

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
OPEN HARVEST COOPERATIVE
LINCOLN, NEBRASKA**

To further the purpose of organizing as a cooperative corporation pursuant to Neb. Rev. Stat. Sections 21-1301 et seq. and Sections 21-2001 et seq., the following Amended and Restated Articles of Incorporation (“Articles”) are hereby adopted and replace in their entirety all prior Articles of Incorporation of the Cooperative.

**ARTICLE I
Name**

1.1 The name of this Cooperative shall be Open Harvest Cooperative.

**ARTICLE II
Registered Office and Registered Agent**

2.1 The registered office of this Cooperative shall be 1618 South Street, Lincoln, Nebraska 68502. The registered agent at such address shall be Kelsi Swanson.

**ARTICLE III
Purposes and Powers**

3.1 The purposes for which this Cooperative is organized are:

- (a) To buy, sell, handle, ship, manufacture, process, grade, market, store and warehouse natural, organic or similar food products, and equipment and supplies used or consumed in the production of natural, organic or similar food products, and to carry on any related activity or business and to act as agent, broker, or representative for its shareholders and patrons.
- (b) To obtain and disseminate information to its shareholders and patrons concerning cooperation, more efficient product marketing, the use of natural, organic or similar food products, supplies and implements, and other matters concerning cooperation.
- (c) To generally pursue any course of conduct and activity which cooperative corporations organized under the laws of the State of Nebraska may pursue.

3.2 This Cooperative shall have and exercise all of the powers and rights conferred upon corporations organized and existing pursuant to the provisions of Neb. Rev. Stat. Sections 21-1301 et seq., and Sections 21-2001 et seq., as amended. In addition thereto, the Cooperative shall have and exercise all the powers and rights as are necessary, suitable, proper, convenient or expedient to the attainment of the purposes of the Cooperative.

**ARTICLE IV
Capitalization**

4.1 The authorized capital stock of this Cooperative shall be Four Hundred Thousand Dollars (\$400,000) divided into eight thousand (8,000) shares of common stock with a par value of Twenty-five Dollars (\$25.00) each, which shall be fully paid when issued, and Eight Thousand (8000) shares of preferred stock with a par value of Twenty-five Dollars (\$25) each, which shall be fully paid when issued. The preferred stock shall be non-voting. The Board of Directors is authorized to determine the qualifications, preferences, and limitations of such non- voting preferred shares, and to provide for the issue and sale or other distribution thereof in one or more issues.

4.2 No shareholder shall own, either directly or indirectly, more than five percent of the paid up capital stock of the Cooperative. The Board of Directors of the Cooperative shall have the authority to further limit the number of shares which may be held by any shareholder.

4.3 Each shareholder who owns common stock is entitled to one vote in the affairs of this Cooperative.

4.4 The capital stock of this Cooperative may be purchased, owned and held only by persons who satisfy the membership requirements as set forth in the Bylaws and as authorized by the Board of Directors.

4.5 No shareholder shall have a preemptive right to acquire unissued shares of the capital stock of this Cooperative.

**ARTICLE V
Duration**

5.1 The existence of this Cooperative shall be perpetual.

ARTICLE VI
Directors

- 6.1** The number of members of the Board of Directors and the manner of their election shall be set forth in the Bylaws.
- 6.2** No director shall have personal liability to the Cooperative or its shareholders for monetary damages for breach of fiduciary duty as a director, provided, however, this provision shall not eliminate the liability of the director for:
- (a) Any act or omission not in good faith which involves intentional misconduct or a knowing violation of law;
 - (b) Any transaction from which the director derived an improper direct or indirect financial benefit;
 - (c) Paying a dividend or approving a share repurchase which was in violation of law;
 - (d) Any act or omission which violates a declaratory or injunctive order obtained by the Cooperative or its shareholders; and
 - (e) Any act or omission occurring prior to the date this provision becomes effective. The foregoing provision shall not limit the Cooperative from providing any other indemnification permitted by law nor shall it be deemed inclusive of any other rights to which the director may be entitled under any Bylaw, agreement, or vote of shareholders. The Cooperative may purchase and maintain insurance on behalf of any person who is or was a director of the Cooperative against any liability asserted against him or incurred by him in such capacity or arising out of his/her status as a director whether the Cooperative would have the power to indemnify him against such liability under the provisions of law or this Article.

ARTICLE VII
Bylaws

- 7.1** The shareholders shall adopt Bylaws for the Cooperative, and may authorize the Board of Directors to amend the Bylaws.

ARTICLE VIII
Dividends

- 8.1 General.** The Cooperative shall not pay dividends except in accordance with this Article VIII.
- 8.2 Patronage Dividends.** The Cooperative shall pay patronage dividends to patrons of the

Cooperative in accordance with this Section 8.2.

8.2.1 Patronage dividends paid by the Cooperative shall be computed and paid in accordance with Subchapter T of the Internal Revenue Code.

8.2.2 The gross amount of patronage dividends for any given period shall be computed as follows: gross earnings, less operating expenses (including taxes), short term debt, long term debt service payments and reserves as determined by the Board of Directors in its sole discretion. This amount will then be multiplied by the ratio of shareholders sales to total sales.

8.2.3 Patronage dividends shall be payable on a pro rata basis to shareholders on the basis of the value of business such shareholder has conducted at the Cooperative during such period. The patronage dividend shall be proportionately allocated based on all business conducted by the Cooperative, excluding non-members.

8.2.4 In conjunction with the issuance of any patronage dividend, the Board of Directors shall provide to shareholders a detailed statement of the method used in calculating and distributing the net earnings.

8.2.5 The Cooperative shall not be required to pay all net profits as patronage dividends, and may set aside any amount of net profits as reserves as the Board of Directors may determine in its sole discretion.

8.3 Authority of Board of Directors. Except as otherwise provided in this Article VIII, all decisions regarding payment of dividends shall be made by the Board of Directors. The Board of Directors may adopt policies regarding the payment of dividends consistent with this Article VIII.

ARTICLE IX Amendments

9.1 These Articles may be amended by a two-thirds vote of the shareholders present and voting on such amendments at a meeting called for that purpose.

[THE NEXT PAGE IS THE SECRETARY'S CERTIFICATE]

SECRETARY'S CERTIFICATE

The undersigned, being the secretary of a duly held meeting of the shareholders on November 2, 2014 and authorized by the Board of Directors to certify these Amended and Restated Articles of Incorporation, hereby certifies as follows:

- A. These Amended and Restated Articles of Incorporation contain amendments to the original articles of incorporation which require approval by the shareholders.
- B. The Board of Directors approved these Amended and Restated Articles of Incorporation and recommended the same for approval by the shareholders on November 2, 2014.
- C. These Amended and Restated Articles of Incorporation do not provide for the exchange, reclassification or cancellation of issued shares.
- D. The adoption date of these Amended and Restated Articles of Incorporation is November 2, 2014.
- E. These Amended and Restated Articles were approved by the shareholders at a duly held meeting on November 2, 2014. As of the date of such meeting, 2,813 shares of common stock were issued and outstanding and entitled to vote. At such meeting, 60 shares of common stock were represented in person or by proxy, which constituted a quorum. The total number of votes cast in favor of adopting the Amended and Restated Articles of Incorporation equaled or exceeded the two-thirds vote required.

Date

By: _____

Printed Name: Carla McCullough, Board Chair
Secretary of the Meeting