

**AMENDED AND RESTATED BYLAWS**  
**OF**  
**FARMERS COOPERATIVE ELEVATOR CO.**

**ARTICLE ONE**  
**DEFINITIONS**

As used or referred to in these Bylaws, and in the Articles of Incorporation, the following terms shall have the meanings provided next to them:

- 1.1 **"Absentee Vote"** means the vote of a Member that is cast without physical presence at the meeting at which the vote is tallied.
- 1.2 **"Articles"** means the Association's Articles of Incorporation as amended from time to time.
- 1.3 **"Association"** means Farmers Cooperative Elevator Co.
- 1.4 **"Association Net Margins"**, as referenced in Article 3.9 of the Association's Articles of Incorporation, means all Net Margins other than amounts distributed as Patronage Refunds, and includes without limitation, amounts added to the Capital Reserve pursuant to these Bylaws.
- 1.5 **"Board"** means the Board of Directors of the Association.
- 1.6 **"Capital Credits"** means equity interests in the Association, other than capital stock, that are allocated and distributed to individual equity holders, and may include, without limitation patronage certificates, written notices of allocation, Per-Unit Retain Certificates or other similar equity interests authorized by the Board of Directors from time to time. Capital Credits are further defined and described in the Articles.
- 1.7 **"Capital Reserve"** means the unallocated capital reserve of the Association authorized in Bylaw 7.9. The Capital Reserve may be undifferentiated or it may include specifically designated reserves. The Capital Reserve may be subject to claims of current and former Member Patrons upon dissolution of the Association or as otherwise expressly provided in the Articles or these Bylaws, but it shall consist of the portion of the Association's equity that has not been allocated and distributed to any particular equity holder of the Association.
- 1.8 **"Code"** means the Internal Revenue Code of 1986, as amended.
- 1.9 **"Member"** or **"Members"** means the Members of the Association who are eligible and admitted to Membership by the Board in accordance with the Articles and these Bylaws. The Association has Voting Members and Non-Voting Members.
- 1.10 **"Net Margins"** as referenced in Article 3.9 of the Association's Articles of Incorporation, means the net proceeds or savings from the Association's annual operations.
- 1.11 **"Net Proceeds"** means the net income or net loss from Patronage Transactions conducted by the Association, before reduction for payments to Patrons with respect to business conducted on a patronage basis and before reduction for any Per-Unit Retain Certificates. Net Proceeds is further defined and described in Bylaw 7.3.

- 1.12 **“Nonpatronage Transactions”** shall refer to business done by the Association that is not from “Patronage Transactions.”
- 1.13 **"Patron"** means any Member and any nonmember with whom the Association has expressly agreed in a separate written agreement to do business on a patronage basis, in each case with respect to business conducted with the Association on a patronage basis pursuant to Bylaw 7.1.
- 1.14 **"Patronage Refund"** means the final payment to Patrons based on the Net Proceeds of the Association in accordance with Bylaws 7.4 and 7.5. Patronage Refund has the same meaning as given to "patronage dividend" in Section 1388 of the Code.
- 1.13 **"Patronage Transaction"** means business that the Association does on a patronage basis with or for Patrons. Board policy shall determine what business of the Association is done on a patronage basis.
- 1.15 **“Per-Unit Retain Certificates”** means a portion of the progress payments made by the Association to Patrons for marketing of their commodities that is held back to fund the revolving fund plan, base capital plan or other equity needs of the Association, as described in a written notice of per-unit retain allocation to the Patrons.
- 1.16 **“PURPIM”** means cash progress payments made to Patrons for marketing of their commodities. PURPIM has the same meaning as given to “per-unit retain paid in money” under Subchapter T of the Code.

## **ARTICLE TWO MEMBERSHIP**

- 2.1 **ADMISSION TO MEMBERSHIP.** Only an eligible person (as defined in the Articles) who is accepted to Membership by the Board may become a Member of the Association upon agreement to comply with such uniform conditions of Membership as prescribed by the Board. Applicants for Membership may be deemed to have applied for Membership as of the first business transaction within the year of application for Membership.
- 2.2 **TERMINATION OF MEMBERSHIP.** The Board may terminate the Membership of a Member who becomes ineligible for Membership or who has intentionally or repeatedly violated any Bylaw or condition of Membership in the Association, breached any contract with the Association, or obstructed or engaged in a material conflict with any lawful purpose or activity of the Association. A Voting Member so terminated shall thereafter have no voting rights in the Association. Termination of Membership shall not impair the obligations of either party under any agreement between the Association and the person whose Membership is terminated.

## **ARTICLE THREE MEMBERS' MEETINGS**

- 3.1 **MEMBER MEETINGS.** An annual meeting of the Members shall be held within six (6) months following the close of each fiscal year, at a time and place fixed by the Board. A special meeting of the Members may be called at any time by the Board or upon the written petition of at least ten percent (10%) of the Voting Members.
- 3.2 **VOTING.**
- (a) The Voting Members shall exercise all voting control of the Association.

- (b) Each Voting Member shall be entitled to one vote on each matter submitted to a vote of the Members.
- (c) If two or more persons hold one Voting Membership in partnership, joint tenancy, or otherwise, the vote of such Member shall be cast by any one of such persons.
- (d) The vote of any Voting Member that is a corporation or other legal entity (a "**Member Entity**") shall be cast by a person designated by the board of directors, partners, or trustees of such Member Entity. In the alternative, individual producers who are the principal owner-operators of a Member Entity may become Voting Members in their own right, in which case, such individual Members shall be entitled to vote in lieu of the Member Entity. In this instance, the Patronage Transactions of the Member Entity shall be attributed to such individual Members for the purpose of determining whether the individual Members are active Patrons of the Association.
- (e) No person may vote in more than one Voting Member capacity.
- (f) A Voting Member may cast an Absentee Vote on any matter to be acted upon by the Members, if an Absentee Vote has been authorized and provided by the Board. A Voting Member may deliver an Absentee Vote to the Association by personal delivery to an office of the Association, or by mail, telephone facsimile, or other means of electronic transmission that accomplishes delivery of a complete and legible Absentee Vote to the Association upon the terms prescribed for such Absentee Vote.

3.3 NOTICES. A written notice of each Member meeting shall be sent to each Voting Member at their last known address not less than ten (10) days prior to the date of the meeting; or, if such notice is impracticable, the notice may be given by publishing the same at least two (2) weeks prior to the date of the meeting or other action in a publication or publications of general circulation throughout the Association's trade area. Notice shall be sent by mail, or, if the Voting Member consents, by telephone facsimile or by other means of electronic transmission that reasonably assures actual delivery of the notice. No final action shall be taken at any special meeting on any matter not specified in the notice.

3.4 MEMBER QUORUM. A quorum necessary for any vote or other action by the Members shall be at least ten percent (10%) of the Voting Members participating in person or by Absentee Vote, but if the Voting Members exceed five hundred (500) in number, fifty (50) Voting Members participating in person or by Absentee Vote shall constitute a quorum. The quorum shall be established by a registration of the Members present or otherwise participating in the meeting.

#### **ARTICLE FOUR BOARD OF DIRECTORS**

4.1 SELECTION OF DIRECTORS. The Board shall consist of seven (7) Directors. Separate elections shall be held each year at the annual meeting of the Members (or a special meeting of the Members called for the purpose of Director election) to elect a successor for each Director whose term expires. Each Director shall be elected for a term of three (3) years and until a successor is elected and qualified. To be eligible for election as a Director, a person must be a Voting Member of the Association. Any Director who ceases to be a Member shall thereby be disqualified and that Director position shall be vacant. A Director may not be elected to more than three (3) consecutive terms.

- 4.2 VACANCY. Each vacancy of a Director position on the Board, other than a vacancy by removal from office by the Voting Members or expiration of term, may be filled for the unexpired term by appointment by a majority of the Directors then in office. A Director may be removed from office at any time by a majority vote of the Voting Members, in which case the Voting Members may fill the vacancy for the remainder of the term.
- 4.3 BOARD MEETINGS. The Board shall meet regularly at such time and place as the Board determines. Special meetings of the Board may be called by the Chair, President, or any three (3) Directors. All meetings shall be held on such notice as the Board prescribes; provided, however, that any business may be transacted at any meeting without specification of such business in the notice of the meeting.
- 4.4 ORGANIZATIONAL MEETING. An organizational meeting of the Board shall be held at or before the next regular Board meeting following each annual meeting of the Members for the purpose of election of officers for the ensuing year and to transact such other business as may properly come before the meeting. The Directors and officers in office prior to the Members annual meeting shall continue to hold office until the organizational meeting.
- 4.5 BOARD QUORUM; BOARD VOTE. The quorum necessary for transaction of business at any meeting of the Board shall be at least four (4) Directors. All matters determined by the Board shall require a supporting vote from a majority of the Directors present, except where a greater vote is required by law.
- 4.6 DIRECTOR FEES AND EXPENSES. The Directors shall be reimbursed for their reasonable expenses incurred when engaged in the business of the Association, and shall be paid a reasonable Director fee for attendance at meetings or on other business of the Association.
- 4.7 FAITHFUL PERFORMANCE. The Board may require each person having control or custody of any of the Association's funds or property to give bond or be insured for faithful performance, and the cost shall be borne by the Association.
- 4.8 AUDITS. The Board shall have the records and financial statements of the Association audited by an independent certified public accountant at least once each fiscal year and a report of such audit shall be made at the next annual meeting of the Members.
- 4.9 BORROWINGS. The Board shall have the power to authorize the borrowing of money and encumbrance of assets of the Association as security for repayment of the amounts borrowed. The Board may authorize a guaranty of another person's financial obligation, if such guaranty will serve a business purpose of the Association.
- 4.10 COMMITTEES. The Board may appoint such committees, including an Executive Committee, from time to time, and delegate such authority and responsibility to such committee(s) as the Board determines. The decision or act of any committee shall be subject to review and ratification by the Board, and may be amended or repealed by the Board in accordance with any condition imposed by the Board in its delegation and charge to the committee. Each committee shall make regular and timely reports of their activities and recommendations to the Board.

## **ARTICLE FIVE OFFICERS**

- 5.1 ELECTION OF OFFICERS. At each organizational meeting of the Board, the Board shall elect officers of the Association including a Chair, Vice Chair, Secretary, and Treasurer. The Board may elect other officers as it deems necessary or desirable. The Chair and Vice Chair must be Directors of the Association. An officer may be removed by the Board whenever the Board considers such removal to be in the best interest of the Association. If any vacancy occurs among the officers of the Association, the vacant position shall be promptly filled or eliminated by the Board.
- 5.2 CHAIR. The Chair shall:
- (a) Preside at all meetings of the Members and of the Directors.
  - (b) Perform other duties and have such powers as the Board requires or delegates.
- 5.3 VICE CHAIR. The Vice Chair shall:
- (a) Perform the duties of the Chair in the absence or disability of the Chair.
  - (b) Perform such other duties as required by the Board.
- 5.4 SECRETARY. The Secretary shall:
- (a) Keep a record of each meeting of the Members and of the Directors.
  - (b) Give notices as required by law.
  - (c) Perform other duties and have such powers as the Board requires or delegates.
- 5.5 TREASURER. The Treasurer shall:
- (a) Supervise the safekeeping of all funds and property of the Association.
  - (b) Supervise the records of all financial transactions of the Association.
  - (c) Perform other duties and have such powers as the Board requires or delegates.
- 5.6 PRESIDENT. The Board shall appoint and employ a President, who shall be the chief executive officer and general manager of the Association, and the Board may terminate such employment at its discretion. The President shall actively manage and supervise the business of the Association; shall control the employment, supervision, compensation, discipline and discharge of the Association's employees; and shall perform other duties and have such powers as the Board requires or delegates. The President may delegate authority to such employee Vice Presidents as the President deems necessary for the efficient and effective management of the Association's business.

## **ARTICLE SIX INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES**

- 6.1 INDEMNIFICATION. Each person and the heirs and legal representatives of such person who is or was a Director or officer or employee of the Association or of any other entity that the person serves or served as such at the request of the Association (an "**Indemnitee**"), shall be indemnified by the Association against liability and related expense incurred in connection with any claim, suit, or other proceeding (a "**Claim**"), whether civil, criminal, administrative, or investigative and including any related appeal in which the Indemnitee may be involved by reason of the Indemnitee's position with the Association. Such indemnification shall be available whether or not the Indemnitee occupies the position when liability or expense is incurred, but only if the

Indemnitee has met the standard of conduct set forth in Bylaw 6.2. The amount of indemnification shall be reduced by the amount of any other indemnification or reimbursement of the Indemnitee in respect of the liability and expense for which indemnification is claimed. As used in this Bylaw, the terms "liability" and "expense" shall include, without limitation: Indemnitee 's personal expenses; attorney fees and disbursements; fees and expenses of witnesses, experts, and other consultants necessary to defend Indemnitee against a Claim; judgments, fines, or penalties; and amounts paid in settlement by or on behalf of an Indemnitee, with respect to a Claim. The disposition of any Claim by judgment, order, settlement (whether with or without court approval), or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee did not meet the standard of conduct set forth in Bylaw 6.2.

- 6.2 **STANDARD OF CONDUCT FOR INDEMNIFICATION.** In order to receive indemnification with respect to a Claim, an Indemnitee shall have:
- (a) acted in good faith; and
  - (b) reasonably believed:
    - (1) in the case of the Indemnitee's conduct in an official capacity with the Association, that such conduct was in the best interest of the Association;
    - (2) in all other cases, that the Indemnitee's conduct was not opposed to the Association's best interest; and
  - (c) in the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.
- 6.3 **DETERMINATION OF ENTITLEMENT TO INDEMNIFICATION.** Each Indemnitee who has been successful on the merits with respect to any Claim shall be entitled to indemnification. Any other indemnification shall be available only if the Board, acting by a quorum consisting of Directors who are not parties to (or who have been wholly successful with respect to) such Claim shall find that the Indemnitee has met the standard of conduct set forth in Bylaw 6.2, or independent legal counsel gives the Association a written opinion that the Indemnitee has met such standard.
- 6.4 **ADVANCE OF EXPENSES.** The Association may advance funds to pay expenses incurred with respect to any Claim prior to final disposition if the Indemnitee agrees to repay such amount in the event it is ultimately determined that the Indemnitee is not entitled to indemnification.
- 6.5 **RIGHTS NOT EXCLUSIVE.** Indemnification provided in these Bylaws shall be in addition to any rights to which the Indemnitee may otherwise be entitled by contract or as a matter of law and shall be available whether or not the Claim asserted against the Indemnitee is based on matters which antedate the adoption of this Article 6 of the Bylaws.
- 6.6 **INSURANCE.** The Association is authorized to purchase insurance to insure the Association against costs of indemnification.

**ARTICLE SEVEN  
PATRONS AND PATRONAGE REFUNDS**

7.1 COOPERATIVE OPERATION.

- (a) The Association shall be operated upon a cooperative basis. Accordingly, the net income of the Association in excess of amounts credited by the Board of Directors to Capital Reserves shall be accounted for, allocated and distributed annually as provided in this Article 7.
- (b) Each transaction between the Association and a Patron shall be subject to and shall include as a part of its terms each provision of the Articles and Bylaws, whether referred to in the transaction or not. Each Patron shall be entitled to Patronage Refunds as provided in these Bylaws. Nonmembers shall not be Patrons and shall not be entitled to Patronage Refunds arising out of transactions with the Association as provided in this Article 7, unless the Association and the nonmember have expressly agreed in a separate written agreement to do business on a patronage basis.
- (c) In determining the net income or net loss of the Association or its allocation units, there shall be taken into account (i) the Association's share of the net income or net loss of any unincorporated entity in which the Association owns an equity interest, (ii) patronage distributions distributed by other cooperatives of which the Association is a patron, and (iii) to the extent determined by the Board of Directors in its sole discretion, the Association's share of the undistributed net income or net loss before tax of any corporation or other entity in which the Association owns an equity interest.

7.2 ESTABLISHMENT OF POOLS OR ALLOCATION UNITS. The Board of Directors may establish pools or allocation units on a reasonable and equitable basis, which may be functional, divisional, departmental, geographic, or otherwise. If pools or allocation units are established, the Board of Directors shall adopt accounting procedures that the Board of Directors determines in its sole discretion equitably allocate among such pools or allocation units the Association's income, gains, expenses and losses and, to the extent provided in Bylaw 7.1(c), patronage distributions received by the Association and its share of income, gain, loss and deduction of other entities in which it owns an interest.

7.3 DETERMINATION OF NET PROCEEDS. The Net Proceeds for each fiscal year shall be the sum of:

- a) The gross revenues directly attributable to goods or services marketed or procured for Patrons, plus
- b) An equitably apportioned share of other items of income or gain attributable to the Association's Patronage Transactions, less
- c) An equitably apportioned share of all expenses and costs of goods or services (other than PURPIMs) directly attributable or apportioned to goods or services marketed or procured for Patrons, less
- d) An equitably apportioned share of all other expenses or losses attributable to the Association's Patronage Transactions, dividends on capital stock to the extent that such dividends cannot be fully paid from net income from Nonpatronage Transactions as provided in Bylaw 7.11, and distributable net income from Patronage Transactions that is credited to the Capital Reserve pursuant to Bylaw 7.10.

The foregoing amounts shall be determined in accordance with the accounting treatment used by the Association 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 services shall include without limitation: (1) such amounts of depreciation, cost depletion and amortization as may be appropriate, (2) amounts incurred for the promotion and encouragement of cooperative organizations, and (3) taxes other than federal income taxes. Such net income or net loss shall be subject to adjustment as provided in Bylaws 7.10 and 7.11 relating to losses.

#### 7.4 ALLOCATION OF NET PROCEEDS.

- a) The Net Proceeds for each fiscal year shall be allocated among the Patrons in the ratio that the quantity or value of the business done with or for each such Patron during such fiscal year bears to the quantity or value of the business done with or for all Patrons. The Board of Directors will reasonably and equitably determine whether allocations shall be made on the basis of quantity or value, or a combination of the two. The Board of Directors may, in its sole discretion, allocate alternative minimum tax income or preferences among the Patrons.
- b) Upon the occurrence of an event of unusual or extraordinary income or loss (examples include, but are not limited to, the sale of a major asset at a significant gain or loss, or the resolution of a lawsuit with significant receipt or payment of funds), the Board of Directors may in its sole discretion create a separate pool for that income or loss and allocate that pool to a subset of Patrons that the Board of Directors determines should appropriately share in that income or bear that loss. That allocation may be geographic, by time period, or by any other method deemed equitable in the sole discretion of the Board of Directors. In making that allocation, the Board of Directors may exclude former Patrons who are no longer Patrons as of the end of a fiscal year and would have been included in the allocation group if they had remained Patrons. The Board of Directors will provide reasonable notice to Patrons of any such allocation.

#### 7.5 DISTRIBUTION OF NET PROCEEDS.

- (a) Net Proceeds Distributions. The Net Proceeds allocated to a Patron pursuant to Bylaw 7.4 hereof may be distributed annually or more often to such Patron as a PURPIM, a Per-Unit Retain Certificate or a Patronage Refund. No distribution need be made of a Patronage Refund where the amount to be distributed to a Patron is less than a de minimis amount established from time to time by the Board of Directors.
- (b) Form of Net Proceeds Distributions. The Net Proceeds shall be distributed in cash and non-cash form as determined by the Board of Directors. Cash distributions can be made as PURPIMs or the cash portion of the Patronage Refund. Non-cash distributions may be made as Per-Unit Retain Certificates or the non-cash portion of the Patronage Refund, and can be in the form of capital stock, Capital Credits, or any combination thereof designated by the Board of Directors.
- (b) Written Notices of Allocation. The Association shall distribute Net Proceeds as provided in this Bylaw 7.5 within eight and one-half months after the end of each fiscal year. Distributions shall include a written notice of allocation showing (1) the amount of such distribution; (2) the manner of such distribution; (3) the exact amount distributed in cash,

capital stock and Capital Credits; and (4) the manner in which the Board of Directors has designated the non-cash portion of such distribution as a qualified written notice of allocation, as a nonqualified written notice of allocation or any combination thereof as provided in Section 1388 of the Code.

- 7.7 BASE CAPITAL PLAN. The Board of Directors may from time to time approve or modify reasonable and equitable plans for financing the Association. Such plans may have as their objective the alignment of individual Members' or other Patrons' investment with their respective patronage. Any such plan or plans, when approved by the Board of Directors, shall be binding upon all Members and other Patrons. For the purpose of funding individual Members' or other Patrons' required capital contributions pursuant to any such plan or plans ("target capital") through the retention and reinvestment of Patronage Refunds and/or Per-Unit Retains, any such plan or plans may require the cash and non-cash portion of each Patron's Patronage Refund and/or per unit retains to vary, depending on whether the Patron has met or exceeded the Patron's respective target capital requirement. The base capital plan may employ the use of non-qualified or qualified Patronage Refund distributions and Per-Unit Retain Certificates.
- 7.8 FORFEITURE OF NET PROCEEDS. The allocation and distribution of Net Proceeds to each Patron is subject to the condition that, if the Association allocates Net Proceeds to a Patron who: (1) does not consent to include the amount of any distribution in income as required in the Consent Bylaw or in any other written patronage agreement; or (2) is unable or unwilling to receive or accept distribution; or (3) cannot, after distribution, be located for redemption of the non-cash portion of any Patronage Refund or any Per-Unit Retain Certificate, then such distribution (or the non-cash portion of any Patronage Refund or Per-Unit Retain Certificate in the case of clause 3 of this Bylaw) shall forfeit and be irrevocably assigned back to the Association and be added to the Capital Reserve.
- 7.9 CAPITAL RESERVE. The Association shall maintain a Capital Reserve for the purpose of providing a reserve against which the Association may charge losses and for other purposes for which an unallocated reserve may be necessary or desirable for the Association. The Capital Reserve shall not be allocated to Patrons and, except as otherwise provided in Bylaw 7.10, the Association shall annually add to the Capital Reserve the sum of the following amounts:
- (a) The annual net income of the Association attributable to Nonpatronage Transactions;
  - (b) Annual net income from Patrons who are unidentified or to whom the amount otherwise to be distributed is less than the de minimis amount provided in Bylaw 7.5(a); and
  - (c) An amount not to exceed fifty percent (50%) of Net Proceeds, provided that a determination as to a specific amount is determined prior to the first day of any fiscal year, and further that the amount is set at fifteen percent (15%) for any fiscal year for which the Board of Directors does not make a determination prior to the first day of such year. The discretion to credit Net Proceeds to the Capital Reserve shall be reduced or eliminated with respect to the Net Proceeds of any period following the adoption of a Board of Directors resolution that irrevocably provides for such reduction or elimination with respect to such period.

Amounts carried in the Capital Reserve and not allocated to the members may be so allocated by the Board of Directors at any time. Federal and any state income taxes receivable from the Association shall be charged to the Capital Reserve.

#### 7.10 TREATMENT OF PATRONAGE LOSSES.

- (a) Methods for Handling Patronage Losses. If there is a net loss in any fiscal year from Patronage Transactions of any pool or allocation unit, the Association may take one or more of the following actions:
  - (1) Offset all or part of such net loss against the Net Proceeds of other pools or allocation units, if any, for such fiscal year to the extent allowed by law;
  - (2) Establish accounts receivable from Patrons that may be satisfied out of any future amounts that may become payable by the Association to each such Patron;
  - (3) Carry all or part of the loss forward to be charged against future Net Proceeds of the allocation unit that incurs the loss;
  - (4) Offset all or part of such net loss against unallocated retained earnings or the Capital Reserve; and/or
  - (5) Cancel outstanding allocated Patronage Refunds, Per-Unit Retain Certificates, or other patronage equities in the amount of the loss.
- (b) Allocation of Net Loss Among Patrons. Any cancellation of patronage equities or establishment of accounts receivable from Patrons pursuant to this Bylaw 7.10 shall be made among the Patrons in a manner consistent with the allocation of Net Proceeds.
- (c) Restoration of Net Loss out of Future Net Proceeds. The future Net Proceeds of an allocation unit may be reduced by part or all of any net loss that was offset against the unallocated retained earnings, against the Capital Reserve, against the patronage equities of another allocation unit, or against the net proceeds of another allocation unit, and may be used to restore the retained earnings, Capital Reserve, or patronage equities or to increase the future net proceeds 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 Bylaw 7.10 shall be implemented by the Board of Directors in a manner that it determines in its sole discretion is equitable and in the best interest of the Association.
- (e) No Assessments Against Members or Patrons. There shall be no right of assessment against Members for the purpose of restoring impairments to capital caused by net losses.
- (f) Tax Losses. This Bylaw shall not be construed to deprive the Association of the right to carry back or carry forward net operating losses in accordance with the Code or state tax statutes.

#### 7.11 NONPATRONAGE INCOME AND LOSS.

- (a) All dividends paid on capital stock shall be paid exclusively out of current and accumulated net income from Nonpatronage Transactions and unallocated income from Patronage Transactions to the extent such net income is sufficient to satisfy any dividend obligation.
- (b) Annual nonpatronage net losses generally shall be chargeable against the Capital Reserve, if any, unless and to the extent the Board of Directors determines in its sole discretion that

it is reasonable and equitable to allocate all or part of such a net loss among Patrons of the Association.

- 7.12 CONSENT BYLAW. Each person who becomes a Member in the Association and each Member of the Association on 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 the Member's Patronage Transactions that are distributed by qualified written notice of allocation (as defined in Section 1388 of the Code) and which are received by the Member from the Association, will be taken into account and included in the Member's gross income for Federal income tax purposes at their stated dollar amount in computing gross income in the manner and to the extent provided in Section 1385(a) of the Code in the taxable year in which such written notice of allocation is received by the member.

#### **ARTICLE EIGHT FISCAL YEAR**

The fiscal year of the Association shall be determined by the Board.

#### **ARTICLE NINE AMENDMENT OF BYLAWS**

These Bylaws may be amended by an affirmative vote of a simple majority of those Voting Members who vote on the amendment. The notice of such action to amend must contain the text of the proposed amendment.