

# **Bylaws of Davidson Water, Inc.**

# **TABLE OF CONTENTS**

## **Article 1 – General**

Pages 5 – 6

- Section 1.1 - Usage
- Section 1.2 - Defined Terms
- Section 1.3 - Law and Articles

## **Article 2 – Cooperative Membership**

Pages 7 – 18

- Section 2.1 - Member Qualifications
- Section 2.2 - Membership Procedure
- Section 2.3 - Membership
- Section 2.4 - Membership Agreement
- Section 2.5 - Provision of Water
- Section 2.6 - Use of Water
- Section 2.7 - Grant of Property Rights
- Section 2.8 - Member Termination
- Section 2.9 - Membership List

## **Article 3 – Member Meetings and Member Voting**

Pages 19 – 26

- Section 3.1 - Annual and Regular Member Meetings
- Section 3.2 - Special Member Meetings
- Section 3.3 - Agenda, Attendance, and Action at Member Meetings
- Section 3.4 - Member Action Without a Member Meeting
- Section 3.5 - Notice of Member Meetings
- Section 3.6 - Record Date
- Section 3.7 - Member Meeting List
- Section 3.8 - Member Waiver of Notice
- Section 3.9 - Member Voting by Mail or Electronic Ballot
- Section 3.10 - Member Quorum
- Section 3.11 - Member Voting
- Section 3.12 - Member Voting by Member Proxy
- Section 3.13 - Accepting and Rejecting Member Voting Documents
- Section 3.14 - Credentials and Election Committee

## **Article 4 – Board of Directors**

Pages 27 – 34

- Section 4.1 - Director Districts
- Section 4.2 - Board
- Section 4.3 - Director Qualifications
- Section 4.4 - Director Nominations
- Section 4.5 - Director Elections
- Section 4.6 - Director Terms
- Section 4.7 - Director Resignation
- Section 4.8 - Director Removal
- Section 4.9 - Director Vacancy
- Section 4.10 - Director Compensation
- Section 4.11 - Close Relative

## **Article 5 – Board Meetings and Director Voting**

Pages 35 – 39

- Section 5.1 - Regular Board Meetings
- Section 5.2 - Special of Board Meetings
- Section 5.3 - Conduct of Board Meetings
- Section 5.4 - Waiver of Board Meeting Notice
- Section 5.5 - Board Action by Written Consent
- Section 5.6 - Director Quorum and Voting
- Section 5.7 - Committees
- Section 5.8 - Board Executive Committee
- Section 5.9 - Conflict of Interest Transaction

## **Article 6 – Officers, Indemnification, and Insurance**

Pages 40 – 44

- Section 6.1 - Required Officers
- Section 6.2 - President
- Section 6.3 - Vice-President
- Section 6.4 - Secretary
- Section 6.5 - Treasurer
- Section 6.6 - Other Officers
- Section 6.7 - Responsibility for Corporate Reports
- Section 6.8 - Officer Resignation and Removal
- Section 6.9 - Officer Standard of Conduct
- Section 6.10 - Officer Contract Rights
- Section 6.11 - Authority to Execute Documents
- Section 6.12 - Officer Compensation
- Section 6.13 - Bonds

Section 6.14 - Indemnification  
Section 6.15 - Insurance

**Article 7 – Cooperative Operation**

Pages 45 – 49

Section 7.1 - Nonprofit and Cooperative Operation  
Section 7.2 - Allocating Capital Credits  
Section 7.3 - Notification and Assignment of Capital Credits  
Section 7.4 - Retiring Capital Credits  
Section 7.5 - Patron Agreement  
Section 7.6 - Reasonable Reserves

**Article 8 – Disposition of Cooperative Assets**

Pages 50 – 52

Section 8.1 - Transfer of Cooperative Assets  
Section 8.2 - Merger or Consolidation  
Section 8.3 - Distribution of Cooperative Assets Upon Dissolution

**Article 9 – Miscellaneous**

Pages 53 – 56

Section 9.1 - Electronic Documents and Actions  
Section 9.2 - Bylaw Amendment  
Section 9.3 - Rules of Order  
Section 9.4 - Fiscal Year  
Section 9.5 - Notice and Communication  
Section 9.6 - Governing Law  
Section 9.7 - Titles and Headings  
Section 9.8 - Partial Invalidity  
Section 9.9 - Cumulative Remedies  
Section 9.10 - Entire Agreement  
Section 9.11 - Successors and Assigns  
Section 9.12 - Waiver  
Section 9.13 - Lack of Notice

# Bylaws of Davidson Water, Inc.

## **Article 1 – General**

Section 1.1 – Usage. Within these Bylaws of Davidson Water, Inc. (“Cooperative”) as currently existing or as later amended (“Bylaws”), except as otherwise provided and subject to the context requiring otherwise:

- (a) words and phrases have their customary and ordinary meaning;
- (b) the singular use of a word includes the plural use and the plural use of a word includes the singular use;
- (c) the masculine use of a word includes the feminine and neutral uses, the feminine use of a word includes the masculine and neutral uses, and the neutral use of a word includes the masculine and feminine uses;
- (d) the present tense of a word includes the past and future tenses, and the future tense of a word includes the present tense;
- (e) the words “shall” and “must” are words of obligation, with “shall” meaning “has a duty to” and “must” meaning “is required to;”
- (f) the word “may” is a word of discretion meaning “has discretion to,” “is permitted to,” “is authorized to,” or “is entitled to;”
- (g) the words “may ... only” are words of limited discretion and prohibition;
- (h) the words “shall not,” “must not,” and “may not” are words of prohibition, with “shall not” meaning “has a duty not to,” “must not” meaning “is required not to,” and “may not” meaning “has no discretion to,” “is not permitted to,” “is not authorized to,” and “is not entitled to;”
- (i) an exception to a word of obligation is a word of discretion and an exception to a word of discretion is a word of prohibition;
- (j) the words “except as otherwise provided,” “subject to,” and similar words are words of limitation and exception;
- (k) the words “include,” “includes,” and “including” mean “include without limitation,” “includes without limitation,” and “including without limitation;”
- (l) the word “or” is inclusive, with “A or B” meaning “A or B or both;” and
- (m) the word “individual” means a “natural person” or “human being.”

Section 1.2 – Defined Terms. These Bylaws define certain words, phrases, and terms (“Defined Terms”). In general, Defined Terms are: (1) defined in a full sentence or part of a sentence; (2) capitalized and enclosed within quotation marks when defined; (3) enclosed within parenthesis when defined in part of a sentence; and (4) capitalized when otherwise used in these Bylaws. Except as otherwise provided in these Bylaws and subject to the context requiring otherwise, Defined Terms have the meaning specified in the appropriate Bylaw.

Section 1.3 – Law and Articles. These Bylaws are subject to Law (“Law”) and the Articles of Incorporation of Davidson Water, Inc. (“Articles”). If, and to the extent that, a Bylaw conflicts with Law or the Articles, then the Law or Articles control. “Law” includes applicable:

- (1) local, state, and federal constitutions, statutes, ordinances, regulations, holdings, rulings, orders, and similar documents or actions, whether legislative, executive, or judicial; and
- (2) legally binding contracts enforceable by or against the Cooperative, including legally binding contracts between the Cooperative and an Applicant or Member.

## **Article 2 – Cooperative Membership**

### Section 2.1 – Member Qualifications.

- (a) Except as otherwise provided in these Bylaws, an individual or Entity may become and remain a member of the Cooperative only if: (a) the individual or Entity is a person with the capacity to enter legally binding contracts (“Person”); and (b) the Person consumes, receives, purchases, or otherwise uses (“Uses”), or requests or agrees to Use, water distributed, sold, supplied, furnished, or otherwise provided (“Provided”) by the Cooperative.
- (b) An “Entity” includes a domestic or foreign: cooperative; business or nonprofit corporation; sole proprietorship; unincorporated association; limited liability company; partnership; trust; estate; persons having a joint or common economic interest; and local, regional, state, federal, or national government, including an agency or division of a government.
- (c) Except as otherwise provided in these Bylaws, a Person may not become or remain a Member of the Cooperative if the Person resides at, engages in a business at, owns, controls, or otherwise occupies (“Occupies”) a residence, office, building, premise, structure, facility, or other location (“Location”), the provision of water to which Location is the basis of purported membership, and which Location is or was:
  - (1) Occupied by a second Person, other than a landlord, tenant, or similarly related Person, who: owes the Cooperative for water provided to or for the Location, if the first Person Occupied the Location when the Cooperative Provided the water; or
  - (2) Previously Occupied by an Entity owned or controlled by the Person, which Entity owes the Cooperative for water provided to or for the Location.

To become or remain a Member of the Cooperative, such second Person must place the account into their name and pay all fees due and owing for water provided to such location.

- (d) A Person, either individually or through an Entity not considered legally separate from the Person may hold more than one membership in the Cooperative. Persons Occupying a Location to or for which the Cooperative Provides water may hold more than one membership for each connection in the Cooperative. Provided, however, the voting rights of such Member(s) shall be set forth under Article 3 of these Bylaws.

### Section 2.2 – Membership Procedure.

- (a) Except as otherwise provided in these Bylaws or by the Board, a qualified Person or Entity seeking to become or remain a Member (“Applicant”) must complete the procedures stated in this Bylaw to the Cooperative’s satisfaction (“Membership Procedures”) before initially Using, or requesting or agreeing to Use, water Used or to be Used by the Applicant.

- (b) To become or remain a Member, an Applicant must complete or authorize the completion of a written membership application provided by the Cooperative in which the Applicant agrees to:
- (1) Comply with the Governing Documents;
  - (2) Ensure that Member Equipment connected to Cooperative Equipment, and any act or omission involving Member Equipment connected to Cooperative Equipment, complies with the Governing Documents and all applicable State and Federal law;
  - (3) Read communications sent from and information provided by the Cooperative;
  - (4) Pay at prices, rates, or amounts determined by the Board, pursuant to the terms, conditions, time, and manner specified by the Cooperative, and regardless of the amount or time billed, pay the Cooperative for: (i) water to the Applicant or provided to or for a Location Occupied by the Applicant; (ii) dues, assessments, fees, deposits, contributions, and other amounts required by the Governing Documents; and (iii) interest, late payment fees, and collection costs, including attorney and collection fees, related to amounts owed, but not timely paid, to the Cooperative.
- (c) The “Governing Documents” are the written membership application completed or authorized for completion by an Applicant or Member, payment of the membership deposit and the issuance of a receipt for same, and the following documents and actions, all as currently existing or as later adopted or amended:
- (1) All Law regarding or affecting the Cooperative’s property, property rights, and assets (“Assets”), the Cooperative’s operation, the Cooperative’s Members and Patrons as defined herein, the Provision and Use of water, Cooperative Equipment, and Member Equipment connected to Cooperative Equipment;
  - (2) The Articles;
  - (3) These Bylaws;
  - (4) The Cooperative’s service rules and regulations and related appendices;
  - (5) The Cooperative’s rate or price schedules; and
  - (6) All rules, regulations, requirements, guidelines, procedures, policies, programs, determinations, resolutions, or actions taken, adopted, promulgated, or approved by the Board.
- (d) “Cooperative Equipment” is a product, equipment, structure, facility, or other good owned, controlled, operated, or furnished by the Cooperative. “Member Equipment” is a product, equipment, structure, facility, or other good:
- (1) owned, controlled, operated, or furnished by an Applicant or Member; and
  - (2) located on property owned, controlled, operated, or furnished by an Applicant or Member.

- (e) To become or remain a Member, an Applicant must:
  - (1) Give the Cooperative all information requested by the Cooperative; and
  - (2) Complete any additional or supplemental document, contract, or action required by the Board for the water which the Applicant is Using or requesting or agreeing to Use. Except as required by Law or otherwise provided in these Bylaws, the Cooperative will not release, disclose, or disseminate personally identifiable, proprietary, or confidential information regarding a Member.
  
- (f) Except as otherwise provided in these Bylaws or by the Board, an Applicant shall pay the Cooperative:
  - (1) Dues, assessments, fees, deposits, contributions, capital replacement recovery fees, and other amounts required by the Governing Documents; and
  - (2) Outstanding amounts owed to the Cooperative by the Applicant. An Applicant shall provide prior express consent to the Cooperative using an automatic telephone dialing system, an artificial or prerecorded voice, or electronic communication including but not limited to email or text, to address the Cooperative's provision of water or the Member's use of water.

Section 2.3 – Membership.

- (a) Except as otherwise provided in these Bylaws or by the Board, a qualified Person or Entity becomes a Member of the Cooperative (“Member”) and consents to being a Member upon:
  - (1) Using, or requesting or agreeing to Use, water Provided by the Cooperative; and
  - (2) Failing to notify the Cooperative in writing within five (5) days of receiving the notice of membership and payment of the deposit that the Person does not consent to being a Member.
  
- (b) To remain a Member, the Person must:
  - (1) Complete the Membership Procedure;
  - (2) Use, or request or agree to Use, water provided by the Cooperative; and,
  - (3) Not have another connection with a separate water source absent written approval from the Cooperative.
  
- (c) The Cooperative may issue membership certificates or other documentation of membership to Members in a manner, method, and form determined by the Board.
  
- (d) If the Board determines that a qualified Person or Entity is unable to complete the Membership Procedure, then the Board may refuse, deactivate, or terminate the Person's or Entity's membership in the Cooperative. For other good cause determined by the Board, the Board may refuse a qualified Person or Entity membership in the Cooperative.

- (e) Except as otherwise provided in these Bylaws or by the Board in advance and in writing, a Cooperative membership, and a right or privilege associated with the Cooperative membership, may not be sold, purchased, assigned, disposed of, acquired, or otherwise transferred. If an individual Member dies without the Cooperative's knowledge, and if a surviving spouse of the deceased Member Uses water at the Location previously occupied by the deceased Member, then, until the Cooperative learns of the Member's death or terminates the deceased Member's membership, the deceased Member's membership is deemed to have transferred to the Member's surviving spouse.

Section 2.4 – Membership Agreement.

- (a) A Member shall:
  - (1) Comply with the Governing Documents;
  - (2) Provide and maintain a current mailing address, email address (as able) and telephone number with the Cooperative; and
  - (3) Pay the Cooperative for the Cooperative's damages, costs, or expenses, including attorney fees and legal expenses, caused by or associated with the Member's failure to comply with the Governing Documents. If and as requested by the Cooperative, a Member shall correct or remedy, or pay to correct or remedy, the Member's failure to comply with the Governing Documents.
- (b) If a Member fails to comply with the Governing Documents, then, as provided in these Bylaws, the Cooperative may render such Membership as "inactive" or, if corrective action is not taken by such Member, to terminate the Membership of such Member or water provided to the Member.
- (c) Regardless of whether money damages are available or adequate, the Cooperative may:
  - (1) Bring and maintain a legal action to enjoin the Member from violating the Governing Documents; and
  - (2) Bring and maintain a legal action to order the Member to comply with the Governing Documents.
- (d) The Articles and these Bylaws are contracts between the Cooperative and a Member. By becoming a Member, the Member acknowledges that:
  - (1) Every Member is a vital and integral part of the Cooperative;
  - (2) The Cooperative's successful operation depends upon each Member complying with the Governing Documents; and
  - (3) Members are united in an interdependent relationship based upon cooperative principals, including: (i) open and voluntary membership, (ii) Democratic Member control, (iii) Member's economic control, (iv) autonomy and independence, (v) education, training and information, (vi) cooperation among cooperatives, and (vii) concern for community.

- (e) If a dispute arises out of, or relates to, the Governing Documents, the Cooperative's Provision of water, or a Member's Use of water, if the dispute cannot be settled through negotiation, and if requested by the Cooperative or the Member then the Cooperative and the Member shall first try in good faith to settle the dispute by mediation administered by a mediator certified by the Superior Courts of North Carolina.
- (f) If a controversy or claim arises out of, or relates to, the Governing Documents, the Cooperative's provision of water, or a Member's Use of water, and if requested by the Cooperative or the Member, then the Cooperative and the Member shall, after mediation, settle the controversy or claim by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in Davidson County, North Carolina, and the judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Controversies and claims must be settled through individual arbitration, and not through collective or class action arbitration.
- (g) As requested by the Cooperative, a Member shall indemnify the Cooperative for, and hold the Cooperative harmless from, liabilities, damages, costs, or expenses, including reasonable attorney fees and legal expenses, incurred by the Cooperative, or by a Cooperative Director, Officer, employee, agent, or representative ("Cooperative Official"), and caused by the negligence, gross negligence, or willful misconduct of the Member or a non-Member Occupying the same Location as the Member, or by the unsafe or defective condition of a Location Occupied by the Member.
- (h) In general, a Member is not liable to third parties for the Cooperative's acts, debts, liabilities, or obligations solely because of membership in the Cooperative. A Member may become liable to the Cooperative as provided in the Governing Documents or as otherwise agreed to by the Cooperative and the Member.
- (i) A Member agrees to the Cooperative using and contacting a Member by an automatic telephone dialing system, or an artificial or prerecorded voice, or electronic communication (ie: email or text if available) to address the Cooperative's provision of water or the Member's Use of water.

#### Section 2.5 – Provision of Water.

- (a) A Member shall comply with any reasonable procedure required by the Cooperative regarding the Provision of water. Based upon different costs of providing water to different groups or categories of Members, the Cooperative may charge each group a different rate or price for providing water, or may designate the appropriate size of meter or water line to supply such meter. The Cooperative may, but is not required, to provide fire protection for certain Members occupying areas in which such protection is desired and is deemed in the discretion of the Board of Directors, in the Cooperative's best interest to serve.
- (b) Interruption of Water. The Cooperative shall Provide water to Members in a reasonable manner. The Cooperative, however, does not insure, guarantee, or warrant that it will provide adequate, continuous, or non-fluctuating water without interruption. The

Cooperative is not liable for damages, costs, or expenses, including attorney fees or legal expenses, caused by the Cooperative providing inadequate, noncontinuous, or fluctuating water/pressure, for any use including fire protection unless the damages, costs, or expenses are caused by the Cooperative's gross negligence or willful misconduct. The Cooperative's responsibility and liability for providing water terminate upon delivery of water to a Member's connection to the Cooperative. In case of emergency, or as requested by government or emergency officials or representatives, the Cooperative may interrupt the provision of water to Members.

- (c) A Member shall take or omit any act reasonably required by the Cooperative to safely, reliably, and efficiently operate the Cooperative and Provide water, which act involves or relates to:
  - (1) A Location Occupied by the Member and to or for which the Cooperative Provides or will provide water;
  - (2) Real or personal property in which the Member possesses a legal or equitable right or interest ("Member Property");
  - (3) Cooperative Equipment; or
  - (4) Member Equipment connected to Cooperative Equipment. As required by the Cooperative, a Member shall correct or remedy a violation of a safety, reliability, efficiency, or similar statute, regulation, ordinance, or other requirement.
  
- (d) A Member shall:
  - (1) Protect Cooperative Equipment and Member Equipment connected to Cooperative Equipment; and
  - (2) Install and maintain any protective device, and implement and follow any protective procedure, required by the Cooperative.
  
- (e) As necessary to safely, reliably, and efficiently operate the Cooperative and Provide water, the Cooperative may temporarily suspend or terminate Provision of water. A Member shall not tamper with, alter, interfere with, damage, or impair Cooperative Equipment. Except as otherwise provided by the Board, the Cooperative owns all Cooperative Equipment.
  
- (f) Except as otherwise provided by the Board, before Member Equipment is connected to Cooperative Equipment, such connection is subject to approval by the Cooperative. Before and while Member Equipment is connected to Cooperative Equipment, the Member:
  - (1) Shall comply with, and shall ensure that the Member Equipment, the connection, and any act or omission regarding the Member Equipment and the connection comply with the Governing Documents, including terms, conditions, requirements, and procedures required by the Cooperative regarding the Member Equipment and the connection;
  - (2) Shall ensure that the Member Equipment and the connection do not adversely impact the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide water;

- (3) Grants the Cooperative the right to inspect the Member Equipment and the connection to determine whether the Member Equipment and connection comply with the Governing Documents and applicable State and Federal law;
  - (4) Grants the Cooperative the right to disconnect or temporarily operate Member Equipment that does not comply with the Governing Documents or that adversely impacts the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide water; and
  - (5) Shall pay the Cooperative for income not received or accrued because of the Member Equipment connection.
- (g) If Member Equipment is connected to Cooperative Equipment, then:
- (1) The Member is, but the Cooperative is not, responsible for designing, installing, operating, maintaining, inspecting, repairing, replacing, and removing the Member Equipment;
  - (2) The Cooperative is not liable for damage to, or for the performance of, the Member Equipment;
  - (3) The Cooperative is not liable for damage to Member Property;
  - (4) The Member is responsible for knowing the concerns, risks, and issues associated with operating the Member Equipment and connecting the Member Equipment to Cooperative Equipment;
  - (5) The Member is liable for damage to, and for the nonperformance of, the Cooperative Equipment caused by the Member Equipment or the connection; and
  - (6) The Member is liable for, and must indemnify the Cooperative against, injury or death to any Person and damage to any property caused by, or resulting from, the Member Equipment or the connection.
- (h) Inactivation of Water. After Providing a Member reasonable notice and an opportunity to comment orally or in writing, the Cooperative may inactivate or terminate the Provision of water to the Member for a reason stated herein. Except in cases of health, safety or damage to Member or Cooperative or public property, without providing a Member notice or an opportunity to comment, the Cooperative may inactivate or terminate the Provision of water to the Member upon determining or discovering:
- (1) That Cooperative Equipment used to Provide water has been tampered with, altered, interfered with, damaged, or impaired;
  - (2) That Member Equipment connected to Cooperative Equipment adversely impacts the Cooperative's ability to safely, reliably, and efficiently operate the Cooperative or Provide water;
  - (3) The unsafe condition of Cooperative Equipment or Member Equipment connected to Cooperative Equipment; or
  - (4) An imminent hazard or danger posed by Cooperative Equipment or Member Equipment connected to Cooperative Equipment.
- (i) Usage Information. Cooperative may use Cooperative Equipment to measure, collect, maintain, transmit, communicate, and store the aggregate or incremental amount, quantity,

or quality of water Used by a Member, and other data or information regarding the Member's use of water (collectively, "Usage Information"). Cooperative may in its discretion use, disclose, and transfer Usage Information if reasonably related to Providing water or if reasonably related to protecting against, or responding to, death, personal injury, or property damage. Cooperative shall reasonably protect Usage Information.

#### Section 2.6 – Use of Water.

- (a) Except as otherwise provided in these Bylaws or by the Board:
  - (1) A Member shall Use water marketed, sold, and distributed, by the Cooperative for substantially all water Used by the Member;
  - (2) A Member shall not maintain an interconnection with any other source of water not approved by the Cooperative; and,
  - (3) A Member shall not participate in a program, activity, or event regarding the Member's Use of water where the Member serves as the source of water supply for such program, activity or event. In Using water, a Member shall comply with the Cooperative's Governing Documents.
  
- (b) Payment for Water. At prices, rates, or amounts determined by the Board, pursuant to terms, conditions, time, and manner specified by the Cooperative, and regardless of the amount or time billed, a Member shall pay the Cooperative for:
  - (1) Water Provided to the Member or Provided to or for a Location Occupied by the Member; and
  - (2) Dues, assessments, fees, deposits, contributions, or other amounts required by the Governing Documents.
  
- (c) Dues, assessments, contributions, or other amounts paid by a Member to the Cooperative may pay for periodical subscriptions received by the Member from the Cooperative or from an Entity in which the Cooperative is a member or owner.
  
- (d) If the Cooperative sends a Member a bill, invoice, or similar document reflecting an incorrect or inaccurate amount owed, then:
  - (1) The Cooperative may send the Member another bill, invoice, or similar document reflecting the correct and accurate amount owed; and
  - (2) The Member shall pay the correct and accurate amount owed. The Cooperative may require a Member to pay for water in advance of Using water.
  
- (e) When determining the value or quantity of water provided to a Member or provided to or for a Location Occupied by the Member, the Cooperative may invoice the cost of water provided to the Member against the cost of water provided to the Member or provided to or for another Location occupied by the Member.

- (f) If another Person Provides a Member a good or service related to water provided to the Member, then, before paying the other Person:
  - (1) The Member shall pay the Cooperative; and
  - (2) The Cooperative may apply amounts received from or on behalf of the Member for or toward a good or service related to water Provided to the Member, if any, then to water Provided to the Member or Provided to or for a Location Occupied by the Member.
  - (3) The Cooperative may apply deposits or final billing amounts received from or on behalf of the Member for or toward water Provided to the Member or Provided to or for a Location Occupied by the Member.
  
- (g) Except as otherwise provided by the Board:
  - (1) A Member shall pay interest and late payment fees for amounts owed, but not timely paid, to the Cooperative as may be required by the Cooperative.
  - (2) A Member shall pay all costs, including reasonable attorney and collection fees, required to collect or obtain payment of amounts owed, but not timely paid, to the Cooperative;
  - (3) The Cooperative may transfer an amount owed, but not timely paid, on a Member's account to another account of the Member; and
  - (4) Regardless of the Cooperative's accounting procedures, the Cooperative may apply amounts paid by a Member to one or more of the Member's accounts or to all of the Member's accounts on a pro rata basis.
  
- (h) Service Agreements. the Cooperative may, from time to time, enter into service agreements with commercial or governmental Members to address unique or high-volume needs upon such terms and conditions as mutually agreed upon between the Board and such commercial or governmental Members.
  
- (i) Sale of Water. Except as otherwise agreed upon by and between the Board and a Member pursuant to a Master Meter Agreement, a Member may not sell, lease, or otherwise transfer water provided by the Cooperative or a right to access water provided by Cooperative.

Section 2.7 – Grant of Property Rights.

- (a) As required by the Cooperative for a Cooperative Purpose, a Member shall:
  - (1) provide the Cooperative safe, adequate, and reliable access to or use of Member Property as determined by the Cooperative; and
  - (2) pursuant to terms and condition specified by the Cooperative, and without compensation from the Cooperative, grant or convey to the Cooperative a written easement, right-of-way, license, or other right or interest in Member Property, and execute a document regarding this grant or conveyance in a form as requested by the Cooperative.

- (b) A “Cooperative Purpose” is at any time, and subject to the availability of water to serve the Cooperative, and in a manner determined by the Cooperative:
- (1) Purchasing, installing, constructing, inspecting, monitoring, operating, repairing, maintaining, removing, relocating, upgrading, or replacing Cooperative Equipment or Member Equipment connected to Cooperative Equipment;
  - (2) Providing water to a Member or one or more other Members;
  - (3) Monitoring, measuring, or maintaining water Provided to a Member or one or more other Members;
  - (4) Providing water to a Person or one or more other Persons;
  - (5) Monitoring, measuring, or maintaining water Provided to a Person or one or more other Persons;
  - (6) Authorizing, permitting, satisfying, or facilitating an obligation incurred, or right granted, by the Cooperative regarding use of Cooperative Equipment; or
  - (7) Safely, reliably, and efficiently operating the Cooperative or Providing water. If reasonably needed for safety, reliability, efficiency, or similar reasons, a Cooperative Purpose includes, through physical, chemical, herbicide, or other means, clearing, trimming, removing, or managing any trees, bushes, brush, or other vegetation located within or outside an easement, right-of-way, license, or other right or interest in Member Property.

Section 2.8 – Member Termination.

- (a) Except as otherwise provided by the Board, a Member is terminated upon:
- (1) The Member’s non-payment for water provided by the Cooperative; or
  - (2) The Cooperative learning of the Member’s death, legal dissolution, or legal cessation of existence; provided however such Membership is only transferable to a Member’s surviving spouse in accordance with these bylaws.
  - (3) The Member requesting termination;
  - (4) The Cooperative learning that the Member has permanently ceased using water and paying the minimum charge required by the Cooperative for active Membership.
- (b) Except as otherwise provided by the Board, a partnership Member continuing to Use water is not suspended or terminated upon the death of a partner or following any other alteration in the partnership. A partner departing a partnership Member remains individually liable to the Cooperative for water provided to or for the Member before, and amounts owed to the Cooperative by the Member at the time of, the partner’s departure.
- (c) Termination of a Member does not:
- (1) Release the Member from debts, liabilities, or obligations owed to the Cooperative; or
  - (2) Release the Cooperative from the obligation to retire and pay Capital Credits to the former Member or obligations to the former Member regarding the Cooperative’s dissolution as provided under Article Eight of these Bylaws.

- (d) Upon a Member's termination from the Cooperative, and after deducting amounts owed to the Cooperative from any Membership fee or capital credits approved by the Board which are applicable to such Member, the Cooperative must return to the Member any amount provided in the Governing Documents, including Membership fee and the retirement of such Member's capital credits as approved by the Board.

Section 2.9 – Membership List.

- (a) The Cooperative shall maintain a written or Electronic record of current Members in a form permitting the Cooperative to:
  - (1) Alphabetically list the names and addresses and other contact information of all Members; and
  - (2) Indicate the number of votes each Member is entitled to cast ("Membership List"). The Membership List which is available for inspection as provided hereunder shall not include the address or other contact information of any Member(s).
- (b) Except as otherwise provided by these Bylaws or the Board, a Person may not inspect, copy, or receive a copy of all or part of the Membership List or a similar list of Members.
- (c) Pursuant to this Bylaw and in a manner determined by the Board, upon delivery to the Cooperative at least five days in advance of a written or Electronic notice or request signed by a Member who has been activated and in good standing with no unpaid invoices during the immediately preceding 6 months, the Member, or the Member's agent or attorney, may:
  - (1) Inspect and copy the Membership List during regular business hours at a reasonable location specified by the Cooperative; or
  - (2) Pay the Cooperative a reasonable charge determined by the Cooperative covering the labor and material costs of producing, reproducing, copying, or transmitting the Membership List, which charge may not exceed the estimated costs of producing, reproducing, copying, or transmitting the Membership List, and the Cooperative must provide the Member if requested, an Electronic copy of the Membership List.
- (d) A Member, Member's agent, or Member's attorney, however, may inspect, copy, or receive a copy of the Membership List only if, as determined by the Cooperative:
  - (1) The Member's notice or request is made in good faith and for a proper purpose;
  - (2) The Member describes with reasonable particularity the purpose for which the Member will use the Membership List; and
  - (3) The Membership List is directly connected with the Member's purpose.
- (e) Except as otherwise provided by the Board, a Person may not:
  - (1) Obtain or use all or part of the Membership List for a purpose unrelated to a Member's interest as a Member;

- (2) Use all or part of the Membership List to solicit money or property, unless the money or property is used solely to solicit Member votes in a Cooperative election or vote;
  - (3) Use all or part of the Membership List for a commercial purpose; or
  - (4) Sell or purchase all or part of the Membership List.
- (f) Except as otherwise provided by the Board, a Person shall comply with any reasonable terms, conditions, or requirements imposed by the Cooperative to protect against use of all or part of the Membership List for improper purposes or prohibited uses.
- (g) Instead of making the Membership List available for inspection or copying, or providing a copy of the Membership List, the Cooperative may, within five days of receiving a notice or request from a Member, offer the Member an alternative method for reasonably and timely accomplishing the purpose identified by the Member without providing access to or a copy of the full Membership List.
- (h) Except as otherwise provided by these Bylaws or the Board, the Cooperative may not sell, transfer, disclose, distribute, or otherwise dispose of all or part of the Membership List or a similar list or record of Members or Member information.

## **Article 3 – Member Meetings and Member Voting**

### **Section 3.1 – Annual and Regular Member Meetings.**

Within a county in which the Cooperative Provides a Cooperative Service, the Cooperative shall annually hold a meeting of Members (“Annual Member Meeting”) which shall be held at 7:30 p.m. on the second Monday in March of each year if not a legal holiday, or if a legal holiday on the next business day following. Provided, however, if the Annual Member Meeting cannot be held on the given day and time due to inclement weather or to other circumstances which are of such a health, safety or accessibility issue that the Annual Member Meeting cannot be held at the time or location set forth herein, then the Annual Member Meeting shall be held on the fourth Monday in March at the Cooperative Offices at 7040 US Highway 52, Welcome, North Carolina. Unless the Board determines otherwise, the President or the President’s designee presides over the Annual Member Meeting. The Cooperative’s failure to hold an Annual or Regular Member Meeting does not affect an action taken by the Cooperative.

At the Annual Member Meeting: (1) the President may provide a written or oral report regarding the activities of the Cooperative; and (2) the Treasurer may provide a written or oral report regarding the financial condition of the Cooperative.

### **Section 3.2 – Special Member Meetings.**

Special Meetings of the Members (“Special Member Meetings”) may be called at any time by the action of the Board, and such meetings must be held upon receiving: (1) a written or oral request from the Board or President; (2) one or more written requests signed by at least 51% of the Board; or (3) one or more written demands signed and dated within sixty (60) days after the first signature by at least ten percent (10%) of the total number of active Members (“Total Membership”), with each page of each written demand requesting and describing the purpose of the meeting (“Member Demand”).

The Board shall determine the date, time, and location of a Special Member Meeting. Unless the Board determines otherwise, the President or the President’s designee presides over the Special Member Meeting. The purpose of every Special Member Meeting shall be stated in the notice thereof, and no business shall be transacted thereat except such as is specified in the notice.

If the Cooperative does not notify Members of a Special Member Meeting within fifteen (15) days of receiving a Member Demand, then a Member signing the Member Demand may: (1) set a reasonable time, place, and location for the Special Member Meeting; and (2) provide written notice to all Members of the Special Member Meeting.

### **Section 3.3 – Agenda, Attendance, and Action at Member Meetings.**

Except as otherwise provided in these Bylaws, before or at an Annual, Regular, or Special Member Meeting (“Member Meeting”), the Manager and executive committee of the Board: (1) shall determine the agenda, program, or order of business for the Member Meeting; and (2) may

limit attendance at the Member Meeting to Members, Spouses of Members and one legal representative per Member.

Except as otherwise provided by the Board before or at a Member Meeting, the President or an individual designated by the President: (1) shall preside at the Member Meeting; (2) may remove a Person from the Member Meeting for unruly, disruptive, or similar behavior; and (3) may exercise power reasonably necessary for efficiently and effectively conducting the Member Meeting.

Except as otherwise provided by the Board before or at a Member Meeting, Members attending the Member Meeting may consider, vote, or act only upon a matter for which: (1) except as otherwise provided in these Bylaws, the Board and Members were notified and (2) the Members are authorized to consider, vote, or act as conferred upon Members by Law, the Articles, or these Bylaws. Members attending a Special Member Meeting may consider, vote, or act only upon a matter described in the notice of the Special Member Meeting.

Except as otherwise provided by the Board before or at a Member Meeting, the order of business at the Member Meeting and so far as possible all other meetings shall be:

- a. Calling to order and proof of quorum
- b. Proof of notice of meeting
- c. Reading and action on any unapproved minutes
- d. Reports of officers and committees
- e. Election of directors
- f. Unfinished business
- g. New business
- h. Adjournment

#### Section 3.4 – Member Action Without a Member Meeting.

Except as otherwise provided in these Bylaws, Members may not act without a Member Meeting.

#### Section 3.5 – Notice of Member Meetings.

As directed by the President, Secretary, or any other Officer or Member properly calling the Member Meeting, the Cooperative shall deliver written or Electronic notice of a Member Meeting by mail or by Electronic transmission, either with or without other documents, to all Members entitled to vote at the meeting. This notice must indicate the date, time, and location of the meeting and must be delivered at least thirty (30) days, but no more than sixty (60) days, before the meeting. For a Special Member Meeting, this notice must state the purpose of the meeting and describe any matter to be considered or voted or acted upon at the meeting.

Except as otherwise provided in these Bylaws, a mailed notice of a Member Meeting is delivered when deposited in the United States mail with prepaid postage affixed and addressed to a Member at the Member's address shown on the Membership List. Except as otherwise provided

in these Bylaws, an Electronically transmitted notice of a Member Meeting is delivered when Electronically sent to a Member at the Member's Electronic mail address shown in the Cooperative's records. The good faith, inadvertent, and unintended failure of a Member to receive notice of a Member Meeting does not affect an action taken at the Member Meeting.

Except as otherwise provided in these Bylaws, the Cooperative shall notify Members of a Member Meeting adjourned to another date, time, or location unless: (1) the meeting is adjourned to another date occurring within one hundred twenty (120) days following the original Member Meeting date; and (2) the new date, time, or location is announced at the Member Meeting prior to adjournment.

### Section 3.6 – Record Date.

A "Record Date" is the date for determining the Total Membership and the Members entitled to: (1) sign a Member petition, request, demand, consent, appointment, or similar document; (2) receive a ballot, notice of a Member Meeting, or similar document; or (3) vote or otherwise act. If a Member is suspended after the Record Date, then the Member may not sign a document, receive a document, or vote or otherwise act.

The Board may fix the Record Date, but the Record Date must not be more than 30 days before the: (1) date the first Member signs a Member petition, request, demand, consent, appointment, or similar document; (2) date a ballot, notice, or similar document is due or required; or (3) date of a Member Meeting. Except as otherwise provided by the Board, the Record Date: (1) for signing a Member petition, request, demand, consent, appointment, or similar document is the date the Cooperative receives the signed document; (2) for receiving a ballot, notice, or similar document is the date 30 days before the document is due or required; and (3) for voting or otherwise acting at a Member Meeting is the date of the Member Meeting.

The Record Date for determining the Total Membership and the Members entitled to notice of, or to vote at, a Member Meeting is effective for a Member Meeting adjourned to a date not more than 30 days after the Member Meeting date.

### Section 3.7 – Member Meeting List.

For a Member Meeting, the Cooperative shall prepare and maintain a written or Electronic alphabetical list stating the name and address of each Member entitled to receive notice of and to vote at the Member Meeting ("Member Meeting List").

Except as otherwise provided by these Bylaws or the Board, a Person may not inspect, copy, or receive a copy of all or part of the Member Meeting List or a similar list of Members.

Pursuant to this Bylaw, and in a manner determined by the Board, the Cooperative shall make the Member Meeting List available at the Member Meeting and a Member, or the Member's agent, may inspect the Member Meeting List at any time during the meeting. Such meeting list shall not include addresses or electronic contact information for the Members.

In a manner determined by the Board, the Cooperative shall make the Member Meeting List available for inspection beginning 30 business days after the Cooperative provides notice of the meeting, and continuing until the meeting, at: (1) the Cooperative's principal office; or (2) a reasonable place identified in the notice of the Member Meeting and located in the county in which the Member Meeting will be held. In a manner determined by the Board, upon written or Electronic demand and during regular business hours during the period a Member Meeting List is available for inspection, a Member or the Member's agent may: (1) inspect the Member Meeting List; (2) copy the Member Meeting List at the Member's expense; or (3) pay the Cooperative a reasonable charge determined by the Cooperative covering the labor and material costs of producing, reproducing, copying, and transmitting the Member Meeting List, which charge may not exceed the estimated cost of producing, reproducing, copying, or transmitting the Member Meeting List, and the Cooperative must provide the Member a written or, if requested, Electronic copy of the Member Meeting List.

A Member or Member's agent, however, may copy or receive a copy of the Member Meeting List only if, as determined by the Cooperative: (1) the Member's demand is made in good faith and for a proper purpose; (2) the Member describes with reasonable particularity the purpose for which the Member will use the Member Meeting List; and (3) the Member Meeting List is directly connected with the Member's purpose.

Except as otherwise provided by the Board, a Person may not: (1) obtain or use all or part of the Member Meeting List for a purpose unrelated to a Member's interest as a Member; (2) use all or part of the Member Meeting List to solicit money or property, unless the money or property is used solely to solicit Member votes in a Cooperative election or vote; (3) use all or part of the Member Meeting List for a commercial purpose; or (4) sell or purchase all or part of the Member Meeting List.

Except as otherwise provided by the Board, a Person shall comply with any reasonable terms, conditions, or requirements imposed by the Cooperative to protect against use of all or part of the Member Meeting List for improper purposes or prohibited uses.

Instead of making the Member Meeting List available for inspection or copying, or providing a copy of the Member Meeting List, and as stated in the notice of a Member Meeting, the Cooperative may, within ten days of receiving a demand from a Member stating a proper purpose for inspection, offer the Member an alternative method for reasonably and timely accomplishing the purpose identified by the Member without providing access to or a copy of the full Member Meeting List.

Except as otherwise provided by these Bylaws or the Board, the Cooperative may not sell, transfer, disclose, distribute, or otherwise dispose of all or part of the Member Meeting List or a similar list or record of Members or Member information.

### Section 3.8 – Member Waiver of Notice.

In a manner determined by the Board, a Member may waive notice of a Member Meeting, or of a matter to be considered, or voted or acted upon, at a Member Meeting, by signing and

delivering to the Cooperative a written or Electronic waiver of notice (“Member Meeting Waiver of Notice”) before the Member Meeting.

Unless a Member objects to holding a Member Meeting, or to transacting business at the Member Meeting, the Member’s attendance in person or representation by Member Proxy on a matter considered at the Member Meeting waives the Member’s objection to lack of notice, or to defective notice, of the Member Meeting. Unless a Member objects to considering, or voting or acting upon, a matter at a Member Meeting, the Member’s attendance in person or representation by Member Proxy on the matter considered at the Member Meeting waives the Member’s objection to considering, or voting or acting upon, the matter at the Member Meeting.

### Section 3.9 – Member Voting by Mail or Electronic Ballot.

Except as otherwise provided in these Bylaws or by the Board, a Member may not vote or act by mail or Electronic transmission except as may be provided in this Bylaw and in a manner determined by the Board.

### Section 3.10 – Member Quorum.

A quorum of Members is three percent (3%) of the Total Membership (“Member Quorum”).

If less than the Member Quorum are present in person or represented by Member Proxy at a Member Meeting, then a majority of Members attending the Member Meeting in person or represented by Member Proxy may adjourn the Member Meeting without further notice to a date no more than 120 days following the original Member Meeting.

Upon a Member being present or represented by Member Proxy for any purpose at a Member Meeting, the Member is deemed present for Member Quorum purposes for the remainder of the Member Meeting and for any adjourned Member Meeting, unless a new Record Date is, or must be, set for that adjourned Member Meeting.

### Section 3.11—Member Voting.

If a Member presents identification or proof of Cooperative membership as reasonably required by the Cooperative, and if the Member is not inactive on the Record Date and remains active after the Record Date, then, regardless of the value or quantity of Cooperative Services Used, the Member may cast one (1) vote on a matter for which the Member is entitled to vote. To vote for an Entity Member, an individual must present evidence requested by and satisfactory to the Cooperative that the individual is authorized to vote on behalf of the Entity Member. Unless an Entity Member authorizes another individual to vote for the Entity Member, the Entity Member’s chief executive officer, Board chairperson, managing owner, majority owner is authorized to vote for the Entity Member. If more than one individual is authorized to vote for an Entity Member, then the first vote cast shall be considered the Entity Member’s vote. If an individual Member dies without the Cooperative’s knowledge, then, until the Cooperative learns of the Member’s death or terminates the Member’s membership, a surviving spouse of the Member

Using a Cooperative Service at the Location previously Occupied by the Member may cast the Member's vote.

Except as otherwise provided in these Bylaws, Members approve a matter if: (1) a Member Quorum is present in person or represented by Member Proxy; and (2) a majority of Members present and voting in person or represented and voting by Member Proxy, who are entitled to vote on the matter, vote in favor of the matter. To approve a matter, the votes cast for the matter must equal or exceed a majority of the Member Quorum.

At a Member Meeting, the individual presiding over the Member vote may require the Members to vote by voice. If the individual presiding over the Member vote determines, in good faith, that a voice vote is not sufficient to accurately determine the vote results, then the Members shall vote by written ballot ("Written Ballot"), or in any other reasonable manner determined by the individual presiding over the Member vote. Members may not cumulate votes. Agreements signed by Members providing the manner in which a Member will vote are not valid.

### Section 3.12 – Member Voting by Member Proxy.

Pursuant to this Bylaw and in a manner determined by the Board, a Member entitled to vote or the Member's attorney-in-fact, after presenting evidence requested by and satisfactory to the Cooperative that the individual is the Member's attorney-in-fact may appoint another individual Person ("Member Proxy") to vote on any matter as provided in these Bylaws for the Member. The Cooperative must accept votes properly taken by a Member Proxy on behalf of a Member entitled to vote as the Member's vote.

(a) Member Proxy Appointment. To appoint a Member Proxy:

- (1) the Member must sign and date a form prepared by the Cooperative: (a) appointing the Member Proxy; and (b) specifying the Member Meeting at which, or the dates during which, the Member Proxy may vote for the Member ("Member Proxy Appointment"); and
- (2) except as otherwise provided in these Bylaws, the individual designated by the Cooperative ("Cooperative Proxy Manager") must receive the Member Proxy Appointment at the beginning of, or at least 5 days before, the Member Meeting at which the Member Proxy will vote for the Member.

A Member Proxy Appointment is effective when received by the Cooperative Proxy Manager appointing the Cooperative Secretary or such person as is clearly and legibly written upon the Member Proxy form provided by the Cooperative. A Member may not authorize a Member Proxy to designate a substitute Member Proxy to vote for the Member.

Except as otherwise provided in the Member Proxy Appointment or these Bylaws, a Member Proxy Appointment is: (1) valid for eleven (11) months; (2) valid for a Member Meeting properly adjourned and reconvened on, or at, another date, time, or location; and (3) unlimited regarding the matters or actions, or the manner of voting or acting on a matter or action, upon which the Member Proxy may vote or act for the Member. A Member Proxy Appointment may not be

procured through fraud or other improper means. As determined by the Cooperative, a Member Proxy Appointment procured through fraud or other improper means is invalid.

(b) Member Proxy Appointment Revocation. Before a Member Proxy votes for a Member, the Member Proxy Appointment is revoked by:

(1) the Cooperative Proxy Manager receiving a more recently dated Member Proxy Appointment signed by the Member appointing the Member Proxy;

(2) the Cooperative Proxy Manager receiving a Member Proxy Appointment signed by the Member appointing the Member Proxy and bearing the same date as the Member Proxy Appointment;

(3) the Cooperative Proxy Manager receiving a written revocation of Member Proxy Appointment signed by the Member appointing the Member Proxy and dated after the Member Proxy Appointment;

(4) in person, the Member appointing the Member Proxy attending and voting at a Member Meeting specified in, or occurring during the dates specified in, the Member Proxy Appointment, including a Member Meeting properly adjourned and reconvened; or

(5) the Cooperative Proxy Manager receiving notice of the death, legal incapacity, or membership suspension or termination of the Member appointing the Member Proxy.

#### Section 3.13 – Accepting and Rejecting Member Voting Documents.

In the event the Board does authorize Member Voting Documents outside of a Member Annual or Special Meeting, for a Member Written Consent, Member Meeting Waiver of Notice, ballot, or other document allegedly executed by, or on behalf of, a Member (collectively, “Member Voting Document”):

(a) the Cooperative may accept, and give effect to, the Member Voting Document if: (a) the name signed on the Member Voting Document corresponds to a Member’s name, and the Cooperative acts in good faith; or (b) the Cooperative reasonably believes the Member Voting Document is valid and authorized;

(b) the Cooperative may reject, and not give effect to, the Member Voting Document if the Cooperative: (1) acts in good faith; and (2) has a reasonable basis for doubting the validity of the signature on the Member Voting Document or the validity of the signatory’s authority to sign on behalf of the Member; and

(c) the Cooperative, and a Cooperative Member or Official, are not liable to a Member for accepting or rejecting a Member Voting Document as provided in this Bylaw.

Section 3.14 – Credentials and Election Committee. Before a Member Meeting, the Board shall appoint a Credentials and Election Member Committee (“C&E Committee”) for the Member Meeting consisting of an uneven number of active Members between three (3) and nine (9).

(a) C&E Committee Members. A C&E Committee member must not be: (1) a member of the Nominating Committee; or (2) an existing, or a Close Relative of an existing, Cooperative Official, Board Member, or known Director candidate. As determined by the Board, the Cooperative may reasonably compensate or reimburse C&E Committee members.

(b) C&E Committee Duties. During, or within a reasonable time before or after, the Member Meeting for which the C&E Committee was appointed, the C&E Committee shall:

- (1) elect a chairperson and secretary;
- (2) establish, or approve, the manner or method of Member registration and voting;
- (3) oversee or supervise Member registration and voting, and the tabulation of Member votes; and
- (4) consider and decide all questions, issues, or disputes regarding: (a) Member registration and voting, including the determination of Members present and the validity of Mail Ballots [as may be authorized by the Board], Member Proxy Appointments; (b) the tabulation or count of Member votes, including the determination of vote results; (c) Director nominations; and (d) whether a Director nominee or newly elected Director satisfies the Director Qualifications (collectively, “Member Meeting Issues”).

The C&E Committee may meet, consider, or decide Member Meeting Issues, or otherwise act, only if a majority of the C&E Committee members are present. A C&E Committee decision or action requires a vote of at least a majority of the C&E Committee members present and voting. Except as otherwise provided in this Bylaw, C&E Committee decisions or actions during, or within a reasonable time before or after, a Member Meeting are final. At the Cooperative’s expense, the Cooperative shall make available legal counsel to the C&E Committee.

(c) Member Challenge. A Member entitled to vote at a Member Meeting may comment upon a Member Meeting Issue, or challenge the C&E Committee’s decision or action regarding a Member Meeting Issue, by filing a written description of the Member’s comment or challenge (“Member Challenge”) with the Cooperative within three (3) business days following the Member Meeting being addressed by the Member Challenge.

Within thirty (30) days of receiving a Member Challenge, the C&E Committee shall:

- (1) as determined by the C&E Committee, meet and receive oral or written evidence from a Member, or legal counsel representing a Member, directly and substantially implicated in, or affected by, the Member Challenge; and
- (2) consider, decide, and rule on the Member Challenge.

The C&E Committee’s decision regarding a Member Challenge is final. Upon written request by a Member received by the C&E Committee within thirty (30) days of a C&E Committee decision or action, the C&E Committee shall prepare a written report summarizing and explaining the C&E Committee’s decision or action. The failure of the Cooperative or the C&E Committee to act as required by this Bylaw shall not, by itself, affect a vote, Director election, or other action taken at a Member Meeting.

## **Article 4 – Board of Directors**

### **Section 4.1 – Director Districts.**

Based upon geographic, population, membership, or other equitable consideration determined by the Board, the Cooperative shall divide the general area in which the Cooperative Provides Cooperative Services (“Cooperative Service Area”) into areas that equitably represent the Members (“Director Districts”). A Director District may not be substantially unequal with another Director District. The number of Members within each Director District must be within twenty percent (20%) of the number of Members within every other Director District.

If a Member Uses a Cooperative Service at Locations in more than one Director District, then (1) if the Member is an individual and resides within the Cooperative Service Area, the Member Uses a Cooperative Service at a Location in the Director District in which the Member resides; and (2) if the Member is an individual and does not reside within the Cooperative Service Area, or if the Member is an Entity, the Member Uses a Cooperative Service at a Location in the Director District in which the Member first Used, and continues to Use, a Cooperative Service.

As necessary based upon geographic, population, membership, or other equitable consideration determined by the Board, the Board may revise the Director Districts to ensure that the number of Members within each Director District is within twenty percent (20%) of the number of Members within every other Director District. Within thirty (30) days following a Director District revision, and at least thirty (30) days before the next Annual Member Meeting, the Cooperative must notify, in writing or electronically or by publication on the Cooperative’s website, Members affected by the Director District revision. Director District revisions are effective on the date the Cooperative releases written or by Electronic publication on its website notice of the Director District revision. A Director District revision may not: (1) increase an existing Director’s Director Term; or (2) unless the affected Director consents in writing, shorten an existing Director’s Director Term.

### **Section 4.2 – Board.**

The Cooperative shall have a Board that equitably represents the Members and shall be composed of the following:

- (a) The Board shall be comprised of eleven (11) Members, all of whom shall be Members of the Cooperative. At each Annual Member Meeting, the Members shall elect for a term of three (3) years the number of Directors whose terms of office have expired. Each Director shall hold office for the term for which he/she is elected and until his/her successor shall be been elected and qualified. Notwithstanding the foregoing, following the 2020 Annual Member Meeting, upon the retirement of the next four (4) successive Directors or upon the sooner vacancy of the office of any Director(s) prior to the expiration of such Director’s term(s) for any reason, the number of Directors of the Cooperative shall be reduced by way of attrition of such retiring or vacating Directors to eleven (11) Members, all of whom shall be Members of the Cooperative. The Members shall elect for a term of three (3) years the number of Directors whose terms of office have expired, with the exception of those next

four (4) successive Directors who shall retire or who shall vacate their office prior to the expiration of their term(s). Upon the periodic reduction in the number of Directors until reaching eleven (11) in number, elections shall be conducted at each Annual Member Meeting, with the election of two Members residing within each of the four identified Director Districts and three Members being elected “at large” and residing anywhere within the Cooperative’s service area.

- (b) The Board of Directors shall meet within ten (10) days after the annual election of Directors and select a president, vice-president, secretary, and treasurer from among themselves, each of whom shall hold office until the next annual meeting and until the election and qualification of his/her successor unless sooner removed by death, resignation, or for cause.

#### Section 4.3 – Director Qualifications.

A Director or Director candidate must comply with this Bylaw. [The Cooperative or a committee appointed by the Cooperative may conduct an investigation, or require information, to determine whether a Director or Director candidate complies with this Bylaw.]

- (a) General Director Qualifications. To become and remain a Director, a Person must comply with the following general qualifications (“General Director Qualifications”):

- (1) be an individual;
- (2) have the capacity to enter legally binding contracts;
- (3) be lawfully present in the United States of America;
- (4) not have been previously removed or disqualified as a Director;
- (5) while a Director, and during the five (5) years immediately before becoming a Director, not be convicted of, or plead guilty to, a felony;
- (6) before becoming a Director, graduate from high school or earn an equivalent degree or certification;
- (7) except as otherwise provided by the Board for good cause, attend at least two-thirds (2/3) of all Board Meetings during each year beginning on the date of the annual meeting at which the Director was elected.
- (8) be an active Member in good standing and not have had Cooperative Services cut off or terminated due to non-payment during the two (2) years immediately before becoming a Director;
- (9) Use a Cooperative Service at a Location within the Director District from which the Director is nominated or elected during the two (2) years immediately before becoming a Director.

- (b) Independence Director Qualifications. To become and remain a Director, an individual must comply with the following independence qualifications (“Independence Director Qualifications”):

- (1) annually complete and sign an independence certification and disclosure form approved by the Board;

- (2) while a Director and during the one (1) year immediately before becoming a Director, not be an employee of the Cooperative;
  - (3) while a Director and during the one (1) year immediately before becoming a Director, not receive or have a Close Relative that receives more than ten percent (10%) of annual gross income, other than retirement income, directly or indirectly from the Cooperative;
  - (4) while a Director and during the one year immediately before becoming a Director, not Provide or have a Close Relative that owns, leases, or rents real or personal property used to Provide Cooperative Services;
  - (5) while a Director, not be a Close Relative of a Cooperative Official, Director or Cooperative employee;
  - (6) while a Director, not be employed by another Director, or be employed by, or receive more than ten percent (10%) of annual gross income from, an entity for which another Director controls, owns more than ten (10%) percent, or is a director or officer;
  - (7) while a Director and during the one (1) year immediately before becoming a Director, not be a party in a mediation, arbitration, lawsuit, or other legal action against or by the Cooperative or a Cooperative Subsidiary;
  - (8) agree not to become an employee of the Cooperative or a Cooperative Subsidiary during the one year immediately after ceasing to be a Director; and
- (c) Director Disqualification. After being elected, if a Director does not comply with all General Director Qualifications and Independence Director Qualifications (collectively, “Director Qualifications”) existing when the Director was elected, then except as otherwise provided by the Board for good cause, the Board shall disqualify the Director and the individual is no longer a Director if:
- (1) the Board notifies the Director in writing or electronically of the basis for, and provides the Director an opportunity to respond regarding, the Board’s proposed disqualification; and
  - (2) within 30 days after the Board notifies the Director of the proposed disqualification, the Director neither complies with nor meets the Director Qualification set forth herein.

If a majority of Directors authorized by these Bylaws complies with the Director Qualifications and approves a Board action, then the failure of a Director to comply with the Director Qualifications does not affect the Board action.

#### Section 4.4 – Director Nominations.

For each Director position nominated from a Location within the Cooperative Service Area at large or a Director District the Nominating Committee shall nominate individuals as provided in this Bylaw.

- (a) Nominating Committee Nominations. At least sixty (60) days before the Member Meeting, the Board shall appoint a Member Committee consisting of at least 1 Nominating Member from each Director District (“Nominating Committee”). Nominating Committee members

may not be an existing, or a Close Relative of an existing Cooperative Official or known Director or Director candidate.

At least thirty (30) days before the Member Meeting at which Members are scheduled to elect Directors, the Nominating Committee shall:

- (1) nominate at least one (1) but no more than three (3) individuals to run for election for each Director position scheduled for election by Members at the Member Meeting (“Nominating Committee Nominations”); and
- (2) display the Nominating Committee Nominations at the Cooperative’s principal office and on the Cooperative’s webpage.

If, before the scheduled election, a Nominating Committee Nominee dies, becomes incapacitated, or ceases to be qualified to be a Director, then the Nominating Committee may nominate another individual, whose nomination shall be displayed at the Cooperative’s Principal office and on the Cooperative’s website as soon as possible prior to the Member Meeting. As determined by the Board, the Cooperative may reasonably compensate or reimburse Nominating Committee members.

- (b) Notice of Director Nominations. At least ten (10) days before a Member Meeting at which Members are scheduled to elect Directors, the Cooperative shall notify Members upon the Cooperative’s website of the:

- (1) director positions scheduled for election by Members; and,
- (2) names and corresponding Director positions of all Nominating Committee Nominations;

- (c) Nomination of Director by Petition. In addition to Nominating Committee Nominations, Nominating Members may nominate, through petition, individuals to run for a Director position scheduled for election by Members at the Member Meeting (“Member Petition Nominations”) through the following procedure:

- (1) Nominating Members may make Member Petition Nominations by delivering to the Cooperative 30 days prior to the Member Meeting a written petition for each Member Petition Nomination (“Member Petition”):
  - (A) Listing, on each page of the Member Petition, the name of the Member Petition Nominee;
  - (B) Indicating, on each page of the Member Petition, the Director position for which the Member Petition Nominee will run; and
  - (C) Containing the printed names, addresses, and telephone numbers, and original dated signatures signed within 60 days of the first signature, of at least 100 Nominating Members.

- (2) After verifying that a Member Petition complies with this Bylaw, the Cooperative shall display the Member Petition Nomination in approximately the same location and fashion as the Nominating Committee Nominations.
- (3) Not more than 60 nor less than 10 days before a Member Meeting at which Members are scheduled to elect Directors, the Cooperative shall notify Members of the:
  - (A) Director positions scheduled for election by Members;
  - (B) Names and corresponding Directors positions of all Nominating Committee Nominations; and,
  - (C) Names and corresponding Director positions of all Member Petition Nominations.

#### Section 4.5 – Director Elections.

At each Member Meeting at which a Director position is scheduled for election by Members using a Cooperative Service at a Location within the Cooperative Service Area (“Electing Members”), the Electing Members shall elect the Director from the Nominating Committee Nominations or Member Petition Nominations by a majority of votes cast by Electing Members with a Member Quorum present in person or represented by Member Proxy. If a Director position is unfilled after the first round of voting, then voting must be repeated until the Director position is filled, with the nominee receiving the lowest number of votes removed from the next round of voting. As determined by the individual presiding at the Member Meeting, the number of votes received by each nominee may or may not be announced. If only one individual is nominated to run for election for a Director position scheduled for election by Members at the Member Meeting, then the individual presiding at the Member Meeting may announce that the nominated individual is elected by acclamation and no vote is required.

#### Section 4.6 – Director Terms.

Except as otherwise provided in these Bylaws, a Director’s term is three (3) years or until a successor Director is elected or appointed and takes office (“Director Term”). A Director’s term begins: (1) after the individual consents to being elected or appointed as a Director; and (2) immediately after election or appointment. A Director’s term ends after: (1) a successor Director consents to being elected or appointed as a Director; and (2) immediately after a successor Director’s election or appointment. Directors shall not serve after attaining seventy (70) years of age; however, Directors who become seventy (70) years of age during a term may complete the term.

#### Section 4.7 – Director Resignation.

A Director may resign at any time. To resign, a Director must sign and deliver a written or electronic notice of resignation to the Board, President, or Secretary. Except as a later date is otherwise provided in a written or electronic notice of resignation, a Director’s resignation is effective when the Board, President, or Secretary receives the written or electronic notice of

resignation. If a Director's resignation is effective at a later date, and if the successor Director does not take office until the effective date of the Director's resignation, then the pending Director vacancy may be filled by majority vote of the Board before the effective date of the Director's resignation.

#### Section 4.8 – Director Removal.

Directors may be removed from office in the following manner:

(a) Director Removal Petition. For a Director for whom removal is requested, the Removing Members must deliver to the President or Secretary a dated written petition ("Director Removal Petition"):

- (1) identifying the Director on each page;
- (2) explaining, on each page, the reasonable basis for the Director's removal; and
- (3) as Removing Members existed on the Director Removal Petition date, containing the printed names, printed addresses, and original and dated signatures obtained within sixty days following the Director Removal Petition date, of at least ten percent of the Members.

Within thirty (30) days after the President or Secretary receives a Director Removal Petition: (1) the Cooperative shall forward a copy of the Director Removal Petition to the implicated Director and the C&E Committee; (2) the Board shall meet to review the Director Removal Petition.

(b) Member Meeting. If the C&E Committee determines that the Director Removal Petition complies with this Bylaw, then the Cooperative shall notice and hold a Member Meeting within sixty days following the C&E Committee's determination. Notice of the Member Meeting must state that: (1) a purpose of the Member Meeting is to consider removing a Director; (2) evidence may be presented, and a Member vote taken, regarding removing the Director; and (3) Members may elect a successor Director to fill the removed Director's term.

Provided a Member Quorum is present in person or represented by Member Proxy at the Member Meeting, then for the Director named in a Director Removal Petition:

- (1) before a Member vote, evidence must be presented supporting the basis for removing the Director;
- (2) the Director may be represented by legal counsel, and must have the opportunity to refute, and present evidence opposing, the basis for removing the Director; and
- (3) after the Director's presentation and Member discussion, the Members must vote whether to remove the Director.

If a majority sufficient to elect the Director at a Meeting of Members vote to remove the Director, then the Director is removed effective the time and date of the Member vote. At the Member Meeting, the Members may elect a new Director to succeed the removed Director without complying with the Director Nomination or notice provisions of these Bylaws. A successor

Director elected by the Members must comply with the Director Qualifications and serves the unexpired Director Term of the removed Director. A Director Removal Petition or Director removal does not affect a Board action.

Members may not remove a Director for lawfully opposing a Transfer of Cooperative Assets or a Cooperative dissolution. The Board may not remove a Director for lawfully opposing a Transfer of Cooperative Assets or a Cooperative dissolution.

#### Section 4.9 – Director Vacancy.

Except as otherwise provided in these Bylaws:

- (a) by an affirmative vote of the majority of remaining Directors, and within 3 months of a Director position becoming vacant, the Board shall fill a vacant Director position, including a vacant Director position resulting from increasing the number of Directors; and
- (b) a Director elected, designated, or appointed by the Board to fill a vacant Director position serves the unexpired Director Term of the vacant Director position only until the next Annual Member Meeting, at which time the Members must elect a new Director to fill the unexpired Director Term of the previously vacant Director position].

If a Director vacancy will occur at a later specified date, then the Board may fill the vacancy before the vacancy occurs and the new Director takes office when the vacancy occurs. An individual elected, designated, or appointed to fill a vacant Director position must comply with the Director Qualifications. Except as otherwise provided in these Bylaws, and as used in this Bylaw, “vacant Director position” and “Director vacancy” do not include Director positions vacated due to an expired Director Term.

#### Section 4.10 – Director Compensation.

A Director is not an employee of the Cooperative. As determined or approved by the Board, however, the Cooperative may compensate Directors a fixed amount and reimbursement of any expenses for attending a: (a) Board Meeting; (b) function, meeting, or event involving or relating to the Cooperative; or (c) function, meeting, or event involving, relating to, or reasonably enhancing the Director’s ability to serve in, the role of Director. The Board must determine or approve the manner, method, and amount of any Director compensation or expense reimbursement.

#### Section 4.11 – Close Relative.

The term “Close Relative” means an individual who:

- (a) through blood, law, or marriage, is a spouse, child, stepchild, father, stepfather, mother, stepmother, brother, stepbrother, half-brother, sister, stepsister, half-sister,

grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law; or

(b) resides in the same residence (collectively, “Close Relative”).

An individual qualified and elected, designated, or appointed to a position does not become a Close Relative while serving in the position because of a marriage or legal action to which the individual was not a direct party.

## **Article 5 – Board Meetings and Director Voting**

### **Section 5.1 – Regular Board Meetings.**

- (a) The Board shall regularly meet at the date, time, and location determined by the Board (“Regular Board Meeting”).
- (b) The Board shall provide notice of its Regular Board Meetings pursuant to N.C.G.S. 55A-7-05(a).
- (c) For good cause, the President may change the date, time, or location of a Regular Board Meeting.
- (d) A Director not attending a Board Meeting at which the Regular Board Meeting date, time, or location is changed is entitled to receive notice of the Regular Board Meeting change at least five (5) days before the next Regular Board Meeting.
- (e) All Directors are entitled to receive notice of a President’s change in a Regular Board Meeting date, time, or location at least five (5) days before the changed Regular Board Meeting.

### **Section 5.2 – Special Board Meetings.**

The Board, the President, or at least a majority of the Directors may call a special meeting of the Board (“Special Board Meeting”) by providing each Director at least five (5) days’ prior written or electronic [email or text message] notice indicating the date, time, location, and purpose of the Special Board Meeting. Pursuant to N.C.G.S. 55A-7-02(2), Members may also call a Special Board Meeting as provided in these Bylaws.

### **Section 5.3 – Conduct of Board Meetings.**

- (a) Except as otherwise provided in these Bylaws, a Regular Board Meeting or Special Board Meeting (“Board Meeting”) may, upon approval of a majority of the Board, be:
  - (1) held in, or out of, a state in which the Cooperative Provides a Cooperative Service; and
  - (2) conducted with absent Directors participating, and deemed present in person, through any means of communication by which all Directors participating in the Board Meeting may simultaneously [approve and] hear each other during the Board Meeting for reasons of such absent Directors’ health, safety, substantial hardship to arrange for physical presence or similar exigent circumstances as may arise. A Director may annually request to attend up to two (2) meetings remotely for such reasons as stated herein.
- (b) If a Director Quorum is present at a Board Meeting, then:
  - (1) in descending priority, the following Officers may preside at the Board Meeting: President, Vice-President, Secretary, and Treasurer; and

- (2) if no Officer is present or desires to preside at a Board Meeting, then the Directors attending the Board Meeting must elect by majority vote a Director to preside over the Board Meeting.
- (c) The Board may promulgate or approve rules, policies, and procedures regarding:
  - (1) attendance at, participation in, or presentation during Board Meetings by Persons other than Directors;
  - (2) the right to access, inspect, or copy minutes, records, or other documents relating to a Board Meeting by Persons other than Directors; or
  - (3) the conduct of Board Meetings.

Except as otherwise provided by the Board, non-Members may not attend Board Meetings and Members may petition the Executive Committee regarding such concerns, questions, and grievances as such Member(s) may wish for the Board to address upon the recommendation of the Executive Committee.

Section 5.4 – Waiver of Board Meeting Notice.

- (a) Except for any meetings at which business is taken up which requires notification under Chapter 55A-10-20, at any time before, during, or after a Board Meeting, a Director may waive notice of a Board Meeting by delivering to the Cooperative a written [or Electronic] waiver of notice signed by the Director and later filed with the Board Meeting minutes or the Cooperative’s records.
- (b) A Director’s attendance at, or participation in, a Board Meeting waives any required notice of the Board Meeting and any matter considered at the Board Meeting, unless the Director:
  - (1) at the beginning of the Board Meeting, [or promptly upon arrival] objects to holding or transacting business at the Board Meeting, a lack of, or defective, notice of the Board Meeting, or a matter being considered at the Board Meeting; and
  - (2) does not vote for, or assent to, [action taken at the Board Meeting or an objected matter].

Section 5.5 – Board Action by Written Consent.

- (a) The Board may not act without a Board Meeting Unless the Board determines due to reasons of emergency, or the health and safety of its Members, ore pursuant to a declared State of Emergency by State or Federal officials such action is necessary to protect such interests, which case the Board may take such action required to address such emergency, health or safety concern if the action is:
  - (1) taken by all Directors; and
  - (2) evidenced by one or more written [or Electronic] consents (“Director Written Consent”):
    - (A) describing the action taken;

- (B) signed by each Director;
- (C) delivered to the Cooperative; and
- (D) included with the Cooperative's Board Meeting minutes. Except as a different effective date is provided in the Director Written Consent, action taken by Director Written Consent is effective when the last Director signs the Director Written Consent and such consent(s) are entered into the official minutes of the next Board Meeting. A Director Written Consent has the effect of, and may be described as, a Board Meeting vote.]

Section 5.6 – Director Quorum and Voting.

- (a) A quorum of Directors is a majority of the Directors in office immediately before a Board Meeting begins (“Director Quorum”).
- (b) If a Director Quorum is present when a matter is voted or acted upon, and unless the vote of a greater number of Directors is required, then the affirmative vote of a majority of Directors present is deemed the act of the Board.
- (c) An interested Director is not counted in determining whether a Director Quorum is present to vote or act upon a matter in which the Director is interested provided such interested Director discloses to the Board the nature of his/her interest and seeks the Board's approval to recuse such interested Director prior to any deliberation upon the matter.
- (d) A Director may not vote by Proxy.
- (e) An agreement signed by Directors providing the manner in which a Director must vote is not valid.

Section 5.7 – Committees.

- (a) The Board may create a committee of the Board (“Board Committee”) and appoint Directors to serve on the Board Committee.
- (b) A Board Committee must consist of two (2) or more Directors and serves at the Board's discretion.
- (c) The Board may create a committee of the Members (“Member Committee”) and appoint Members, including Directors, to serve on the Member Committee.
- (d) The Board may appoint one or more Directors or Members, respectively, as alternate members of any Board or Member Committee to replace any absent or disqualified Committee member during the Committee member's absence or disqualification.
- (e) Except as otherwise provided in these Bylaws, at least a majority of Directors currently in office must approve the:
  - (1) creation of a Board Committee or Member Committee;
  - (2) appointment of Directors to a Board Committee; and
  - (3) appointment of Members to a Member Committee.
- (f) To the same extent as the Board and Directors, the Bylaws addressing Regular Board Meetings, Special Board Meetings, Conduct of Board Meetings, Waiver of Board Meeting Notice, Board Action by Written Consent, and Director Quorum and Voting

apply to Board Committees and Directors serving on Board Committees, and to Member Committees and Members serving on Member Committees.

- (g) A Member Committee may act as specified by the Board, but may not exercise Board authority. Except as otherwise provided in this Bylaw, the Board may authorize a Board Committee to exercise Board authority. Although a Board Committee may recommend, a Board Committee may not act, to:
  - (1) retire and pay Capital Credits;
  - (2) approve the Cooperative's dissolution or merger, or the sale, pledge, or Transfer of all, or substantially all, Cooperative Assets;
  - (3) elect, appoint, disqualify, or remove a Director, or fill a Board or Board Committee vacancy; or
  - (4) adopt, amend, or repeal Bylaws.

#### Section 5.8 – Board Executive Committee.

- (a) Except as otherwise provided by the Board, a Board Executive Committee is composed of the President, Vice-President, Secretary, and Treasurer (“Board Executive Committee”); and
- (b) The Board Executive Committee:
  - (1) is a Board Committee;
  - (2) may exercise all Board authority granted to the Board Executive Committee by the Board and permitted under these Bylaws; and
  - (3) shall serve as a Grievance Committee of the Board to hear concerns, questions and grievances as may be raised by any one or more Member(s) and Employee(s), and shall be asked to seek additional information, and review and make recommendations to the Board for resolutions or determinations of such concerns, questions or grievances for the Board's final action; and
  - (4) at the next Board Meeting following an exercise of Board authority, must report to the Board regarding the Board Executive Committee's exercise of Board authority.

#### Section 5.9 – Conflict of Interest Transaction.

- (a) A conflict of interest transaction is a contract or transaction with the Cooperative in which a Director [or the Director's spouse, child, grandchildren, or parent] has a direct or indirect pecuniary interest (“Conflict of Interest Transaction”).
- (b) A Director has an indirect pecuniary interest in a contract or transaction with the Cooperative if at least one party to the contract or transaction is another Entity:
  - (1) in which the Director [or the Director's spouse, child, grandchildren, or parent] has a material or financial interest, or is a general partner; or
  - (2) of which the Director [or the Director's spouse, child, grandchildren, or parent] is a director, officer, or trustee.

(c) Regardless of the presence or vote of a Director interested in a Conflict of Interest Transaction, a Conflict of Interest Transaction may be approved, and a Board Quorum or Member Quorum satisfied, if the material facts regarding the Conflict of Interest Transaction and the Director's interest, are:

- (1) disclosed to the Board or Board Committee, and a majority of more than one Director or Board Committee member with no interest in the Conflict of Interest Transaction votes in good faith to approve the Conflict of Interest Transaction; or
- (2) disclosed to the Members, and a majority of Members not voting under the control of a Director or Entity interested in the Conflict of Interest Transaction votes in good faith to approve the Conflict of Interest Transaction.
- (3) A Conflict of Interest Transaction that is approved pursuant to this Bylaw, or that is fair to the Cooperative when entered or approved pursuant to this Bylaw, is not, solely by reason of being a Conflict of Interest Transaction: (1) void or voidable; or (2) the basis for imposing liability on a Director interested in the Conflict of Interest Transaction.

## **Article 6 – Officers, Indemnification, and Insurance**

### Section 6.1 – Required Officers.

The Cooperative must have the following officers: President, Vice-President, Secretary, and Treasurer (“Required Officers”). The Board may elect Required Officers: (1) at the first Regular Board Meeting following each Annual Member Meeting; (2) at a special called meeting following each Annual Member Meeting, or as soon after each Annual Member Meeting as reasonably possible and convenient; (3) by affirmative vote of a majority of Directors in office; and (4) by voice vote or by secret written ballot without prior nomination if such method is approved by a majority of Directors.

A Required Officer must be a Director. Subject to removal by the Board, a Required Officer holds office until the Required Officer’s successor is elected. The Board shall fill a vacant Required Officer’s position for the unexpired portion of the Required Officer’s term.

### Section 6.2 – President.

Except as otherwise provided by the Board or these Bylaws, the President:

- (a) shall preside, or designate another individual to preside, at all Board and Member Meetings;
- (b) on the Cooperative’s behalf, may sign a document properly authorized or approved by the Board or Members; and
- (c) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

### Section 6.3 – Vice-President.

Except as otherwise provided by the Board or these Bylaws, the Vice-President: (1) upon the President’s death, absence, disability, improper refusal, or inability to act, shall perform the duties, and have the powers, of the President; and (2) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

### Section 6.4 – Secretary.

Except as otherwise provided by the Board or these Bylaws, the Secretary:

- (a) shall be responsible for preparing, or supervising the preparation and Board approval of, minutes of Board and Member Meetings;
- (b) shall be responsible for maintaining and authenticating the Cooperative’s records;
- (c) may affix the Cooperative’s seal to a document authorized or approved by the Board or Members if required; and
- (d) shall perform all other duties, shall have all other responsibilities, and may exercise all other authority, prescribed by the Board.

#### Section 6.5 – Treasurer.

Except as otherwise provided by the Board or these Bylaws, the Treasurer shall be available for consultation on the preparation and Board approval of certain financial reports including the balance sheet, statements of income, cash flow, an annual budget, performance of an annual audit by a qualified accountant with such audit report being submitted to the Members of the Cooperative at the Annual Member Meeting, and shall further perform all duties, shall have all responsibility, and may exercise all authority, prescribed by the Board.

#### Section 6.6 – Other Officers.

The Board may create other offices and elect or appoint other officers (“Other Officers”). The same individual may simultaneously hold more than one office. Except as otherwise provided by Law, this individual may not execute, acknowledge, or verify a document in more than one capacity. Except as otherwise provided by the Board, Other Officers:

- (a) shall be Directors;
- (b) must be elected or appointed by the affirmative vote of a majority of current Directors;
- (c) may be elected by secret written ballot and without prior nomination;
- (d) may assist Required Officers; and
- (e) shall perform all duties and functions, shall have all responsibilities, and may exercise all authority, prescribed by the Board.

#### Section 6.7 – Responsibility for Corporate Reports.

The Cooperative’s General Manager or with respect to financial reporting its Chief Financial Officer must certify the following in each annual report filed or submitted to the Members or any lender or government agency:

- (a) the signing officer has reviewed the report;
- (b) based on the officer’s knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- (c) based on the officer’s knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the Cooperative as of, and for, the periods presented in the report;
- (d) the signing officers: (A) are responsible for establishing and maintaining internal controls; (B) have designed the internal controls to ensure that material information relating to the Cooperative and its consolidated subsidiaries is made known to the officers by others within those entities, particularly during the period in which the periodic reports are being prepared; (C) have evaluated the effectiveness of the Cooperative’s internal controls as of a date within 90 days prior to the report; and (D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
- (e) the signing officers have disclosed to the Cooperative’s auditors and the Board Audit Committee (or persons fulfilling the equivalent function): (A) all significant deficiencies

- in the design or operation of internal controls which could adversely affect the Cooperative's ability to record, process, summarize, and report financial data and have identified for the Cooperative's auditors any material weaknesses in internal controls; and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Cooperative's internal controls; and
- (f) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

#### Section 6.8 – Officer Resignation and Removal.

At any time, a Required Officer or Other Officer (collectively, "Officer" or "Cooperative Officer") may resign. To resign: (1) an Officer elected or appointed by the Board must deliver to the Board Chair an oral, written, or Electronic resignation. Except as a later effective date is otherwise provided and agreed upon at the time of the Officer resignation, an Officer resignation is effective when received. If an Officer resignation states a future effective date, and if, as appropriate, the Board accepts the future effective date, then, as appropriate, the Board may fill the vacant Officer position before the future effective date, but the successor Officer may not take office until the future effective date.

At any time the Board may remove for any reason with or without cause an Officer elected or appointed by the Board.

#### Section 6.9 – Officer Standard of Conduct.

An Officer shall discharge the Officer's duties: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the Officer reasonably believes to be in the Cooperative's best interests.

An Officer shall: (1) inform the Board, or the superior Officer or Board Committee to whom or which the Officer reports, of information regarding the Cooperative's affairs known to the Officer, within the scope of the Officer's duties and functions, and known to the Officer to be material to the superior Officer or Board; and (2) inform the Board, the superior Officer to whom the Officer reports, or another appropriate person within Cooperative of any actual or probable material violation of law involving the Cooperative, or material breach of duty to the Cooperative by a Cooperative Officer, employee, or agent, that the Officer believes has occurred or is likely to occur.

#### Section 6.10 – Officer Contract Rights.

The election, appointment, retention, or employment of an Officer, by itself, does not create a contract between the Cooperative and the Officer. An Officer's resignation or removal does not affect the Cooperative's contract rights, if any, with the Officer.

Section 6.11 – Authority to Execute Documents.

On the Cooperative's behalf Required Officer(s) as authorized in Board resolution for banking, financial or legal purposes may sign, execute, and acknowledge a document properly authorized or approved by the Board or Members. The Board may authorize additional Cooperative Officials to sign, execute, and acknowledge a document on the Cooperative's behalf.

Section 6.12 – Officer Compensation.

Upon approval by the Board, the Cooperative may reasonably compensate, reimburse, pay a salary to, or provide insurance or other benefits to, an Officer.

Section 6.13 – Bonds.

At the Cooperative's expense, the Cooperative may purchase a bond covering one or more Cooperative Officials.

Section 6.14 – Indemnification.

As determined by the Board:

For and during the term of a Director of the Company, the Company shall indemnify such Director of the Company to the fullest extent possible against expenses, including attorneys' fees, judgments, fines, settlements and reasonable expenses, actually incurred by such person relating to his or her conduct as an active Director of the Company, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of the duty of loyalty to the Company; (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law; (iii) for a transaction from which such person derived an improper personal benefit; (iv) against judgments, penalties, fines and settlements arising from any proceeding by or in the right of the Company, or against expenses in any such case, where such person shall be adjudged liable to the Company, or (v) acts or omissions which occurred or arose after such Director's term ended. Any indemnification under this Article (unless ordered by a court) shall be made by the Corporation only as authorized in each specific case upon a determination that indemnification of the director is permissible under the circumstances because such person met the applicable standard of conduct set forth herein. Such determination shall be made by the Board of Directors by a majority vote of a quorum of disinterested directors who at the time of the vote are not, were not, and are not threatened to be made parties to the proceeding giving rise to the request for indemnification. The Corporation shall pay for or reimburse the reasonable expenses (including attorneys' fees) incurred by a director who is a party to proceeding in advance of the final disposition of the proceeding if [a] the director furnishes the Corporation a written affirmation of his or her good faith belief that he or she conducted himself in good faith, [b] the director furnishes the Corporation with a written undertaking, executed personally or on his or her behalf, to repay the advance if it is determined that he or she did not conduct himself in good faith, which undertaking shall be an unlimited general obligation of the director or officer but which need not be secured and which may be accepted without reference to financial ability to make repayment, and [c] a determination is made by the body authorizing indemnification that the

facts then known to such body would not preclude indemnification. The Board of Directors may exercise the Corporation's power to purchase and maintain insurance (including without limitation insurance for legal expenses and costs incurred in connection with defending any claim, proceeding, or lawsuit) on behalf of any person who is or was a director of the Corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

Section 6.15 – Insurance.

Regardless of indemnification authority or requirement, the Cooperative may purchase and maintain insurance on behalf of an individual who is or was a Cooperative Official. This insurance is against a liability, including judgment, settlement, or otherwise, or reasonable expenses, including reasonable attorney fees, asserted against or incurred by the Cooperative or the individual in his or her individual capacity, or arising from the individual's status, as a Cooperative Official.

## **Article 7 – Cooperative Operation**

### Section 7.1 – Nonprofit and Cooperative Operation.

The Cooperative: (1) shall operate on a nonprofit and cooperative basis for the mutual benefit of all Members; and (2) may not pay interest or dividends on capital furnished by Patrons.

### Section 7.2 – Allocating Capital Credits.

The Cooperative shall allocate Capital Credits to retail Members as provided in this Bylaw. The Cooperative must allocate Capital Credits in a name as shown in the Cooperative's records, regardless of the marital status of such Member.

- (a) Patron. The term “Patron” means, during a fiscal year: (1) a Member; and (2) any other Person Using a Cooperative Service to whom the Cooperative is obligated to allocate Capital Credits, which obligation existed before the Cooperative received payment for the Cooperative Service. The terms Patron and Member may be used interchangeably in this article.
- (b) Cooperative Service. The term “Cooperative Service” means the provision of potable water through distribution lines of the cooperative to the property line or designated point for each Patron/Member, at which points designated, meters to be purchased by each Patron/Member, and installed, owned and maintained by the Cooperative.
- (c) Allocating Margins. The Cooperative shall equitably allocate to each Patron as Capital Credits, in proportion to the value of the Cooperative Service paid for by the Patron during the fiscal year, the Cooperative's operating Margins during the fiscal year. Operating Margins mean the amount by which the Cooperative's operating revenues from providing a Cooperative Service exceed the Cooperative's operating expenses of providing the Cooperative Service, all as determined under federal cooperative tax law and such ByLaws, Rules and Regulations as may be adopted by the Cooperative from time to time.

The Cooperative shall also maintain records to enable it to equitably allocate to each Patron, in proportion to the value of the Cooperative Service paid for by the Patron during the fiscal year, the Cooperative's Nonoperating earnings during the fiscal year. Nonoperating earnings means the amount by which the Cooperative's nonoperating revenues during a fiscal year exceed the Cooperative's nonoperating expenses during the fiscal year. Nonoperating earnings will not be retired as Capital Credits prior to dissolution of the Cooperation.

All other amounts received in excess of costs and expenses by the Cooperative, such as contributions in aid of construction (i.e. connection fees, tap fees, capital recovery fees, developer contributions in aid of construction, etc.) will be: (i) used to establish reserves not subject to retirement as capital credits prior to dissolution of the Cooperative or (ii)

will be considered other capital not subject to retirement as capital credits to the Members prior to dissolution of the Cooperative.

All such amounts credited to the capital account of any Patron shall have the same status as though they had been paid to the Patron in cash in pursuance of a legal obligation to do so and the Patron had then furnished the Cooperative corresponding amounts for capital.

All other amounts received by the Cooperative from its operations in excess of costs and expenses shall be considered non-operating and may be, insofar as permitted by law, (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose, allocated to its Patrons on a patronage basis. Any amount so allocated shall be included as a part of the capital credited to the accounts of Patrons, as herein provided.

The Cooperative acknowledges that the first capital credit allocation year shall be 1989. The Cooperative further hereby acknowledges that the special non-operating income received in 1989 resulting from the USDA loan satisfaction was utilized to offset net excess operating expenses in excess of operating income accumulated for all years prior to 1989.

- (d) Capital Credits. For each amount allocated to a Patron, the Patron shall have contributed a sufficient amount to the Cooperative as capital. The Cooperative must credit all capital contributions from a Patron to a capital account for the Patron. The Cooperative shall maintain books and records reflecting the capital contributed by each Patron. At the time of receipt by the Cooperative, each capital contribution is treated as though the Cooperative paid the amount allocated to the Patron in cash pursuant to a pre-existing legal obligation and the Patron contributed the corresponding amount to the Cooperative as capital. The term "Capital Credits" means the amounts allocated to a Patron and contributed by the Patron to the Cooperative as capital.

Consistent with this Bylaw, the allocation of Capital Credits is in the discretion of the Board and the Board must determine the manner, method, and timing of allocating Capital Credits. The Cooperative may use or invest unretired Capital Credits as determined by the Board.

- (e) Treatment of Capital Credits upon the Death of a Legally Married Patron or Pursuant to Court Order. Upon receiving written notice and sufficient proof of the termination, conversion, or alteration of a Membership of a married Patron upon their death or divorce: (1) through the death of a legally married Member, the Cooperative shall assign and transfer to the Member's surviving spouse such Capital Credits allocated to the deceased married Member; or (2) upon the divorce of a married Member, and as expressly provided by an order entered by a court or administrative body of competent jurisdiction and given to the Cooperative pursuant to a written request by such Member/former spouse of a Member, the Cooperative shall assign and transfer to each such Member/former spouse of a Member such portion of Capital Credits allocated or retired, or to be allocated or retired, to the original Member. Any such transfer of capital credits shall be subject to recoupment and offset pursuant to Section 7.4(b) of this Article.

### Section 7.3 – Notification and Assignment of Capital Credits.

Within 8 ½ months after the end of each fiscal year, the Cooperative may notify each Patron in writing [or Electronically] of the stated dollar amount of Capital Credits allocated to the Patron for the preceding fiscal year.

Except as otherwise provided by the Board or these Bylaws, to assign or transfer a Patron's Capital Credits to a surviving spouse or to a former spouse pursuant to the express order of a court of competent jurisdiction: (1) the Cooperative must receive a written [or Electronic via email or text message] request signed by the Patron, or by the Patron's legal representative, to assign or transfer the Capital Credits; and (2) the Patron, or the Patron's legal representative, and the assignee or transferee must comply with all reasonable requirements specified by the Cooperative.

### Section 7.4 – Retiring Capital Credits.

The Cooperative may retire Capital Credits allocated to Patrons and former Patrons as provided in this Bylaw. If the Cooperative retires Capital Credits, then the Cooperative must retire Capital Credits in a Patron's name as reflected in the Cooperative's record. If the Cooperative mails a retired Capital Credit payment, then the Cooperative shall mail the payment to the Patron or former Patron's address as shown in the Cooperative's records or as may be determined by such other reasonable means available to the Cooperative within its internal records. It shall be the affirmative responsibility of the Patron to notify the Cooperative of any changes of address and require that the same be reflected upon the Cooperative's records.

- (a) General Capital Credit Retirements. At any time before the Cooperative's dissolution, liquidation, or other cessation of existence, the Cooperative may generally retire some or all Capital Credits allocated to Patrons and former Patrons. The Cooperative may set a minimum allocated amount which will be required before an actual capital credit retirement check will be issued to a Patron or former Patron.
- (b) Capital Credit Recoupment and Offset. Regardless of a statute of limitation or other time limitation, upon retiring Capital Credits allocated to a Patron or former Patron, the Cooperative may recoup, offset, or setoff an amount owed to the Cooperative by the Patron or former Patron, including but not limited to any Member-incurred fees as set forth in the Rules and Regulations, by reducing the allocated or net present value amount of retired Capital Credits paid to the Patron or former Patron by the amount owed to the Cooperative.
- (c) Capital Credit Retirement Discretion. The Cooperative may retire Capital Credits only if the Board determines that the retirement will not adversely impact the Cooperative's financial condition and maintenance of reasonable reserves. Consistent with this Bylaw, the retirement of Capital Credits are in the sole discretion of the Board and are not affected by previous retirements. The manner, method, and timing of retiring Capital Credits may be determined only by the Board.

- (d) Different and Separate Capital Credit Retirements. As reasonable and fair, the Cooperative may retire Capital Credits to classes of similarly situated Patrons and former Patrons under different manners, methods, and timing, provided the Cooperative retires Capital Credits to similarly situated Patrons and former Patrons under the same manner, method, and timing. If the Cooperative separately identified and allocated Capital Credits representing capital credits or similar amounts allocated to the Cooperative by an Entity in which the Cooperative is or was a member, patron, or owner, then the Cooperative may retire these Capital Credits before or after the Entity retires the capital credits or similar amounts to the Cooperative.
- (e) Discounted Capital Credit Payments. As determined by the Board, before the time the Cooperative anticipates normally retiring Capital Credits, the Cooperative may retire some or all Capital Credits at the net present value of the retired Capital Credits. If the Cooperative retires the net present value of Capital Credits to a Patron or former Patron before the time the Cooperative anticipates normally retiring the Capital Credits, then the amount of Capital Credits not paid may be used or retained as permanent, unallocated equity and paid to the Patron or former Patron upon the Cooperative's later dissolution, liquidation, or other cessation of existence.
- (f) Unclaimed Capital Credits. The Cooperative may regularly impose a reasonable dormancy or service charge for each month a Patron or former Patron fails to claim Capital Credits retired and paid to the Patron or former Patron. Through a voluntary written [or Electronic via email or text messaging] assignment signed by a Patron or former Patron, which assignment is revocable and is not a condition of the Cooperative Providing a Cooperative Service to the Patron, the Patron or former Patron may assign or transfer to the Cooperative any past, present, or future Capital Credits retired and paid to the Patron or former Patron, but not claimed by the Patron or former Patron within one (1) year of retirement, provided the Cooperative undertook or undertakes reasonable measures to notify the Patron or former Patron of the retired and paid Capital Credits. As may be allowed by Law, the Cooperative may retain Capital Credits retired and paid to a Patron or former Patron, but not claimed by the Patron or former Patron within three (3) years of retirement.

#### Section 7.5 – Patron Agreement.

Each Patron and former Patron agrees that:

- (a) Capital Credits are not securities under state or federal Law;
- (b) The Patron's right to Capital Credits vests, accrues, becomes redeemable, and becomes payable only upon the Cooperative, through the affirmative action of its Board, retiring

the Capital Credits as provided in these Bylaws, and not upon the Cooperative allocating the Capital Credits; and,

- (c) As required by Law, each Patron will: (A) report to the appropriate Entity all allocated or retired Capital Credits; and (B) pay the appropriate Entity any tax or similar amount on allocated or retired Capital Credits.

Section 7.6 – Reasonable Reserves.

Regardless of a contrary Bylaw, and to meet the Cooperative's reasonable foreseeable needs, the Cooperative may accumulate and retain amounts exceeding those needed to meet current losses and expenses ("Reasonable Reserves"). The Cooperative must keep records necessary to determine, at any time, each Member's rights and interest in such Reasonable Reserves.

## **Article 8 – Disposition of Cooperative Assets**

### Section 8.1 – Transfer of Cooperative Assets.

Except for a sale, lease, exchange, disposition, conversion, or other transfer (“Transfer”) of Cooperative Assets: (1) to secure indebtedness; (2) pursuant to condemnation or threat of condemnation; (3) pursuant to an existing legal obligation; (4) associated with a Consolidation or Merger; (5) consisting of the Cooperative’s ownership in an Entity; or (6) to a Cooperative Subsidiary, the Cooperative may Transfer, including Transfer as part of a dissolution, liquidation or merger more than ten percent (10%) of the Cooperative’s Assets only if:

- (a) At the expense of the Person seeking to purchase, lease, or acquire the Cooperative’s Assets, the Board appoints three independent appraisers, each of whom, within a reasonable time, evaluates and renders an appraisal valuing the Cooperative’s Assets specified in the proposed Transfer (“Appraisal”);
- (b) The Person seeking to purchase, lease, or acquire the Cooperative’s Assets provides to the Cooperative any information requested by the Cooperative;
- (c) Within a reasonable time of receiving the Appraisals, the Cooperative invites any other Entity operating on a cooperative basis, providing water treatment and distribution services, and primarily located within the same state as the state in which the Cooperative is primarily located, to submit proposals to purchase, lease, or acquire the Cooperative’s Assets specified in the proposed Transfer, or to Merge or Consolidate with the Cooperative;
- (d) The Board approves the proposed Transfer;
- (e) At least two-thirds (2/3) of the Total Membership approves the proposed Transfer;
- (f) Notice of a Member Meeting at which Members will consider the proposed Transfer states that one of the purposes of the Member Meeting is to consider the Transfer, and includes a copy or summary of the proposed Transfer;
- (g) No Director will benefit from the Transfer, financially or otherwise, in a manner different from other Members;
- (h) Except for a Transfer to or merger with an Entity operating on a cooperative basis and providing water treatment and distribution services, all allocated Capital Credits are retired and paid at full and non-discounted value contemporaneous with the transfer; and
- (i) In proportion to the value or quantity of Cooperative Services Used by Members during the period in which the Cooperative owned a Cooperative Asset, the Cooperative allocates to Members as Capital Credits any consideration received for the Cooperative’s Assets that exceeds the amount paid for the Cooperative Assets.

Except as otherwise provided by the Members, after the Members approve a Transfer, the Board may in its discretion and in exercise of its fiduciary duty, abandon the Transfer. To secure indebtedness by the Cooperative, the Board may Transfer, mortgage, pledge, dedicate to repayment, or encumber any Cooperative Asset. As used in this Bylaw, a Transfer includes the conversion of the Cooperative to another form of business.

## Section 8.2 – Merger or Consolidation.

The Cooperative may consolidate or merge only with an Entity operating on a Cooperative basis that Provides a Cooperative Service which is the same or similar to that of the Cooperative (“Consolidate or Merge”). To Consolidate or Merge, the Cooperative must comply with this Bylaw.

- (a) Board Approval. To Consolidate or Merge, the Board must approve an agreement or plan to Consolidate or Merge (“Consolidation or Merger Agreement”) stating the:
- (1) terms and conditions of the Consolidation or Merger;
  - (2) name of each Entity Consolidating or Merging with the Cooperative;
  - (3) name of the new or surviving Consolidated or Merged Entity (“New Entity”);
  - (4) manner and basis, if any, of converting memberships or ownership rights of each Consolidating or Merging Entity into memberships or ownership rights of, or payments from, the New Entity;
  - (5) number of directors of the New Entity, which must equal or exceed nine (9), at least two (2) of whom shall include directors from the Cooperative’s legacy service area;
  - (6) date of the New Entity’s annual meeting;
  - (7) names of New Entity directors who will serve until the New Entity’s first annual meeting; and
  - (8) other information required by Law.
- (b) Member Approval. To Consolidate or Merge after the Board approves a Consolidation or Merger Agreement, two-thirds (2/3) of the Members voting in person or by Member proxy must approve the Consolidation or Merger Agreement.
- (c) Notice. The Cooperative shall notify Directors of a Board Meeting, and Members of a Member Meeting, at which Directors or Members may consider a Consolidation or Merger Agreement. This notice and any material soliciting Member approval of the Consolidation or Merger Agreement must contain, or be accompanied by, a summary or copy of the Consolidation or Merger Agreement and the New Entity’s articles of incorporation and bylaws.
- (d) Other Requirements. The New Entity directors named in the Consolidation or Merger Agreement must sign and file articles of Consolidation or Merger in a manner, and stating the information, required by Law. The Cooperative shall comply with all other requirements for Consolidation or Merger specified by Law. After a Consolidation or Merger Agreement is approved, and before articles of Consolidation or Merger are filed, the Board or Members may abandon the Consolidation or Merger.

## Section 8.3 – Distribution of Cooperative Assets Upon Dissolution.

Upon the Cooperative’s dissolution: (1) the Cooperative shall pay, satisfy, or discharge all Cooperative debts, obligations, and liabilities; (2) the Cooperative shall retire and pay all Capital Credits allocated to Patrons and former Patrons; and (3) after paying, satisfying, or discharging all

Cooperative debts, obligations, and liabilities, and after retiring and paying all Capital Credits, and to the extent practical:

- (a) the Cooperative shall first distribute gains from selling an appreciated Cooperative Asset to Members and former Members who Used Cooperative Services during the period in which the Cooperative owned the Cooperative Asset in proportion to the value or quantity of Cooperative Services Used by the Member or former Member during the period the Cooperative owned the Cooperative Asset;
- (b) the Cooperative shall then distribute non-operating earnings used by the Cooperative as permanent, unallocated equity to Members who Used Cooperative Services during the period in which the Cooperative received the earnings in proportion to the value or quantity of Cooperative Services Used by the Member during the period the Cooperative received the earnings; and
- (c) the Cooperative shall then pay or distribute any remaining Cooperative Assets, and any amounts received from selling any remaining Cooperative Assets, to the Members and former Members in proportion to the value or quantity of Cooperative Services Used during the ten (10) years prior to the Cooperative's dissolution.

## Article 9 – Miscellaneous

### Section 9.1 – Electronic Documents and Actions.

If a Member or Director owns, controls, or has reasonable access to the applicable or necessary hardware and software, then, regardless of a contrary Bylaw, as determined by the Board, and as allowed by Law:

(a) the Member or Director consents and agrees to: (A) use, accept, send, receive, and transmit an Electronic signature, contract, record, notice, vote, communication, comment, and other document regarding an action, transaction, business, meeting, or activity with, for, or involving the Cooperative (“Electronic Document”); (B) Electronically conduct an action, transaction, business, meeting, or activity with, for, or involving the Cooperative; and (C) Electronically give or confirm this consent and agreement;

(b) an Electronic Document sent or transmitted to, or received or transmitted from, the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, comment, or other document be in writing;

(c) Electronically sending or transmitting an Electronic Document to, or receiving or transmitting an Electronic Document from, the Member or Director satisfies a requirement imposed by the Governing Documents that the underlying signature, contract, record, notice, vote, communication, comment, or other document be sent or received personally or by mail; and

(d) the Member or Director Electronically taking an action provided in these Bylaws satisfies a requirement imposed by the Governing Documents regarding the form or manner of taking the action.

Except as otherwise provided in these Bylaws, an Electronic Document Electronically sent or transmitted to a Member or Director or former Member at the Member, or Director, or former Member’s last known Electronic address is considered sent, received, transmitted, and effective on the date sent by the Cooperative. An Electronic Document Electronically received or transmitted from a Member, Director or former Member is considered sent, received, transmitted, and effective on the date received by the Cooperative.

As used in these Bylaws, subject to the context requiring otherwise, and as determined by the Board:

(a) “Electronic” and “Electronically” mean relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(b) To sign an Electronic Document means, with present intent to authenticate or adopt the Electronic Document, to attach to, or logically associate with, the Electronic Document an Electronic sound, symbol, or process; and

(c) Electronic transmission includes transmission through: (i) Electronic mail; (ii) the Cooperative’s website; or (iii) a website or information processing system that the Cooperative has designated or uses to send, receive, or transmit Electronic Documents or Electronic information, or to Electronically conduct an action, transaction, business, meeting, or activity.

## Section 9.2 – Bylaw Amendment.

Except as otherwise provided in these Bylaws, these Bylaws may be adopted, amended, or repealed (“Amended”) only by the vote of a majority of Directors. Except as otherwise provided in a Bylaw Amendment, the Amendment is effective immediately after the vote approving the Amendment. The Cooperative must notify Members of Amended Bylaws.

(a) Sponsorship of Bylaw Amendment. The Board may sponsor or propose a Bylaw Amendment. Except as otherwise provided by the Board, Members *may not* sponsor or propose a Bylaw Amendment.

(b) Notice of Bylaw Amendment. Notice of a Board Meeting at which Directors will consider a proposed Bylaw Amendment must: (1) state that the purpose, or one of the purposes, of the Board Meeting is to consider the proposed Bylaw Amendment; and (2) contain, or be accompanied by, a copy or summary of the proposed Bylaw Amendment. After notice of a proposed Bylaw Amendment, the proposed Bylaw Amendment may not be amended to increase the Amendment or to propose a new Amendment.

## Section 9.3 – Rules of Order.

Except as otherwise provided by the Board at any time, and except as otherwise provided in the Governing Documents, the latest edition of Robert’s Rules of Order Newly Revised governs all Member, Board, Member Committee, and Board Committee meetings, documents, communications, actions, and cases to which it is applicable.

## Section 9.4 – Fiscal Year.

The Board may determine and modify the Cooperative’s fiscal year. Except as otherwise provided by the Board, the Cooperative’s fiscal year shall begin on the first day of October in each year.

## Section 9.5 – Notice and Communication.

In these Bylaws:

(a) Notice and Communication Type. Except as otherwise provided in these Bylaws, a notice or communication may be: (1) oral or written or Electronic; and (2) communicated: (A) in person; (B) by telephone, facsimile, Electronic communication or transmission, or other form of wire or wireless communication; (C) by mail or private carrier; or (D) if the above-listed forms of communicating are impractical, then by newspaper of general circulation in the area where published, or radio, television, or other form of public broadcast communication.

If addressed or delivered or transmitted to an address shown in the Membership List or Cooperative records, then a written or Electronic notice, communication, or report delivered or transmitted as part of a newsletter, magazine, or other publication regularly sent to Members constitutes a written or Electronic notice, communication, or report to all Members: (1) residing

at the address; or (2) having the same address shown in the Membership List or Cooperative records.

(b) Notice and Communication Effective Date. Except as otherwise provided in these Bylaws:

(1) an oral notice or communication is effective when communicated, if communicated in a comprehensible manner; and

(2) a written notice or communication is effective upon the earliest of: (A) when received; (B) with the postmark evidencing deposit in the United States Mail, and if correctly addressed and mailed with first class postage affixed, then five (5) days after deposit in the United States Mail, or if correctly addressed and mailed with other than first class, registered, or certified postage affixed, then thirty (30) days after deposit in the United States Mail; or (C) if sent by registered or certified mail, return receipt requested, and if the return receipt is signed by, or on behalf of, the addressee, then on the date indicated on the return receipt.

A written notice or communication is correctly addressed to a Member if addressed to the Member's address shown in the Membership List. A Member is responsible for providing a current address to the Cooperative.

#### Section 9.6 – Governing Law.

These Bylaws must be governed by, and interpreted under, the laws of the State of North Carolina.

#### Section 9.7 – Titles and Headings.

Titles and headings of Bylaw articles, sections, and subsections are for convenience and reference, and do not affect the interpretation, construction, or application of a Bylaw article, section, or subsection.

#### Section 9.8 – Partial Invalidity.

When reasonably possible, every Bylaw article, section, subsection, paragraph, sentence, clause, or provision (collectively, "Bylaw Provision") must be interpreted in a manner by which the Bylaw Provision is valid. The invalidation of a Bylaw Provision by an Entity possessing proper jurisdiction and authority, which invalidation does not alter the fundamental rights, duties, and relationship between the Cooperative and Members, shall not invalidate the remaining Bylaw Provisions.

#### Section 9.9 – Cumulative Remedies.

The rights and remedies provided in these Bylaws are cumulative. The Cooperative or a Member asserting a single right or remedy provided in these Bylaws does not preclude the Cooperative or Member from asserting other rights or remedies provided in these Bylaws.

Section 9.10 – Entire Agreement.

Between the Cooperative and a Member, the Governing Documents: (1) constitute the entire agreement; and (2) supersede and replace a prior or contemporaneous oral or written or Electronic communication or representation.

Section 9.11 – Successors and Assigns.

Except as otherwise provided in these Bylaws: (1) the duties, obligations, and liabilities imposed upon, and the rights granted to, the Cooperative by these Bylaws are binding upon, and inure to the benefit of, the Cooperative's successors and assigns; and (2) the duties, obligations, and liabilities imposed upon a Member by these Bylaws are binding upon the Member's successors and assigns. The binding nature of the duties, obligations, and liabilities imposed by these Bylaws upon the successors and assigns of the Cooperative or a Member does not relieve the Cooperative or Member of the duties, obligations, and liabilities imposed by these Bylaws.

Section 9.12 – Waiver.

The failure of the Cooperative to assert a right or remedy provided in these Bylaws does not waive the right or remedy provided in these Bylaws.

Section 9.13 – Lack of Notice.

The failure of a Member or Director to receive notice of a Meeting, action, or vote does not affect, or invalidate, an action or vote taken by the Members or Board.