

**AMENDED AND RESTATED BYLAWS
OF
OPEN HARVEST COOPERATIVE**
Lincoln, Nebraska

**ARTICLE I
Organization**

- 1.1 **Name.** The name of the Cooperative shall be Open Harvest Cooperative (the "Cooperative").
- 1.2 **Ownership and Purpose.** The Cooperative shall be owned by the shareholders (the "Member Owners") and shall operate as a Cooperative for the benefit of its Member Owners in accordance with its Articles of Incorporation, these Amended and Restated Bylaws ("Bylaws"), and applicable law, including Neb. Rev. Stat., Section 21-201 et seq. (the Nebraska Model Business Corporation Act), and Neb. Rev. Stat. Section 21-1301 et seq. (the Nebraska Cooperative Companies Act).

**ARTICLE II
Member Owners**

- 2.1 **Definition of Member Owner.** Each Member Owner of the Cooperative shall be the owner of one fully paid share of common stock. Only those who patronize the Cooperative annually, and ~~pay an annual equity payment~~ contribute additional paid-in equity as determined by the Board of Directors, may own the capital stock of this Cooperative.
- 2.2 **Eligibility.** Membership in the Cooperative shall be open to any person who complies with the responsibilities and requirements of membership, as established by the Member Owners or the Board of Directors from time to time.
- 2.3 **Nondiscrimination.** Subject to the terms of the Articles of Incorporation, Bylaws, and applicable laws, membership shall be open without regard to any characteristic that does not directly pertain to a person's eligibility and the responsibilities and requirements of membership.
- 2.4 **Admission.** Subject to the terms of these Bylaws, any eligible person may be admitted to membership upon submitting an application and payment in an amount and on such terms as determined by the Board of Directors. All applications for shares of capital stock must be submitted to and approved by the Board of Directors before a share of stock may be issued. Every applicant who applies for a share of common stock who is qualified to become a Member Owner shall be accepted unless the Board of Directors shall find for just and reasonable cause that acceptance of the applicant as a Member Owner would prejudice the interests or otherwise obstruct the purposes of the Cooperative. The payment received from the applicant shall be treated as consideration paid in exchange for the issuance of

one share of common stock in the Cooperative. The Cooperative may issue, but shall not be required to, certificates evidencing the ownership of stock.

2.5 **Rights.** Member Owners have the right to elect the Cooperative's Board of Directors, to attend meetings of the Board upon prior approval by the Board, to receive notice of and attend Member Owner meetings, to petition as described in these Bylaws, and to approve amendments to these Bylaws. In all matters of business, each Member Owner shall be entitled to one vote only, regardless of the number of shares of capital stock that ~~he/she/they~~ may hold. A share held by two or more persons as joint tenants or tenants in common shall be entitled to one vote only. The rights of Member Owners shall apply only to active Member Owners in good standing. All rights and responsibilities of Member Owners are subject to the Articles of Incorporation, Bylaws, and applicable laws, as they may be amended from time to time.

2.6 **Responsibilities.** After application and qualification as a Member Owner, such Member Owner shall ~~contribute additional paid-in equity pay an annual owner equity~~ in an amount determined by the Board of Directors, which shall be credited to the owner equity account of such Member Owner. In addition, the Board of Directors may authorize annual non-refundable administrative, maintenance or other fees. Each Member Owner shall pay the owner equity and fees when due. Each Member Owner shall keep the Cooperative informed of any changes in current contact information and shall abide by these Bylaws and the policies and decisions of the Cooperative or the Board of Directors. A Member Owner who upholds the responsibilities set forth in these Bylaws shall be considered an active Member Owner in good standing.

2.7 Termination of Membership.

2.7.1 **Voluntary Termination.** A Member Owner may voluntarily terminate ~~his/her/their~~ membership at any time by written notice to the Cooperative.

Upon such voluntary termination, the Member Owner shall forfeit any rights or privileges on account of the stock held by the Member Owner and the right to participate in the management of the affairs of the Cooperative. The Board of Directors shall cancel all shares owned by ~~him/her/them~~, and shall either pay to ~~him/her/them~~ the par or book value of such stock, whichever is less, or add such amount to the Member Owner's equity account balance. The notice of cancellation shall be sent to the Member Owner by first class mail at ~~his/her/their~~ last known post office address according to the records of the Cooperative. The Member Owner's equity account balance shall be considered for redemption as provided in these Bylaws.

2.7.2 **Involuntary Termination.** Payment of the annual owner equity and fees shall be due within 30 days of the anniversary of the Member Owner's admission date. A notice of payment due shall be sent to the Member Owner to ~~his/her/their~~ last known address. If not paid within 30 days, the membership shall become inactive. Membership may be involuntarily terminated by the Cooperative for any of the following: (i) non-payment of

owner equity after one year from the anniversary date, or (ii) any material breach of the Articles, Bylaws, or membership agreement or any violation of law related to the operation of the Cooperative after the Member Owner has been provided written notice of the reasons for the proposed termination and an opportunity to respond in person at the next scheduled meeting of the Board of Directors; or (iii) the death of the Member Owner. Should the Board of Directors terminate the membership, the Member Owner shall lose any rights or privileges on account of the stock held by the Member Owner and the right to participate in the management of the affairs of the Cooperative. The Board of Directors shall cancel all shares owned by ~~him/her/them~~, and shall either pay to ~~him/her/them~~ the par or book value of such stock, whichever is less, or add such amount to the Member Owner's equity account balance. The notice of cancellation shall be sent to the Member Owner by first class mail at ~~his/hert~~their last known post office address according to the records of the Cooperative. The Owner Member's equity account balance shall be considered for redemption as provided in these Bylaws.

2.8 **Transferability.** Upon written request to the Board of Directors, who shall have the power to approve or deny such requests, membership and owner equity may be transferred to another person eligible to be a Member Owner pursuant to Section 2.2 hereof.

2.9 **Policies.** The Board of Directors may adopt policies consistent with this Article II and the other provisions set forth in these Bylaws.

ARTICLE III

Meetings of Member Owners

3.1 **Annual Meeting.** A Member Owner meeting shall be held each year at a time and place to be determined by the Board of Directors. The purpose of such meeting shall be to hear reports on operations and finances, to review issues that affect the Cooperative, and to transact such other business as may properly come before the meeting as determined by the Board of Directors.

3.2 **Special Meetings.** Special meetings of the Member Owners shall be called by the Board of Directors, either by a decision of the Board or in response to a written petition of 10 percent or more of the Member Owners stating the purpose of the special meeting. In the case of a petition, notice of the meeting shall include the purpose of the meeting and shall be given within 30 days of the request, and the meeting shall be held within 60 days of the request. No business shall be conducted at that special meeting except that specified in the notice of the meeting.

3.3 **Notice of Meetings.** Notice of the date, time, place, and purpose of each Member Owner meeting shall be posted in the Cooperative and communicated to Member

Owners using the last known contact information of each Member Owner. Subject to the provisions of these Bylaws, notice of the meeting shall be issued not less than 10 nor more than 60 days prior to the date of the meeting.

- 3.4 **Quorum.** A quorum in all meetings of the Member Owners shall consist of ten percent of the Member Owners; not more than fifty Member Owners, or less than five Member Owners. Any Member entitled to vote who is not present in person but votes by mail ballot or other electronic means approved by the Board of Directors shall be counted present for purposes of determining whether a quorum is present to act on the question on which such person casts such vote but shall not be counted present for purposes of determining the presence of a quorum to transact any other business. If less than a quorum is present, a majority of those present may adjourn the meeting without further notice.
- 3.5 **Voting.** All questions shall be decided by a vote of a majority of the Member Owners voting thereon, except as otherwise specifically required by the Articles, the Bylaws, or applicable law. Under guidelines and procedures approved by the Board of Directors, mail ballots and voting by electronic means may be utilized on specific issues, provided that verifiable ballots are received by the Secretary and counted at the same time as all other ballots are received. There shall be no voting by proxy or power of attorney.

ARTICLE IV Directors

- 4.1 **Election of Directors.** The Board of Directors of this Cooperative shall consist of nine active Member Owners in good standing. No stockholder shall be eligible for the Board of Directors if ~~he/she~~^{he/she/they are} is in competition with, or ~~is~~ affiliated with an enterprise that is in competition with this Cooperative. Directors shall be elected for three-year terms. In order to preserve continuity of governance and the transition of the Board of Directors, the terms of Directors shall be staggered such that one-third of the Directors (or as nearly as possible) shall be elected at each annual meeting. The installation of new Directors shall occur at the next scheduled meeting of the Board of Directors following the announcement of the election results. Eligibility requirements and procedures for electing Board Directors are as follows:
- (a) Nominees for election to the Board must be active Member Owners of the Cooperative in good standing. Staff members are not eligible to serve on the Board.
 - (b) An Election Committee, consisting of Board members, Staff members, and at least one non-Board Member Owner, shall be appointed by the Chair. The Committee shall be responsible for organizing and managing the election, counting ballots, and certifying and reporting results.
 - (c) Cumulative voting shall not be permitted.

(d) Each Member Owner shall have equal voting power (i.e., one vote per Member Owner).

- 4.2 **Officers.** The Board of Directors shall elect a Chair, Vice-Chair, and Secretary who shall serve at the discretion of the Board of Directors. The Board may also elect a Treasurer. Each Officer shall hold office for one year. Nominations for Officers may be made by any Director present. The election shall be by secret written ballot and it shall require a simple majority of votes cast for the election. Such Officers shall be deemed the Officers of the Board of Directors and not executive Officers of the Cooperative. The duty and authority of the Officers shall be limited to the duty and authority specifically assigned and delegated by the Board of Directors. No person shall lose ~~his/her~~ **their** status as a Director by reason of serving as an Officer of the Cooperative.
- 4.3 **Meetings of Directors.** Regular meetings of the Board of Directors shall be held at such place and time as the Directors may determine. Special meetings of the Board of Directors shall be held whenever called by the Chair or by a majority of the Directors. Any and all business may be transacted at any special board meeting. Oral or written notice of each regular or special meeting of the Board of Directors shall be given to each Director at least twenty-four hours prior to the time of the meeting. Such notice may be waived by the Directors, and the appearance of a Director at a meeting shall constitute a waiver of notice.
- 4.4 **Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board may be taken by written action affirmed by all of the Directors. The action is effective when affirmed by all of the Directors, unless a different effective time is provided in the action.
- 4.5 **Quorum.** A majority of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors.
- 4.6 **Compensation.** The Board of Directors may establish reasonable compensation or reimbursement for the expenses of the Directors. Each year, an accounting of the Board of Directors' compensation and expense reimbursement shall be reported to the Member Owners at the Annual Meeting and in the Annual Report.
- 4.7 **Indemnification.** The Cooperative shall indemnify and reimburse each present, past, and future Director and Officer for any claim or liability (including expenses and attorney's fees actually and reasonably incurred in connection therewith) to which such person may become subject by reason of being a Director or Officer. Such indemnification shall be made only if it is determined by the Board of Directors that the Director or Officer acted in good faith in the reasonable belief that ~~his or her~~ **their** action was in the best interests of the Cooperative or as otherwise allowed by law.

- 4.8 **Conflict of Interest.** Directors shall be under an obligation to disclose their actual or potential conflicts of interest in any matter under consideration by the Board of Directors. Directors having such a conflict shall abstain from discussion and decision of the matter unless otherwise determined by the Board.
- 4.9 **Advisory Member Owners.** The Board of Directors may appoint one or more Member Owners to serve as advisory members of the Board of Directors. Such persons shall have no voting rights. Their terms of office shall be stated at the time of their appointment.
- 4.10 **Vacancies.** In the event a member of the Board of Directors shall become ineligible to hold office, his/her/their office shall be declared vacant. Vacancies occurring on the Board of Directors by such declaration, resignation or death, shall be filled by appointment by the remaining members of the Board of Directors by a majority vote and for a term expiring at the end of the vacated term.

ARTICLE V

Duties of Directors

- 5.1 **Management of Business.** The Board of Directors shall have general supervision and control of the business and the affairs of the Cooperative and shall make all rules and regulations consistent with law and with these Bylaws for the management of the business and the guidance of the Member Owners, patrons, Officers, employees, and agents of the Cooperative. They shall require an accounting system that shall be adequate for the requirements of the business and shall require proper records to be kept of all business transactions.
- 5.2 **Employment of Manager.** The Board of Directors shall employ a General Manager, define his/her/their duties, fix his/her/their compensation, and may dismiss him/her/them with or without cause at any time.
- 5.3 **Annual Report of Business.** The Board of Directors shall be responsible for making available to the Member Owners present at each Annual Meeting a detailed report of the business of the preceding year. This report shall also be made available to the Member Owners in the store. Such report shall show the financial condition of the Cooperative at the end of the fiscal year in such form as shall fully exhibit to the Member Owners the assets and liabilities of the Cooperative and other facts and figures required to understand the Cooperative's financial results for the period.
- 5.4 **Insurance.** The Board of Directors shall procure liability insurance for all Directors and Officers of the Cooperative. The Board of Directors may procure such other insurance for the benefit of the Cooperative as it deems appropriate and prudent in its sole discretion.

- 5.5 **Reports for Audit and Review.** Prior to the close of every annual fiscal period for which an audit or review is made of the books and accounts of the Cooperative, the Board of Directors shall direct the General Manager to cause a complete inventory report to be prepared for use in the audit or review. Said report shall be certified as true and correct by those responsible for its preparation and made available to the auditor and maintained as a part of the permanent records of the Cooperative.
- 5.6 **Audits.** The Board of Directors shall ~~have an~~ **require an** audit of the Cooperative conducted ~~every five to seven years~~ **at their discretion** provided that an independent review of the financial records of the Cooperative is conducted annually, and at other times as the Board deems necessary. The audit shall meet these requirements:
- (a) The audit shall be performed by a competent, certified, and licensed independent public auditing and accounting firm employed by the Board of Directors of the Cooperative.
 - (b) The audit shall be made in accordance with generally accepted auditing standards.
 - (c) The audit shall express an independent opinion as to the fairness of the financial statements taken as a whole, or clearly state why an opinion cannot be rendered. The audit report shall be in written form and shall be presented to the Board of Directors and reviewed by them at a regular or special meeting.
- 5.7 **Nepotism.** No Board Director or the immediate relative of a Director or the General Manager shall be regularly employed by the Cooperative, except by unanimous approval of the Board of Directors.
- 5.8 **Committees.** The Board of Directors may establish committees as may be necessary and, upon prior approval of the Board of Directors, the Chair shall have the authority to appoint persons to such committees.

ARTICLE VI

Duties of Board Officers

- 6.1 **Duties of Chair.** The Chair shall preside over all meetings of the Cooperative and of the Board of Directors, call meetings of the Board of Directors, perform all acts and duties usually performed by an executive and presiding Officer, and sign such documents of the Cooperative as ~~he/she~~ **they** may be authorized or directed to sign by the Board of Directors. The Chair shall perform such other duties as may be prescribed by the Board of Directors.
- 6.2 **Duties of Vice-Chair.** In the absence or disability of the Chair, the Vice-Chair shall perform the duties of the Chair.
- 6.3 **Duties of Secretary.** The Secretary shall be responsible for all tasks associated with the recordkeeping of the minutes of all meetings of the Board of Directors and

of the Member Owners. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

ARTICLE VII Management

- 7.1 **Duties of General Manager.** The Board of Directors shall employ a General Manager, who shall also serve as the President and Chief Executive Officer of the Cooperative. The General Manager shall have the duties, responsibilities, and authorities prescribed by the Board of Directors.

ARTICLE VIII Dividends

- 8.1 **Dividends.** Stock dividends and patronage dividends shall be distributed, if at all, in accordance with the Articles of Incorporation and these Bylaws.
- 8.2 **Provision for Equity Capital.** The Board of Directors shall have the power to establish equitable procedures for acquiring and maintaining adequate equity capital to finance the business of the Cooperative. Each Member Owner's share of the net margins of the Cooperative shall be payable to ~~him~~~~her~~~~them~~ at the close of each fiscal year, but the payment may be made by retention of a portion of the Member Owners' net margins in the equity capital of the Cooperative as determined by the Board of Directors.
- 8.3 **Extraordinary Items.** In the event that the Cooperative suffers a loss in any one year, the Board of Directors, in its discretion, may charge such loss against the retained savings contributed by those Member Owners whose patronage gave rise to such loss, or against the Member Owner's equity account balance and other equities held by those Member Owners whose patronage gave rise to such loss. Provided, however, in all cases, the Board of Directors may allocate or treat any extraordinary income or expense in such other manner as it, in its sole discretion, determines will provide equitable treatment to all Member Owners of the Cooperative.

ARTICLE IX Redemption of Equities

- 9.1 **Member Owner's Equity Accounts.** The Member Owner's equity accounts of this Cooperative shall be a permanent capital investment on the part of the Member Owner subject to redemption only as herein provided. With the exception of the issuance of any preferred shares by the Cooperative, upon the issuance of a share of common stock, all the remainder of each Member Owner's equity in the Cooperative shall be represented by additions to the Member Owners' equity account balances.

9.2 Redemption of Member's Equity Credits.

9.2.1 It shall be the policy of the Cooperative, when other redemption priorities set forth herein have been met, and when funds are available, to redeem in cash, at the discretion of the Board of Directors a percentage of each Member Owner's equity account balance, or the oldest outstanding equity credits based upon the year in which the credit was granted. Such redemption may be either in full or in part for the specified year. The time and method of redemption shall be determined by the Board of Directors.

9.2.2 The Cooperative shall give priority to redemption of Member's Owner's equity accounts held by deceased persons for the settlement of their estates. The time and method of such redemption of any stock and equity accounts shall be determined solely by the Board of Directors, dependent upon the financial condition of the Cooperative and the conditions established.

9.2.3 The Board of Directors may establish separate standards for the redemption of Member Owner's stock and equity accounts held by Member Owners whose business activity with the Cooperative has caused the Cooperative to sustain a loss because of non-payment or uncollectibility of amounts owed to the Cooperative.

9.3 **Abandoned Equity Interests.** The capital stock, Member Owner's equity account balances or other equity or ownership interests in the Cooperative, regardless of how titled, held by an equityholder in the Cooperative resulting from the allocation of net savings or otherwise shall automatically and without notice revert to the Cooperative or its successor in interest if: (a) the equityholder or his/her/their heirs cannot be found after reasonable diligence is exercised by the Cooperative; or (b) the equityholder or his/her/their heirs have not responded in writing to communications from the Cooperative concerning such ownership interests for a period of one year.

ARTICLE X Consent Bylaw

10.1 **Consent.** Each person who hereafter applies for and is accepted as a stockholder and Member Owner of this Cooperative and each stockholder and Member Owner of this Cooperative on the effective date of this By-law provision who continues as a patron after such date shall, by such act alone, consent that the amount of any distributions with respect to his/her/their patronage occurring after September 19, 2005 and which are made in written notices of allocation (as defined in 26 U.S.C. 1388), and which are received by him/her/them from the Cooperative, will be taken into account by him/her/them at their stated dollar amounts, in the manner provided in 26 U.S.C. 1385(a), in the taxable year in which such written notices of allocation are received by him/her/them.

ARTICLE XI Amendments to the Bylaws

11.1 **Amending the Bylaws.** These Bylaws may be altered by a majority vote of the Member Owners present and voting at any regular or special meeting, provided that notice of the intention to propose amendments shall have been given to Member

Owners in the notice of the meeting.

- 11.2 **Board Action to Amend Bylaws.** The Board of Directors may amend the Bylaws at any time, subject to ratification by the Member Owners at the next regular or by a special meeting of the Member Owners. An amendment made by the Board of Directors shall have full force and effect from the time the Board of Directors approves such amendment until acted upon by the Member Owners, even though such amendment may be later rejected.

ARTICLE XII Dissolution

- 12.1 **Asset Distribution.** Upon the dissolution of this Cooperative, all debts and liabilities shall first be paid according to their respective priorities. After discharging the debts and liabilities, the remaining property shall be liquidated and distributed to each Member Owner pro-rata based upon each Member Owner's equity account balance compared to the equity account balances of all Member Owners.

ARTICLE XIII Bylaws Distribution

- 13.1 **Bylaws Distribution.** These Bylaws shall be maintained by the Board of Directors and shall be made available to every Member Owner.