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2 **RESOLUTION ADOPTING THE BYLAWS**  
3 **OF THE**  
4 **PRESTON GROWERS CO-OP, INC.**  
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7 WHEREAS, the Preston Growers Co-op, Inc. (Cooperative) was formed with  
8 the recording of its Articles of Incorporation under Article 4. Cooperative  
9 Associations of Chapter 19, Agriculture of the West Virginia Code; and  
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11 WHEREAS, counsel to the Cooperative has prepared the attached proposed  
12 Bylaws, which have been reviewed by the Board of Directors; and  
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14 WHEREAS, upon due notice mailed to each member, the Board of Directors  
15 has called a special meeting of the members for the purpose of consideration and  
16 adoption of the Bylaws of the Cooperative.  
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18 NOW THEREFORE BE IT:  
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20 RESOLVED, that, in accordance with the Code, the members of the  
21 Cooperative hereby adopt the attached as the Bylaws of the Cooperative.  
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25 I, \_\_\_\_\_, the duly elected Secretary of Preston Growers Co-  
26 op, Inc., hereby certify that the above resolution of its members was duly approved  
27 and enacted by an affirmative vote of greater than two thirds of the members  
28 voting at a special meeting of the members held on \_\_\_\_\_, 20\_\_, at  
29 which a quorum was present and voting.  
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34 By: \_\_\_\_\_  
35 Secretary  
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**BYLAWS  
OF  
PRESTON GROWERS CO-OP, INC.**

**BYLAW 1  
MEMBERSHIP**

**Section 1.1. Eligibility for Membership.** : Any person, firm, partnership, limited liability partnership, limited partnership, limited liability company (LLC), corporation or association, who or which agrees to be a patron of the Association, signs and abides by a membership agreement with the Association, reside in the territory served by the Cooperative and who meet the qualifications established by the Board of Directors, shall become members of the cooperative by:

- (1) applying for membership;
- (2) being approved for membership by the Cooperative's Board of Directors;
- (3) Purchasing for \$100.00 and becoming the holder of a share of the Cooperative's membership stock (hereafter referred to as a "Membership Share" or "Membership Stock"), payable by check, cash, or other means approved by the Board of Directors; and
- (4) agreeing to abide by the membership agreement established by the Board of Directors, which shall be uniform in its application to all members, and agreeing to pay such dues and fees from time to time as established by the Board of Directors.

**Section 1.2. Termination of Membership.** Membership in this Cooperative may be terminated by the Board of Directors if any of the following events occur:

- (1) a member ceases to be an agricultural producer or has become ineligible for membership for any reason according to Section 1.1 of these bylaws.;
- (2) a member has failed to patronize this Cooperative for a period of one year or more, or has failed to make deliveries for sales arranged by the Cooperative; an exception being given by the Board of Directors if conditions outside the control of the member prohibit the member from fulfilling this obligation;

- 1 (3) a member who is an individual dies without legal and qualified heir, or a  
2 member that is not an individual ceases to exist as a legal entity and  
3 leaves no successor; all other successor transfers to be approved by the  
4 Board of Directors as provided in bylaw 9 or  
5
- 6 (4) the Board of Directors by resolution finds that a member has:  
7
- 8 (i) intentionally or repeatedly violated any provision of the  
9 Cooperative's Articles of Incorporation, its Bylaws, or its rules and  
10 regulations;
  - 11
  - 12 (ii) breached any contract with or obligation to the Cooperative or any  
13 of its members including, but not limited to, the obligation to make  
14 timely payments on the member's account with the Cooperative; or  
15
  - 16 (iii) wilfully obstructed any lawful purpose or activity of the Cooperative.  
17

18 **Section 1.3 Suspension or Termination.** In the event the board of directors of the  
19 Association shall find that any member has ceased to be an eligible member under  
20 Section 1, above, the board may immediately suspend the member with written notice  
21 of the violation and allow the member thirty (30) days to cure the violation or the board  
22 may review all circumstances and determine whether to terminate the member without  
23 an opportunity to cure. If an opportunity to cure is provided by the board, a hearing will  
24 be held at the end of the (30) days and the board shall determine whether the member  
25 is eligible to retain membership or whether a suspension or termination is required in  
26 the best interests of the Association. If an affirmative vote of at least two-thirds of the  
27 directors casting votes finds for suspension or termination, such resolution shall be  
28 presented to the members, who, by an affirmative vote of a majority of member votes  
29 cast at a regular or at a special meeting held for that purpose, may suspend such  
30 member's rights as a member or terminate the membership.  
31

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33 **Section 1.4. Consequences of Membership Termination.** Upon termination of  
34 membership, voting rights and other rights of membership shall cease. Termination of  
35 membership alone shall not affect the rights or liabilities of either the member or the  
36 Cooperative under any individual contract. Termination of membership alone does not  
37 affect the member's patronage capital or entitle the member to a redemption of his  
38 Membership Share or to retirement of accumulated patronage capital. In accordance  
39 with the Cooperative's Articles of Incorporation, upon membership termination, the  
40 Cooperative shall have the right, at its option, to purchase the terminated member's  
41 Membership Share at the lesser of their issuance price or book value.  
42

43 A terminated member's allocated patronage and unit retains shall be revolved or retired  
44 in the same manner as the patronage credits or equities of active members.  
45

1 Notwithstanding the foregoing, in the event of the death of a Member, the Cooperative  
2 shall have the option to purchase the shares of the deceased member at a price equal  
3 to the greater of (i) book value; or (ii) the original issuance price. If the Cooperative  
4 does not purchase the deceased member's stock, the estate of the member shall have  
5 the right to transfer the stock to an agricultural producer satisfying the eligibility  
6 requirements set forth in Bylaw 9.2.

7  
8 **Section 1.5. Stock Ownership.** All of the Membership Stock of the Cooperative shall  
9 be held by producers who market agricultural products through the Cooperative or  
10 supply deliveries of commodities on sales arranged by the Cooperative.

11  
12 **Section 1.6. Evidence of Membership.** Membership in the Cooperative shall be  
13 evidenced by the records of the Cooperative. Stock certificates may be issued as  
14 determined by the Board of Directors. Requests for changes in stockholder status,  
15 including address changes, must be given in writing to the Board of Directors.

16  
17 **Section 1.7. Replacement of Stock Certificates.** When existing stock certificates are  
18 to be replaced, they must be surrendered before new certificates are issued. Each  
19 surrendered certificate shall be canceled, with the date of cancellation noted on the  
20 certificate. In the event that any stock certificate has been lost or destroyed, the  
21 registered owner of the certificate shall be required to deliver appropriate  
22 indemnification commitments to the Cooperative before the Cooperative issues a  
23 replacement certificate for the lost or destroyed certificate.

24  
25 **Section 1.8. Nonliability of Members.** Members, stockholders, and patrons of the  
26 Cooperative are neither obligated to pay nor liable upon any Cooperative obligations in  
27 accordance with statutes of the State of West Virginia.

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29 **BYLAW 2**  
30 **Meetings of Members**

31  
32 **Section 2.1. Annual Meetings.** The Annual Meeting of the members of this  
33 Cooperative shall be held annually during the months of January, February or March at  
34 the principal place of business of the Cooperative, or at any other place conveniently  
35 located within the area served by it, as may be determined by the Board of Directors.  
36 The Annual Meeting shall be held on such date, place and hour as determined by the  
37 Board of Directors. The notice of the meeting shall state the date, place and hour of the  
38 meeting. At the Annual Meeting, the members shall transact business as may properly  
39 come before the meeting.

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41 The officers of the Cooperative must submit reports to the members at the Annual  
42 Meeting which cover the business of the Cooperative for the previous fiscal year, and  
43 which show the condition of the Cooperative at the close of the fiscal year.  
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1 **Section 2.2. Special Meetings.** The President shall cause notice of a Special Meeting  
2 of members to be given upon a written petition by at least twenty five percent (25%) of  
3 the members, or upon a majority vote of the Board of Directors. The notice shall state  
4 the time, place and purpose of the Special Meeting. If a Special Meeting is called by  
5 virtue of a member petition, the notice of such meeting shall be issued with ten (10)  
6 days of presentation of such petition and the Special Meeting shall be held within thirty  
7 (30) days from the date of presentation of such petition. No business shall be  
8 transacted at a Special Meeting except that stated in the notice of the meeting.  
9

10 **Section 2.3. Notice.** Notice shall be given by the Secretary of all Annual Meetings and  
11 Special Meetings of the members by mailing a notice of the meeting to each member at  
12 the member's last known address or email address, not less than ten (10) days prior to  
13 the date of the meeting. The failure of any member to receive the notice shall not  
14 invalidate any action which may be taken by the members at the meeting.  
15

16 **Section 2.4. Quorum.** At any meeting of the members, a quorum necessary for the  
17 transaction of business shall be a majority of the members until membership grows to  
18 20 or more, at which time 25% are required for a quorum. Members represented by  
19 signed votes may be counted in computing a quorum only on those questions as to  
20 which a signed vote is taken. If less than a quorum is present at any meeting, a  
21 majority of votes present in person may adjourn the meeting from time to time without  
22 further notice.  
23

24 The attendance of a sufficient number of members to constitute a quorum shall be  
25 established by a registration of members of the Cooperative who are present at the  
26 meeting, which registration shall be verified by the President and Secretary, and shall  
27 be reported in the minutes of the meeting.  
28

29 **Section 2.5. Voting.**  
30

- 31 (1) Each member entity shall be entitled to one vote and no more upon each  
32 matter submitted to a vote at a meeting of the members.  
33
- 34 (2) All questions shall be decided by a vote of a majority of the members  
35 voting thereon in person, except as otherwise provided by law, the Articles  
36 of Incorporation, or these Bylaws.  
37
- 38 (3) Voting by proxy and cumulative voting shall not be allowed, but signed  
39 votes may be used when specifically authorized by resolution of the Board  
40 of Directors. Voting by mail, electronic or telephonic transmittal is  
41 permitted. When so authorized, votes shall be valid and entitled to the  
42 same force and effect as a vote in person if the member has been  
43 previously notified in writing of the exact motion or resolution upon which  
44 the vote is taken and when the vote is received prior to the beginning of  
45 the meeting.  
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2 (4) In the case of voting by corporations, partnerships, limited liability  
3 companies or unincorporated families, only one vote is allotted to each  
4 member entity.

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6 (5) A member entity that is not a natural person must designate an authorized  
7 representative to cast its vote in the affairs of the Cooperative. The  
8 designation must be in writing, must be properly authorized by the  
9 member, and must be provided to the Secretary of the Cooperative. Such  
10 a written designation will remain effective until it is superseded by a more  
11 recent written designation meeting the same criteria. In the absence of  
12 written notice that some person has been designated to represent a  
13 member who is other than a natural person, such member may be  
14 represented by any of its principal officers. No individual may be  
15 authorized to cast more than two votes for a nonperson member entity in  
16 addition to his or her own membership vote at a membership meeting.

17  
18 **Section 2.6. Order of Business.** Insofar as practical, the order of business at the  
19 Annual Meeting and, where applicable, at all other meetings of the members shall be:

- 20  
21 (1) Registration of Members;  
22  
23 (2) Call of Meeting to Order;  
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25 (3) Proof of Notice of Meeting and the Report as to the Members  
26 Present in Order to Determine the Existence of a Quorum;  
27  
28 (4) Reading of Minutes of Prior Meeting;  
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30 (5) Reports of Officers and Committees;  
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32 (6) Election of Directors;  
33  
34 (7) Unfinished Business;  
35  
36 (8) New Business; and  
37  
38 (9) Adjournment.

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40 **Section 2.7. Action Without a Meeting.** Any action which may be taken at a member  
41 meeting may be taken without a meeting if a writing setting forth and approving the  
42 action shall be signed by a majority of the members actually voting on such action.

43  
44 **Section 2.8. Procedure.** The rules of parliamentary practice comprised in Robert's  
45 Rules of Order, most recent edition, shall govern this Cooperative in all situations in

1 which they are applicable and are not inconsistent with the Articles of Association of this  
2 Cooperative or these Bylaws.

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7 **BYLAW 3**  
8 **Directors**  
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10 **Section 3.1. General Powers.** The Board of Directors shall govern the business and  
11 affairs of the Cooperative and shall be empowered to adopt all necessary rules and  
12 regulations not inconsistent with the Articles of Incorporation or Bylaws. The rules and  
13 regulations may be established for the operation of the business, the guidance of the  
14 officers and other employees, and the management of the Cooperative. The Board of  
15 Directors, or the officer or officers to whom the power is delegated, shall hire and fire  
16 employees of the Cooperative, and determine duties, salaries, and other conditions of  
17 employment.

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19 **Section 3.2. Number, Qualifications and Terms of Office.** The government of the  
20 Cooperative and the management of its affairs shall be vested in a Board of Directors  
21 composed of five (5) directors unless membership falls below five, at which time the  
22 number of directors will equal the number of members. The five Directors named in the  
23 Articles of Incorporation of the Cooperative shall serve as the Board until the first annual  
24 meeting of the members, or until their successors are duly chosen and qualified. At the  
25 first annual meeting of the members, five Directors shall be elected, three of whom shall  
26 be elected for a two-year term, and two of whom shall be elected for a one-year term.  
27 Thereafter, the number of Directors of the Cooperative shall be five, with three Directors  
28 elected to a two-year term in each even-numbered year, and with two Directors elected  
29 to a two-year term in each odd-numbered year. All directors shall hold office until their  
30 successors are elected and qualified, except as provided in Section 3.9 of these bylaws.  
31 Subject to modification by the members, voting shall be by ballot and each member may  
32 vote for one (1) candidate for each vacant director position. The candidates receiving  
33 the highest numbers of votes for the vacant positions shall be elected to the Board. Any  
34 vacancy in the Board, other than by expiration of a term of office, shall be filled by a  
35 majority vote of the remaining directors for the remainder of that term or until a special  
36 meeting is called for the purpose of electing a new director.

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39 **Section 3.3. Annual Meeting of the Board of Directors.** Within thirty (30) days after  
40 each Annual Meeting of members, the Board of Directors shall meet for the purpose of  
41 electing officers of the Cooperative and for the transaction of such other business as  
42 shall come before the meeting. The Annual Meeting of the Board of Directors shall be  
43 held immediately after the Annual Meeting of Members or at such time and place as  
44 may be fixed by resolution adopted by a majority of the whole Board of Directors.  
45

1 **Section 3.4. Regular Meeting of the Board of Directors.** Regular Meetings of the  
2 Board of Directors shall be held from time to time at such time and place as may be  
3 fixed by resolution by a majority of the whole Board of Directors.  
4

5 **Section 3.5. Special Meetings.** Special Meetings of the Board of Directors may be  
6 called by the President, the Secretary or by any three (3) of the Directors and shall be  
7 held from time to time at a time and place as may be designated in the notice of the  
8 meeting.  
9

10 **Section 3.6. Notice of Meetings of the Board of Directors.** Notice of each regular or  
11 special meeting of the Board of Directors shall be given by the President or Secretary  
12 who shall give at least seventy-two (72) hours' prior notice of the meeting to each  
13 director by mail, telephone, telephonic facsimile, electronic transmission, telegram or in  
14 person. Notice shall be deemed given upon mailing, if notice is given by mail.  
15

16 **Section 3.7. Waiver of Notice.** Notice of any meeting of the Board of Directors may  
17 be waived either before, at, or after the meeting, in writing signed by each director. A  
18 director, by attendance and participation in the action taken at any meeting of the Board  
19 of Directors, shall be deemed to have waived notice of such meeting.  
20

21 **Section 3.8. Quorum.** A majority of the whole Board of Directors shall constitute a  
22 quorum for the transaction of business except that, when a vacancy or vacancies exist,  
23 a majority of the remaining directors shall constitute a quorum. All questions shall be  
24 decided by a vote of a majority of the directors present at a meeting. Any one or more  
25 members of the Board of Directors or any committee thereof may participate in a  
26 meeting of the Board of Directors or any such committee by means of a conference  
27 telephone or similar communications equipment allowing all persons participating in the  
28 meeting to hear each other at the same time. Participation by such means shall  
29 constitute presence in person at a meeting.  
30

31 **Section 3.9. Removal.** Any director may be removed from office, for cause, by a  
32 majority vote of the members, as provided in §19-4-14. Removal of officer or director.  
33 under Article 4. Cooperative Associations of Chapter 19, Agriculture of the West Virginia  
34 Code.  
35

36 **Section 3.10. Executive Committee.** The Board of Directors may appoint an  
37 Executive Committee of not less than three directors. The Executive Committee shall  
38 have authority to exercise all powers of the full Board of Directors between the meetings  
39 of the Board except,  
40

- 41 (1) Powers reserved by the board to itself.
- 42
- 43 (2) Apportionment or distribution of proceeds.
- 44
- 45 (3) Election of officers.
- 46



1 (4) Filling of vacancies in the board.

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3 (5) Amendments to the bylaws.

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5 **Section 3.11. Committees.** The President or the Board of Directors may establish  
6 committees from time to time making such regulations, as it deems advisable, with  
7 respect to the membership, authority and procedures of such committees.

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9 **Section 3.12. Compensation of the Board of Directors.** Directors who are not  
10 salaried officers of this Cooperative may receive such fixed sum per meeting attended  
11 or such fixed annual sum as may be determined, from time to time, by resolution of the  
12 Board of Directors and subject to the majority approval of the membership. All directors  
13 shall receive their expenses, if any, of attendance at meetings of the Board of Directors  
14 or any committee thereof, as shall be determined, from time to time, by resolution of the  
15 Board of Directors. Nothing in these Bylaws shall be construed to preclude any director  
16 from serving the Cooperative in any other capacity and receiving proper compensation  
17 for the service.

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19 **BYLAW 4**  
20 **Officers and Employees**

21  
22 **Section 4.1. Officers.** At its Annual Meeting, the Board of Directors shall elect from its  
23 number, a President, a Vice-President, a Secretary and a Treasurer. These individuals  
24 are referred to as the officers of this Cooperative and shall be elected by *plurality* of the  
25 cast votes for each officer's position. The officers shall hold their offices until their  
26 successors have been elected and have qualified, except as provided in Section 4.6 of  
27 these bylaws. The Board of Directors may establish other offices as it deems  
28 appropriate. The clerical work of the secretary and treasurer may be delegated by the  
29 Board of Directors. The President, the Vice-President, the Secretary and the Treasurer  
30 shall be members of the Board of Directors.

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32 **Section 4.2. President.** The President:

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34 (1) Shall preside at all meetings of the members and of the Board of  
35 Directors;

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37 (2) May sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or  
38 other instruments executed on behalf of this Cooperative, except in cases  
39 in which the signing and execution thereof shall be expressly delegated by  
40 the Board of Directors or by these Bylaws to some other officer or agent of  
41 the Cooperative, or shall be required by law to be otherwise signed or  
42 executed; and,

43  
44 (3) In general, shall perform all duties incident to the office of the President  
45 and such other duties as may be prescribed by the Board of Directors  
46 from time to time.

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2 **Section 4.3. Vice-President.** In the absence of the President, or in the event of the  
3 inability or refusal to act, the Vice-President shall perform the duties of the President,  
4 and when so acting, shall have all the powers of and be subject to all of the restrictions  
5 upon the President; provided, however, that in the case of death or resignation of the  
6 President, the Board of Directors may declare the office vacant and elect a successor.  
7 The Vice-President shall also perform such other duties as from time to time may be  
8 assigned by the Board of Directors.  
9

10 **Section 4.4. Secretary.** The Secretary:

- 11 (1) Shall cause minutes of the meetings of the members, of the Board of  
12 Directors, and of any executive committee to be kept;
- 13 (2) See that all notices are duly given in accordance with these Bylaws, or as  
14 required by law;
- 15 (3) Supervise custody of the records of the Cooperative;
- 16 (4) Cause a register of the names and post office addresses of all members  
17 to be kept; and
- 18 (5) In general, perform all duties incident to the office of Secretary and such  
19 other duties as from time to time may be assigned by the Board of  
20 Directors.  
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23 **Section 4.5. Treasurer.** The Treasurer shall supervise the custody of all funds,  
24 securities and property of the Cooperative. The Treasurer shall cause deposit of all  
25 funds in the name of the Cooperative and cause disbursement of the same upon the  
26 authority of the Board of Directors. The Treasurer shall perform such other duties as  
27 may be prescribed by the Board of Directors.  
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29 **Section 4.6. Removal of Officers.** Any officer may be removed by the Board of  
30 Directors, with or without cause at any meeting called for that purpose. The removal,  
31 however, shall be without prejudice to the contract rights of the person to be so  
32 removed as provided in §19-4-14. Removal of officer or director. under Article 4.  
33 Cooperative Associations of Chapter 19, Agriculture of the West Virginia Code.  
34

35 **Section 4.7. Election of Additional Officers; Filling of Vacancies.** Election for  
36 persons to fill any other offices established by the Board of Directors pursuant to  
37 Section 4.1 of these Bylaws shall be held at the Annual Meeting of the Board of  
38 Directors or at any other meeting of the Board of Directors, provided that notice of such  
39 election has been given in the notice of such meeting. The officers shall hold their  
40 offices until their successors have been elected and have qualified, except as provided  
41 in Section 4.6. Any vacancy in an office of the board of directors shall be filled by a  
42 majority vote of the Board of Directors for the unexpired term of such office.  
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2 **Section 4.8. Delegation of Responsibilities; Non-Member Employees and**  
3 **Services.** Notwithstanding the duties, responsibilities and authorities of the directors  
4 and officers provided for in these Bylaws, the Board of Directors by resolution may,  
5 except as otherwise limited by law, delegate, wholly or in part, the responsibility and  
6 authority for, and the regular and routine administration of, one or more of such officer's  
7 duties to one or more non-member agents or other members of the Cooperative who  
8 are not directors.  
9

10 The Board of Directors may appoint a general manager (the person holding such  
11 position may be designated Chief Executive Officer) who shall manage the affairs of the  
12 Cooperative, under the supervision of, and in accordance with the policies of, the Board  
13 of Directors. The Board of Directors may elect such other employees from time to time,  
14 and in such event shall establish appropriate duties and responsibilities for any such  
15 employees.  
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17 **Section 4.9. Compensation.** The employee of the Cooperative shall receive  
18 compensation for their services as may be determined, from time to time, by resolution  
19 of the Board of Directors.  
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21 **Section 4.10. Removal of Employees.** Any employee may be removed by the Board  
22 of Directors, with or without cause, at any meeting called for that purpose. The removal,  
23 however, shall be without prejudice to the contract rights of the person to be so  
24 removed.  
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31 **BYLAW 5**  
32 **Indemnification and Insurance**  
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34 **Section 5.1. Liability of Directors, Officers and Manager.** Directors, officers and the  
35 manager (who is the person most responsible for carrying out the policies and directives  
36 of the officers or Board of Directors) are immune from civil liability for any act or  
37 omission relating to their service or function as a director, officer or manager, to the  
38 extent that they meet the standard of care as provided in § 31D-8-830 . Stock;  
39 membership certificate; voting; liability; limitations on transfer and ownership of the WV  
40 Code.  
41

42 **Section 5.2. Indemnification.** This Cooperative shall indemnify each director, officer,  
43 manager, or employee of this Cooperative, and any person serving at the request of this  
44 Cooperative as a director, officer or manager of another corporation, partnership, joint  
45 venture, trust, or other enterprise, against expenses, including attorney's fees,  
46 judgments, fines, and amounts paid in settlement actually and reasonably incurred to

1 the extent to which such officers, directors or managers of the Cooperative may be  
2 indemnified under the law of this state.

3  
4 **Section 5.3. Insurance.** This Cooperative shall have the power to purchase and  
5 maintain insurance on behalf of any person who is or was a director, officer, manager,  
6 employee, or agent of this Cooperative, or is or was serving at the request of this  
7 Cooperative as a director, officer, manager, employee, or agent of another corporation,  
8 partnership, joint venture, trust or other enterprise against any liability asserted and  
9 incurred in any capacity.

10  
11 **Section 5.4. Bonds of Employees, officers, and agents.** Every officer, employee  
12 and agent handling funds or negotiable instruments or property of or for any association  
13 created hereunder shall be required to execute and deliver adequate bonds for the  
14 faithful performance of his duties and obligations. The Board of Directors may require all  
15 officers, agents and employees charged by the Cooperative with the custody of any of  
16 its funds or property to be adequately bonded. Such bonds shall be furnished by a  
17 bonding company, and the cost thereof shall be paid by the Cooperative.

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20 **BYLAW 6**  
21 **Operations on a Cooperative Basis**  
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23 This Cooperative shall be operated on a cooperative basis. Each transaction between  
24 this Cooperative and each member and patron shall be subject to and shall include as  
25 part of its terms and provisions the Articles of Incorporation and the Bylaws of this  
26 Cooperative. Upon contracting to market commodities to this Cooperative, each  
27 member shall be entitled to the patronage refunds, as described in these Bylaws that  
28 arise out of the patronage transactions with the Cooperative.

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35 **BYLAW 7**  
36 **Calculation on Annual Savings and Distribution**  
37 **of Annual Savings Based on Patronage**  
38

39 **Section 7.1. Gross Receipts.** All proceeds received by this Cooperative from any  
40 source shall be deemed to be "Gross Receipts". This Cooperative shall account  
41 separately for gross receipts from business with or for member patrons, and for gross  
42 receipts from sources other than business with or for member patrons. The term "Patron"  
43 as used in these Bylaws and in the Articles of Incorporation shall mean members doing business  
44 with this Association.  
45

1 **Section 7.2. Deductions from Gross Receipts.** For purposes of making the  
2 calculations described in this Bylaw 7, this Cooperative shall account separately for  
3 deductions from gross receipts from business with or for member patrons, and for  
4 deductions from gross receipts from sources other than business with or for member  
5 patrons. This Cooperative shall deduct the following costs and expenses from its gross  
6 receipts from business with or for member patrons, and from its gross receipts from  
7 sources other than business with or for member patrons, respectively:

- 8
- 9 (1) all operating expenses and costs;
- 10
- 11 (2) the cost of goods sold;
- 12
- 13 (3) the cost of services performed;
- 14
- 15 (4) all taxes and all other necessary expenses;
- 16
- 17 (5) reasonable and necessary reserves for depreciation, depletion, and  
18 obsolescence of physical property, and other valuation reserves, all of  
19 which shall be established in accordance with usual and customary  
20 accounting practices; and
- 21
- 22 (6) all accounts deemed worthless by this Cooperative and actually charged  
23 off or removed from the books of the Cooperative.
- 24

25 **Section 7.3. Annual Savings.** The remaining gross receipts after all deductions,  
26 calculated on a fiscal year basis, shall be called "annual savings", and shall be  
27 distributed and paid as provided in these Bylaws. This Cooperative shall account  
28 separately for annual savings from business with or for member patrons, and for annual  
29 savings from sources other than business with or for member patrons. In determining  
30 the amount of annual savings, the amounts of gross receipts as defined in Section 7.1  
31 above, and deductions from gross receipts as defined in Section 7.2 above, shall be  
32 adjusted so as to include only such amounts as are includable or deductible for federal  
33 income tax purposes.

34

35 **Section 7.4. Allocation of Annual Savings Between Departments and Divisions.**  
36 Annual savings from business with or for member patrons shall be distributed to the  
37 member patrons of this Cooperative on the basis of their accumulated This percentage  
38 will not include salaries drawn from the cooperative.

39

40 **Section 7.5. Capital Reserve.** The Board of Directors may annually set aside as a  
41 capital reserve a reasonable reserve for any necessary purpose.

42

43 **Section 7.6. Manner of Distribution of Patronage Refunds.** The remaining annual  
44 savings, excluding amounts allocated to capital reserves, shall be distributed to member  
45 patrons annually as patronage refunds in cash, stock, or in the form of written notices of  
46 allocation (sometimes referred to as "equity credits" or "patronage equities"), or in any

1 combination thereof on a patronage basis. The written notices of allocation may be  
2 **qualified or nonqualified**, as determined by the Board of Directors, and may be issued  
3 in noncertified form. A notice shall be sent to each member patron showing the amount  
4 distributed to the member patron, including the amount distributed in cash and the  
5 amount distributed in capital credits or patronage equities. The notice shall be sent not  
6 later that eight and one-half (8 ½) months after the close of the fiscal year.

7  
8 **Section 7.7. Events of Forfeiture of Refund.** If the Association distributes a  
9 patronage refund to a Patron who (a) does not consent to include the patronage refund  
10 in income as provided in the Consent Bylaw; or (b) is unable to receive distribution; or  
11 (c) cannot be located for redemption of such patronage refunds, such patronage  
12 refunds shall forfeit to this Association and be added to the Capital Reserve. Patronage  
13 refunds of less than Fifty Dollars (\$50) shall be treated as non-distributable and added  
14 to the Capital Reserve.

15  
16 **Section 7.8. Fiscal Year.** The fiscal year for this cooperative will begin at 12:01 AM on  
17 January 1 of each year and end at 12:00 midnight on December 31 of the same year.

18  
19 **BYLAW 8**  
20 **Unit Retentions**

21 **Section 8.1. Unit Retain.** By resolution of the Board of Directors and approval vote by  
22 a majority of the membership, the Cooperative may require investment in its capital in  
23 addition to the investments from a percentage of the retained patronage. These  
24 investments are a direct capital investments from a retain on a per unit basis of the  
25 products purchased from it members. This unit retention, if required, shall be made on  
26 all products delivered, in the same amount per unit and shall at no time become a part  
27 of net annual savings available for patronage. Each member, by continuing to be such,  
28 agrees to invest in the capital of this Cooperative as prescribed in this Bylaw 8. Such  
29 investments shall be accounted for separately in a unit retention account set up on the  
30 books of the Cooperative.

31  
32 **Section 8.2. Income Tax Treatment and Consent to Take Qualified Per Unit**  
33 **Retains Into Income.** The Board of Directors shall have the power to determine  
34 whether any unit retain shall be a "qualified per unit retain" or a "non-qualified per unit  
35 retain" within the meaning of the Internal Revenue Code. Each person or organization  
36 that hereafter applies for and is accepted for membership in this Cooperative and each  
37 member of this Cooperative on the effective date of this Bylaw who continues as a  
38 member after such date shall, by these acts alone, consent that upon a determination of  
39 the Board of Directors that a unit retain authorized by this Bylaw 8 is to constitute a  
40 "qualified per unit retain", the member will take the per unit retain certificate issued to  
41 the member in connection therewith into account at its stated dollar amount in the  
42 manner provided in 26 U.S.C. § 1388(h) and will report such amount in the member's  
43 income tax returns for the taxable year in which the per unit retain certificate is received.

44  
45 These bylaws currently allow financing through: 1) member equity through stock  
46 ownership; 2) patronage refunds that the co-op retains through "written notice of

1 allocation,” also known as equity credits or patronage equity (which is treated like an  
2 additional capital investment by the member, rather than simply an addition to the co-  
3 op’s capital reserve); 3) retained fees on units marketed through the cooperative, if  
4 necessary. The co-op can use all three of these types of capital, but should be aware of  
5 how each is different and the role each plays in raising capital. Please review the USDA  
6 publication “Tax Treatment of Cooperatives” and the University of Kentucky publication  
7 “The Farmer’s Cooperative Yardstick: Cooperative Refunds: Patronage and Revolving”  
8 for useful explanations of cooperative capital systems.  
9

10 **BYLAW 9**  
11 **Restrictions on Transfers and Assignments**

12  
13 **Section 9.1. Process Required for Transfer or Assignment.** No proposed  
14 assignment or transfer of stock, voting rights, membership status, unit retains, or equity  
15 credits or patronage equities shall be binding on this Cooperative without compliance  
16 with this Bylaw 9.  
17

18 **Section 9.2. Membership Stock Transfers.** The Board of Directors may approve any  
19 proposed transfer or assignment of Membership Stock only if all of the following criteria  
20 are satisfied:  
21

- 22 (1) The transferee is an agricultural producer who resides in the area served  
23 by the Cooperative;
- 24 (2) The transfer would not in the opinion of the Board of Directors, have a  
25 material adverse impact on the Cooperative or its operations;
- 26 (3) The transferee will own at least one hundred (100) shares of Membership  
27 Stock;
- 28 (4) The transferee shall be of legal age; and
- 29 (5) The transferee otherwise meets the eligibility requirements for  
30 membership set forth in Section 1.1 of these Bylaws.  
31  
32  
33  
34  
35

36 The transferor and transferee shall agree, as between them, on who retains legal rights  
37 to future redemption of existing patronage equity credits and unit retains and to any  
38 future distributions of proceeds from dissolution or the sale of assets which are allocable  
39 on the basis of patronage.  
40

41 **Section 9.3. Equity Redemption.**  
42

- 43 (1) **Regular Redemption.** If at any time the board of directors determines that  
44 the financial condition of the Association will not be impaired by a  
45 redemption, capital credited to members’ accounts may be redeemed in  
46 full or in part. Any such redemption of capital shall be made in order of

1 priority according to the year in which the capital was furnished and  
2 credited, the capital first received by the Association being the first  
3 redeemed.  
4

5 (2) Discretionary Special Redemptions. Notwithstanding any other provision  
6 of these bylaws, the board, at its absolute discretion, shall have the power  
7 to retire any capital credited to members' accounts on such terms and  
8 conditions as may be agreed upon by the parties in any instance in which  
9 the interests of the Association and its members are deemed to be  
10 furthered thereby and funds are determined by the board to be available  
11 for such purposes.  
12

13 **BYLAW 10**  
14 **Consent**  
15

16 **Section 10.1. Consent to Take Patronage Distributions Into Income.** Each person  
17 or organization that hereafter applies for and is accepted for membership in this  
18 Cooperative and each member of this Cooperative on the effective date of this Bylaw  
19 who continues as a member after the effective date shall, by these acts alone, consent  
20 that the amount of any distributions with respect to patronage which are made in written  
21 notices of allocation (as defined in 26 U.S.C. § 1388), and which are received by the  
22 member from this Cooperative, will be taken into account by the member at their stated  
23 dollar amounts in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in  
24 which the written notices of allocation are received.  
25

26 **Section 10.2. Consent Notification to Members and Prospective Members.** A copy  
27 of this Consent Bylaw, and a statement of its significance shall be given to each  
28 member, and to prospective members before they become members of this  
29 Cooperative.  
30

31 **BYLAW 11**  
32 **Losses**  
33  
34  
35

36 **Section 11.1. Allocation of Net Loss.** In the event this Cooperative shall incur a net  
37 loss in any fiscal year, the Board of Directors, in its sole discretion, may (a) charge such  
38 net loss against any earned surplus or paid-in surplus which is unallocated, or against  
39 any unallocated reserve other than valuation reserves or (b) may recover the amount of  
40 such loss from prior or subsequent years' net margins or savings. If such loss exceeds  
41 the total of said unallocated earned surplus and unallocated reserves, or in any event, if  
42 the Board of Directors so elects, the amount of such loss may be recovered from prior  
43 or subsequent years' net margins or savings. The Board of Directors may make any  
44 assessment of the members only with the majority approval of the members, who may  
45 be polled without having an organized meeting. Such assessments to be made on the  
46 current season's patronage percentage for all divisions and departments on the



1 previous season. This selection shall not be construed or administered in such a way  
2 as to deprive the Cooperative of the right to carry back or carry forward net operating  
3 losses to past or future years, in accordance with the applicable provisions of the  
4 Internal Revenue Code or state taxing statutes.  
5  
6  
7  
8  
9

10 **BYLAW 12**  
11 **Endowments and Grants**

12  
13 Endowments and grants may be received in accordance with the terms established by  
14 the Board of Directors. In no case, shall the Board of Directors make a contract for  
15 services or goods in a grant without the written consent of the member.  
16

17 **BYLAW 13**  
18 **Amendments**

19  
20 These Bylaws may be amended by the members at the Annual Meeting, or at any  
21 Special Meeting for that purpose, if approved by a two thirds majority of the votes cast,  
22 provided that the notice of any such meeting contains a summary statement of the  
23 proposed amendment.  
24

25  
26 **BYLAW 14**  
27 **Dissolution**  
28

29 Members shall have no individual or separate interest in the property or assets  
30 of the Cooperative except, upon dissolution, after (1) all debts and liabilities of the  
31 Cooperative shall have been paid, and (2) all capital furnished through patronage  
32 shall have been returned. Any remaining property and assets of the Cooperative  
33 shall be distributed among the Members and former Members in the proportion  
34 which the aggregate contributed patronage capital of each bears to the total  
35 contributed patronage capital of all Members and former Members.  
36

37 **Section 14.1 Voluntary Dissolution.** At any member meeting held for the purpose  
38 of dissolving the Association, the members may adopt a resolution of dissolution  
39 by the affirmative vote of sixty percent (60%) of the members votes cast on the  
40 proposal. Notice of the meeting shall be given to all members, whether or not  
41 entitled to vote.  
42

1 **Section 14.2 Involuntary Dissolution.** The board of directors may adopt a  
2 resolution of dissolution in the following cases:

- 3
- 4 (1) When the Association has been adjudged bankrupt or has made a  
5 general assignment for the benefit of creditors:  
6
- 7 (2) By leave of the court, when a receiver has been appointed in a general  
8 creditors' suit or in any suit in which the affairs of the Association are  
9 to be wound up:  
10
- 11 (3) When the Articles of Incorporation have been canceled for failing to  
12 file annual franchise or excise tax returns or to pay franchise and  
13 excise taxes and the Association has not been nor desires to be  
14 reinstated: or  
15
- 16 (4) When substantially all of the assets have been sold at judicial sale or  
17 otherwise.  
18

19 The board of directors shall be responsible for seeing the appropriate state filings  
20 are made and notices given pursuant to West Virginia law.  
21

22  
23  
24 **BYLAW 15**  
25 **Conflict of Interest**  
26

27 **Section 15.1 General policy.** Recognizing that directors and officers have a duty to  
28 loyalty and fidelity to the Association and must govern the Association's affairs  
29 honestly and economically, while exercising their best care, skill and judgment for  
30 the benefit of the Association, to avoid even the appearance of impropriety, the  
31 directors and officers of the Association shall:  
32

- 33 (1) Disclose to the Board any situation wherein the director or officer has  
34 a conflicting or duality of interest that could possibly cause that  
35 person to act in other than the best interest of the Association; and  
36
- 37 (2) Follow the procedures stated in Section 2, below, governing the  
38 participation on behalf of the Association in any transaction in which  
39 the person has, or may have, a conflict of interest.  
40

1 **Section 15.2 Procedure.** Any director or officer having a known duality of interest  
2 or possible conflict of interest on any matter shall make a disclosure of such  
3 conflict to the other directors. Such director shall not vote or use his or her  
4 personal influence on the matter, but such director may be counted in determining  
5 the quorum for the meeting. The minutes of the meeting shall reflect the making  
6 of the disclosure, the abstention from voting and the quorum situation. Any officer  
7 having a known duality of interest or possible conflict of interest on any matter  
8 before such officer for administrative action shall report the conflict to the  
9 president or, in the case of the president, to the vice president. Such officer shall  
10 abstain from taking any administrative action on the matter. The requirements in  
11 this Section 2 shall not be construed as preventing any director or officer from  
12 briefly stating his or her position in the matter, nor from answering pertinent  
13 questions of the board or other officers.

14