors except such duties as are specifically required by law to be performed by the secretary-treasurer.

#### **BYLAW IV GENERAL MANAGER**

**Section 1. General Manager/CEO and Help.** The Board of Directors may employ a CEO and provide for other help under such contracts of employment and compensation as they may deem advisable and may terminate such employment at their discretion subject to terms thereof. They may also, in their discretion, provide for the operation of the business by other agencies for the benefit of the company, under such contract and upon such terms as they may deem advisable.

**Section 2. General Manager/CEO's Duties.** The CEO actively supervises all the ordinary business of this Cooperative, employs and discharges all other employees of this Cooperative, and performs such additional duties and possesses such additional powers as the Board of Directors may require or delegate to the CEO.

#### **BYLAW V. OPERATION ON A COOPERATIVE BASIS**

**Section 1. Cooperative Operation.** This cooperative shall be operated upon the cooperative basis in carrying out its business within the scope of the powers and purposes defined in the Articles of Incorporation. Accordingly, the net income of this cooperative in excess of amounts credited by the Board of Directors to Capital Reserves shall be accounted for and distributed annually on the basis of allocation units as provided in this Article V. In determining the net income or net loss of this cooperative or its allocation units, the amount of dividends, if any, paid with respect to equity capital or capital stock shall not be deducted or considered. In determining the net income or net loss of this cooperative or its allocation units, there shall be taken into account this cooperative's share of the net income or net loss of any unincorporated entity in which it owns an equity interest, patronage dividends distributed by other cooperatives of which it is a patron and, to the extent determined by the Board of Directors, its share of the undistributed net income or net loss of any corporation in which it owns an equity interest.

Each transaction between this cooperative 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 markets or procures goods or services shall be entitled to the net income arising out of said transaction as provided in this Article V unless such member and this cooperative have expressly agreed to conduct said business on a nonpatronage basis. No nonmember for whom this cooperative markets or procures goods or services shall be entitled to the net income arising out of said transactions as provided in this Article V unless this cooperative agrees to conduct said business on a patronage basis.

**Section 2. Patrons; Patronage Business; Nonpatronage Business.** As used in this Article V, the following definitions shall apply:

- (a) The term “patron” shall refer to any member or nonmember with respect to business conducted with this cooperative on a patronage basis in accordance with Section 1 of this Article V.
- (b) The term “patronage business” shall refer to business done by this cooperative with or for patrons.
- (c) The term “nonpatronage business” shall refer to business done by this cooperative that does not constitute “patronage business.”

**Section 3. Establishment of Allocation Units.** The Board of Directors may establish the entire cooperative as an allocation unit, but if allocation units are established, the Board of Directors shall establish the units on a reasonable and equitable basis, and they may be functional, divisional, departmental, geographic, tax orientation, or otherwise. Tax orientation distinguishes between patrons who patronize the cooperative as a business and deduct the purchases they make from the cooperative as a business expense on the one hand, or, on the other hand, as a consumer who does not deduct those purchases as expenses. The Board of Directors shall adopt such reasonable and equitable accounting procedures as will, in the Board's judgment, equitably allocate among such allocation units this cooperative's income, gains, expenses and losses and, to the extent provided in Section 1 of this Article V, patronage dividends received by this cooperative and its share of income, gain, loss and deduction of other entities in which it owns an interest.

**Section 4. Determination of the Patronage Income or Loss of an Allocation Unit.** The net income or net loss of an allocation unit from patronage business for each fiscal year shall be the sum of (1) the gross revenues directly attributable to goods or services marketed or procured for patrons of such allocation unit, plus (2) an equitably apportioned share of other items of income or gain attributable to this cooperative's patronage business, less (3) all expenses and costs of goods or services directly attributable to goods or services marketed or procured for patrons of such allocation unit, less (4) an equitably apportioned share of all other expenses or losses attributable to this cooperative's patronage business and distributable net income from patronage business that is credited to the Capital Reserve pursuant to Section 8(c) of this Article V. The foregoing amounts shall be 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. Expenses and cost of goods or services shall include without limitation such amounts of depreciation, cost depletion and amortization as may be appropriate, any unit retentions provided in Section 10 of this Article V, 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 Sections 6 and 9(b) of this Article V relating to losses.

In the event that the Association makes an accounting change that is reported on a retrospective basis as currently ordinarily required by generally accepted accounting principles and practices, or in some other similar matter, and the reporting results in a cumulative effect on the earnings of the Association that is not reflected in an adjustment to income in the year of the change, then the Board of Directors of the Association shall make such adjustments to the total net income of the Association for the year of change or subsequent years as it deems necessary or appropriate in order to prevent amounts, either positive or negative, from being omitted in the calculation of the refund payable to patron.

**Section 5. Allocation of Patronage Income Within Allocation Units.** The net income of an allocation unit from patronage business for each fiscal year, less any amounts thereof that are otherwise allocated in dissolution shall be allocated among the patrons of such allocation unit in the ratio that the quantity or value of the business done with or for each such patron bears to the quantity or value of the business done with or for all patrons of such allocation unit. The Board of Directors shall reasonably and equitably determine whether allocations within any allocation unit shall be made on the basis of quantity or value.

**Section 6. Treatment of Patronage Losses of an Allocation Unit.**

(a) **Methods for Handling Patronage Losses.** If an allocation unit incurs a net loss in any fiscal year from patronage business, this cooperative may take one or more of the following actions:

- (i) Offset all or part of such net loss against the net income of other allocation units for such fiscal year to the extent allowed by law;
- (ii) Establish accounts payable by patrons of the allocation unit that incurs the net loss that may be satisfied out of any future amounts that may become payable by this cooperative to each such patron;
- (iii) Carry all or part of the loss forward to be charged against future net income of the allocation unit that incurs the loss;
- (iv) Offset all or part of such net loss against the Capital Reserve; and
- (v) Cancel outstanding Patrons' Equities.

(b) **Allocation of Net Loss Among Patrons of Loss Unit.** Any cancellation of equities and/or establishment of accounts payable pursuant to this Section 6 shall be made among



the patrons of an allocation unit in a manner consistent with the allocation of net income of such allocation unit.

(c) Restoration of Net Loss out of Future Net Income. The future net income of an allocation unit that incurs a net loss may be reduced by part or all of such net loss that was offset against the Capital Reserve, Patrons' Equities of patrons of another allocation unit or against the net income of another allocation unit and may be used to restore the Capital Reserve, restore such Patrons' Equities or to increase the future net income of such other allocation unit; provided that reasonable notice of the intent to do so is given to the patrons of the loss unit.

(d) Board Discretion. The provisions of this Section 6 shall be implemented by the Board of Directors, having due consideration for all of the circumstances which caused the net loss, in a manner that it determines is both equitable and in the overall best interest of this cooperative.

(e) No Assessments against Members or Nonmember Patrons. There shall be no right of assessment against members or nonmember patrons for the purpose of restoring impairments to capital caused by net losses.

### **Section 7. Distribution of Net Income.**

(a) Patronage Refunds. The net income allocated to a patron pursuant to Sections 5 and 9 of this Article V shall be distributed annually or more often to such patron as a patronage refund; provided, however, that no distribution need be made where the amount otherwise to be distributed to a patron is less than a de minimus amount that may be established from time to time by the Board of Directors.

(b) Form of Patronage Refunds. Patronage refunds shall be distributed in cash, allocated patronage equities, revolving fund certificates, securities of this cooperative, other securities, or any combination thereof designated by the Board of Directors (all such patronage refunds referred to collectively herein as "Patrons' Equities"), including, without limitation, the following instruments:

(i) Capital Equity Certificates, in one or more than one class or series, in such designations or denominations, and with such relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, and bearing no interest, dividend or other annual payment.

(ii) Certificates of Indebtedness in one or more than one class or series, in such designations or denominations, and with such relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, and bearing such maturity and rate of interest, if any, as may be fixed by the Board of Directors. Such certificates shall be callable for payment in cash or other assets at such times as may be determined by the Board of Directors.

(iii) Non-Patronage Earnings Certificates, in one or more than one class or series, in such designations or denominations, and with such relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, with no maturity date, and bearing no interest, dividend or other annual payment. Non-Patronage Earnings Certificates may be distributed only to members and to nonmember patrons as part of the allocation and distribution of nonpatronage income. Such certificates shall be callable for payment in cash or other assets at such times as may be determined by the Board of Directors.

(iv) Preferred Capital Certificates in one or more than one class or series, in such designations or denominations, and with such relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors.

(c) Written Notices of Allocation. The noncash portion of a patronage refund distribution that is attributable to patronage business shall constitute a written notice of allocation as defined in 26 U.S.C. Section 1388 which shall be designated by the Board of Directors as a qualified written notice of allocation, as a nonqualified written notice of allocation or any combination thereof as provided in said section.

(d) No Voting Power. Patrons' Equities shall not entitle the holders thereof to any voting power or other rights to participate in the affairs of this cooperative (which rights are reserved solely for the members or Voting Members of this cooperative as provided in these Bylaws), provided that Patrons' Equities held by Voting Members shall be a factor in determining the voting power of such members as more particularly provided in these Bylaws.

(e) Transfer Restriction. Patrons' Equities may only be transferred with the consent and approval of the Board of Directors, and by such instrument of transfer as may be required or approved by this cooperative.

(f) Board Authority to Allow Conversion. The Board of Directors of this cooperative also shall have the authority to allow conversion of Patrons' Equities into Equity Participation Units, Preferred Equities, or such other debt and/or equity instruments of this cooperative on such terms as shall be established by the Board of Directors.

(g) Redemption Discretionary. No person shall have any right whatsoever to require the retirement or redemption of any Patrons' Equities, other than certificates of indebtedness, non-patronage earnings certificates or preferred capital certificates, any of which may contain rights, preferences, privileges or limitations that are other than an indefinite allocated equity interest whose redemption is solely with the exclusive power and discretion of the Board of Directors to redeem as and when it determines in Bylaw VIII. Equity Capital Management Policy, or of any allocated capital reserve. Such redemption or retirement is solely within the discretion and on such terms as determined from time to time by the Board of Directors of this cooperative.

(h) Cash Portion of Patronage Refund Qualified Written Notices. The cash portion of a

distribution of patronage income with qualified written notices of allocation can range from a minimum of 20% to as much as 100% cash. The Board of Directors may vary the size of the cash portion of any distribution with qualified written notice of allocation to recognize differences in tax orientation of those businesses who make purchases of products and services from the cooperative that are deductible and consumers whose purchases of products and services are not deductible as a business expense. The Board of Directors may also choose to use qualified written notices to distribute patronage income to one group of patrons, while choosing to use non-qualified written notices to distribute income to separately situated patrons.

**Section 8 - Capital Reserve.** The Board of Directors shall cause to be created a Capital Reserve and, except as otherwise provided in Section 9 of this Article V, shall annually add to the Capital Reserve the sum of the following amounts:

- (a) The annual net income of this cooperative attributable to nonpatronage business;
- (b) Annual net income from patrons who are unidentified or to whom the amount otherwise to be distributed is less than the de minimus amount provided in Section 7(a) of this Article V; and
- (c) An amount of the distributable net income from patronage business as determined annually by the Board of Directors, in its sole discretion. The Board of Directors shall be guided by its assessment of the Cooperative's need for equity capital to finance the assets and operations that benefit its members and patrons.

Federal income taxes shall be charged to the Capital Reserve.

**Section 9 - Allocation and Distribution of Nonpatronage Income and Loss.**

(a) Nonpatronage Income. The Board of Directors shall have the discretion to allocate to allocation units amounts that are otherwise to be added to the Capital Reserve pursuant to Section 8(a) of this Article V. Such allocation may be made on the basis of any reasonable and equitable method. Amounts so allocated to allocation units shall be further allocated among the patrons thereof on a patronage basis using such method as the Board of Directors determines to be reasonable and equitable. Amounts so allocated shall be distributed to patrons thereof in the form of cash, property, Non-Patronage Earnings Certificates, or any combination thereof designated by the Board of Directors. The Board of Directors may determine whether and to what extent nonmember patrons may share in such distributions.

(b) Nonpatronage Loss. If the cooperative incurs a net loss on its nonpatronage business or if a net loss is incurred with respect to the nonpatronage business of an allocation unit, such net loss generally shall be chargeable against 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 among allocation units generally or to a specific allocation unit or units.

Any such loss allocated to an allocation unit shall reduce such unit's net income from patronage business to the extent thereof and the excess, if any, shall be treated generally in accordance with Section 6(a)(ii), (iii) and (v) of this Article V.

## **BYLAW VI. ACCOUNTING**

**Section 1. Auditing.** The board of directors may have the accounts examined semi-annually and shall have the books audited at least annually by an auditing service experienced in cooperative businesses and shall submit its report to the stockholders at their annual meeting.

**Section 2. Annual Financial Report.** The Board of Directors shall make annual financial reports or portions thereof as it determines in its sole discretion available to members upon request for proper purpose.

## **BYLAW VII. CONSENT**

**Section 1. Consent.** Each individual or entity that hereafter applies for and is accepted to membership in this cooperative and each member of this cooperative as of the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to its patronage, which are made in written notices of allocation (as defined in 26 U.S.C. 1388) and which are received by the member from the cooperative, will be taken into account by the member at their stated dollar amounts in the manner provided in 26 U.S.C. 1385 in the taxable year in which such written notices of allocation are received by member.

**Section 2. Consent of Nonmember Patrons.** If this cooperative obligates itself to do business with a nonmember on a patronage basis, such nonmember must either (a) agree in writing, prior to any transaction to be conducted on a patronage basis, that the amount of any distributions with respect to patronage which are made in written notices of allocation (as defined in 26 U.S.C. 1388) and which are received by the nonmember patron from this cooperative, will be taken into account by the nonmember patron at their stated dollar amounts in the manner provided in 26 U.S.C. 1383(a) in the taxable year in which such written notices of allocation are received by the nonmember patron and further, that any revocation of such agreement will terminate this cooperative's obligation to distribute patronage with respect to transactions with such nonmember that occur after the close of this cooperative's fiscal year in which the revocation is received; or (b) consent to take the stated dollar amount on any written notice of allocation into account in the manner provided in 26 U.S.C. 1385(b) endorsing and cashing a qualified checks as defined in and within the time provided in 26 U.S.C. 1388(c)(2)©; provided that failure to so consent shall cause the written notice of allocation that accompanies said check to be cancelled with no further action on the part of this cooperative. Any effective nonmember consent is an effective member consent.

## **BYLAW VIII. EQUITY CAPITAL MANAGEMENT**

**Section 1. Overview.** Any redemption of allocated equities is governed by this Bylaw VIII notwithstanding anything to the contrary in the Articles of Incorporation or Bylaws. The

Board of Directors establishes redemption policies in its sole discretion. The Board of Director is charged with deploying the cooperative's capital to replace and grow its property, plant and equipment, to manage its solvency and its liquidity, and to redeem allocated equities with cash to its users (i.e. patrons). The objectives of redeeming allocated equities include aligning ownership with use so the users or patrons are also the source of the cooperative's equity capital.

**Section 2. Distribution of Patronage Earnings in Contrast to Redemption of Allocated Equity.** Distribution of income is a zero-sum game because income is either distributed as a patronage refund or taxed as corporate income. Distribution is an objective process driven by accounting and federal tax principles that are applied through South Dakota law and Bylaw V herein. Each unit of patronage income is allocated and identified with the name of the patron who purchased products and/or services from the cooperative. Distribution of income does not consume financial resources. Either a cash patronage refund or income tax are paid by the cooperative. On the other hand, redemption of allocated equity is a subjective process that requires financial and strategic planning, evaluation of solvency and liquidity, and business judgment. A sustainable equity redemption program requires financial modeling and communication to and with patrons and members.

**Section 3. Return of Excess Capital: Priorities.** Any redemption or retirement is solely within the discretion and on such terms as determined from time to time by the Board of Directors of this Cooperative. In establishing and interpreting any bylaw and policy, and in making such payment, redemption or retirement of allocated equity, the Board of Directors may distinguish natural members from unnatural members (corporations, partnerships, LLCs, and other business organizations, etc.) and, in doing so, favor natural members. The Board of Directors may distinguish between members and non-members, and/or patrons and non-patrons, between equity holders based on their tax orientation when the non-cash portion of patronage earnings was distributed to each holder, and/or on whether the prospective recipient of an allocated equity redemption is an active patron of the cooperative, and a current source of income. The Board of Directors cannot discriminate against any protected class of people as provided by federal or state law. The Board of Directors shall establish priorities for when, how and to whom excess capital is distributed to equity holders in a way that maximizes the value proposition, beginning with those patrons who are the wellspring of the cooperative.

## **BYLAW IX.** **MEMBERSHIP**

**Section 1. Classes of Membership.** This Association shall have two classes of members, which shall be designated as "Producer Members" and "Nonproducer Members." The eligibility requirements for Producer Members and Nonproducer Members are different and are set out below in Section 5 of this Bylaw IX. The other primary differences between Producer Members and Nonproducer Members involve voting rights, which are discussed below in Bylaw X, Section 5, and eligibility to serve as a Director, which is discussed in Bylaw II, Section 1.

### **Section 2. Membership Eligibility Requirements.**

1. **Membership Eligibility Requirements for Producer Members.** Any person shall be eligible to become a Producer Member of this Association if that person:

a. Is engaged in the production of any one or more agricultural products, including tenants of land used for the production of any such product, and lessors of such land who receive as rent therefore part of any such product of such land, and cooperative organizations (corporate or otherwise) of such producers

b. Does a minimum of \$2,500 of patronage-based business annually with the Association

c. Is not subject to membership termination under the Articles of Incorporation or the Bylaws of the Cooperative

2. Membership Eligibility Requirements for Nonproducer Members. Any person shall be eligible to become a Nonproducer Member of this Association if that person:

a. Does a minimum of \$2,500 of patronage-based business annually with the Association

b. Is not subject to membership termination under the Articles of Incorporation or the Bylaws of the Cooperation

### **Section 3. Termination of Membership.**

(a) As described in this Section 3 and in Article III, if the Board of Directors determines that a member has become ineligible for membership in this cooperative, such member's membership in this cooperative shall automatically terminate; provided that, if the Board of Directors determines that a Voting Member has become ineligible to remain a Voting Member, that member shall become a Non-Voting Member, if the CBH Board of Directors determines that the member meets the eligibility requirements for Non-Voting membership.

(b) Membership may, at the discretion of the Board of Directors, be terminated whenever the Board of Directors by resolution finds that a member has:

(i) intentionally or repeatedly violated any provision of the Articles of Incorporation, Bylaws or Board policies of this cooperative; or

(ii) failed to patronize this cooperative for a period of twelve (12) consecutive months; or

(iii) breached any contract with this cooperative; or

(iv) willfully obstructed any lawful purpose or activity of this cooperative; or

(v) remained indebted to this cooperative for ninety (90) days after such indebtedness becomes payable; or

(vi) died or legally dissolved; or

- (vii) failed to comply with any uniform standard of conduct or qualification promulgated by the Board of Directors;

provided, however, that termination of any member's membership as a result of any of the circumstances listed in paragraphs (i) through (vii) of this section (b) shall not be deemed to revoke such member's consent contained in Article VII hereof but rather such member may only revoke such consent in writing.

Upon termination of a Voting Member's membership in this cooperative, such member shall thereafter have no voting power in this cooperative until such time as may be approved by the Board of Directors.

- (c) No action taken hereunder shall impair the obligations or liabilities of either party under any contract with the cooperative which may be terminated only as provided therein.

**Section 4. Membership Lists.** The Board of Directors shall maintain a list of the Producer Members and a list of the Nonproducer Members of the Association. The Board of Directors shall update those membership lists on a regular basis.

**Section 5. Membership Transfers.** Neither the Producer Members nor the Nonproducer Members of this Association may transfer their memberships, except with the written consent of the Board of Directors.

**Section 6. Voting.**

1. **One Member, One Vote.** No member shall have more than one vote on any issue and voting by proxy shall not be allowed.
2. **Voting by Cooperative Associations.** Any cooperative association that is a Producer Member of the Association may elect or appoint any person to represent it at any meeting of the members of this Association. The person so elected or appointed shall have full power and authority to represent such cooperative association, and also to cast its vote at any meeting of the members of the Association, provided that the Association shall have been advised in writing of the name of the person elected or appointed.
3. **Full Voting Rights for Eligible Producer Members** In order to be eligible for voting rights a Producer Member of this association must do a minimum of \$2,500 of patronage-based business annually with the Association. If eligible, Producer Members of this Association shall have full voting rights, meaning that each Producer Member may cast one vote on each matter brought before the members of the Association for a vote.
4. **No Voting Rights for Nonproducer Members.** The Nonproducer Members of this Association shall have no voting rights.

5. References to Voting by Members. All references in the Association's Articles of Incorporation and/or its Bylaws to voting by the members of the Association shall be interpreted as being limited to Producer Members as defined in Bylaw X, Sections 2 and 5. These rules of interpretation shall apply wherever the term "members" is used in the context of voting, if the class or classes of members being described is not specified.

6. Voting Eligibility Questions. The Board of Directors shall have the sole and complete discretion to resolve all issues related to voting eligibility.

7. Multiple Memberships Permissible. Persons holding ownership interests in entities (LLCs, corporations, partnerships, business trusts, etc.), which entities are Producer Members, may themselves be eligible for either a Producer or Nonproducer membership, but only if such person is eligible for such membership without reference or regard to the entity's Producer membership.

**BYLAW X.  
GENDER CLAUSE**

Where the masculine gender appears in the context of these Bylaws, it shall be construed to mean the feminine gender wherever applicable.

**BYLAW XI.  
AMENDMENTS**

**Section 1. Amendments.** These Bylaws may be amended by the members at the annual meeting, or any special meeting called for that purpose by a majority vote of the members present and voting. The Board of Directors may also amend the Bylaws, which amendment shall be effective immediately thereupon, provided also, however, that such amendment is reported at the next annual meeting. The amended bylaw shall be ratified by a majority vote of the members present and voting at the next annual meeting. Amendments made by the Board of Directors are always subject to subsequent modification, amendment, or repeal by the voting members of this Cooperative with prior notice.

Revised/Approved January \_\_\_\_\_, 2022

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Ken Snyder, President  
Board of Directors

ATTEST:

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Casey Miller, Secretary  
Board of Directors