

**AMENDED AND RESTATED BYLAWS OF  
FAIR STATE BREWING COOPERATIVE**

Dated October 16, 2018

**ARTICLE I.  
Definitions**

**The Cooperative** shall refer to Fair State Brewing Cooperative, a cooperative association organized under the Minnesota Cooperative Associations Act, Minnesota Statutes Chapter 308B.

**Eligible State** shall mean any state or territory of the United States unless the Board of Directors determines that for legal or practical reasons the Cooperative cannot accept memberships from that particular state or territory.

**Directors at Large** shall refer to those Directors who are elected by the Membership as a whole.

**Nonpatron Distribution** shall refer to any financial return provided by the Cooperative to the Nonpatron Membership as an allocation of the Cooperative's profits.

**Nonpatron Member** shall mean any Qualified Person who owns Nonpatron Member Units.

**Nonpatron Member Directors** shall refer to those Directors who are elected exclusively by the Nonpatron Members and the Patron Members.

**Nonpatron Member Unit** shall mean Units issued to Nonpatron Members.

**Patron Member** shall mean any Qualified Person who purchases at least 1 Patron Member Unit and is approved as a patron member as specified in Article II Section 4.

**Patron Member Directors** shall refer to those Directors who are elected exclusively by the Patron Membership.

**Patron Member Unit** shall mean Units issued to Patron Members.

**Patronage Refund** shall refer to the money returned to Patron Members under Article II, Section 4(F).

**Qualified Person** shall refer to any individual or group eligible to be a member of the Cooperative under Article II, Section 1 of these bylaws and any and all other eligibility requirements presented elsewhere in these bylaws or in the Cooperative's Articles of Organization.

**ARTICLE II.  
Membership**

**Section 1 - Qualifications**. Any individual over the age at which consumption of



alcohol is permitted in Minnesota, firm, company, corporation, or cooperative may become a member pursuant to terms established by the Board of Directors. Each transaction between this cooperative and each member shall be subject to and shall include as part of its terms each provision of the Articles of Organization of this Cooperative and these Bylaws, whether or not the same is expressly referred to in said transaction. The Cooperative shall not discriminate on social or political grounds, on the basis of race, creed, age (except as noted herein above), sex, handicap, sexual preference or marital status.

**Section 2 - Current Address.** Every member agrees to provide his or her current address and to keep the Cooperative apprised of any changes to that member's address. The Board of Directors shall establish a method by which a member can update their address electronically and receive an electronic confirmation. If the Cooperative has not updated the members' address in its records and the member has not received an electronic confirmation, then that member's address shall not be deemed to be updated under these bylaws. A member may also update his or her address by sending a letter by certified mail through the United States Postal Service that both explicitly requests that the member's address be updated and provides a complete updated mailing address.

**Section 3 - Classes of Members.** There shall be two classes of members.

(a) Nonpatron Members will be those individuals or entities who own one or more Nonpatron Member Units and have been approved by the Nonpatron Members and the Board of Directors pursuant to Article II Section 5(A). Nonpatron Members may also be, but do not need to be, Patron Members.

(b) Patron Members will be those individuals who join the Cooperative and purchase at least 1 Patron Member Unit with the intent of consuming any product produced by the Cooperative or otherwise doing business with the Cooperative in any way.

**Section 4 - Patron Membership.**

(a) **Eligibility Requirements.** Any Qualified Person residing within the State of Minnesota or within any other Eligible State may apply to become a Patron Member.

(b) **Application and Purchase Requirement.** Application for membership shall be made in writing on a form provided by the Cooperative or through some electronic means provided by the Cooperative. Pending approval by the Board of Directors, a Qualified Person who applies to become a Patron Member shall sign a patron membership agreement in a form established by the Board of Directors from time to time and purchase at least 1 Patron Member Unit and shall provide appropriate payment as determined by the Board of Directors. The Board of Directors shall have complete discretion to establish policies establishing the amount and terms of payment required for the Patron Member Unit and other requirements for patron membership.

(c) **Approval.** The Board of Directors, or a group of individuals delegated



such authority by the Board of Directors, shall act upon applications for patron membership. The application may be approved or rejected based upon policies established by the Board of Directors, subject to the restrictions in Article II Section 1. The Board of Directors may, at its sole discretion, provide a means of providing some, but not necessarily all, patron membership benefits to prospective members on an expedited basis upon receiving appropriate payment but before official approval by the Board of Directors.

(d) **Voting Rights.** For all votes in which Patron Members are entitled to vote, Patron Members shall have one vote in the affairs of the Cooperative regardless of how many Patron Member Units are owned by the Patron Member.

(i) The Patron Members shall have the exclusive right to vote for Patron-Member Directors as specified in Article IV.

(ii) For elections of Directors at Large and all other matters submitted to a vote of all of the Cooperative's members, the Patron Membership's vote shall be awarded in a block comprising 15% of the total voting power of the Cooperative, and this vote shall be apportioned to whichever candidate receives a plurality of the Patron Members' vote.

(e) **Termination, Suspension of Voting Rights, and Nontransferability.**

(i) A Patron Member may terminate his or her membership by providing notice to the Cooperative through either an electronic method provided by the Cooperative for the express purpose of termination or by certified mail. Patron Membership shall also terminate automatically upon the death of a member. A Patron Member who has not provided his or her current address for a period of 2 consecutive years shall be determined to have abandoned his or her Patron Membership interest and Patron Member Units and gifted them to the Cooperative.

(ii) The Board of Directors may, by a majority vote, terminate a Patron Membership at any time for any reason that they deem appropriate, including, but not limited to situations where the member has:

A. intentionally or repeatedly violated any provision of the Articles of Incorporation, Bylaws or Board of Directors approved policies of this Cooperative;

B. materially breached any contract with this Cooperative;

C. remained indebted to this cooperative for ninety (90) days after such indebtedness becomes payable;

D. willfully obstructed any lawful purpose of the Cooperative;

E. been convicted of any criminal offense related to the



consumption of alcohol.

(iii) Patron Members subject to termination of membership by the Board of Directors shall be given at least 30 days' notice and an opportunity to be heard by the board prior to the effective date of termination. However, in the event a Patron Member is convicted of a criminal offense related to the consumption of alcohol, then the Board of Directors has complete discretion to terminate the Patron Member's membership immediately without notice or chance for a hearing.

(iv) Patron Membership rights, including Patronage Refunds established as credits or discounts against future purchases or patronage capital, and Patron Member Units, are not transferable or assignable except with approval of the Board of Directors or pursuant to policies adopted by the board of Directors permitting transfer or assignment in specified circumstances (such as to an heir on death).

(v) Upon termination the Cooperative shall purchase the Patron Member's Patron Member Units at par or book value, whichever is lower, together with any cash or other distribution due or unpaid, less any indebtedness due to the Cooperative. The Cooperative shall repurchase a terminating member's membership interest only when it has received replacement capital from new or continuing members or the Board of Directors otherwise determines that repurchase of the membership interest will not impair the capital or financial condition of the Cooperative.

(vi) Upon termination of membership, the Patron Member shall thereafter have no voting rights in this cooperative. No action taken hereunder shall impair the obligations or liabilities of either party under any contract with the Cooperative, which may be terminated only as provided therein.

(vii) If a Patron Member has not patronized the Cooperative for a period of two consecutive years, or more, the Board of Directors may adopt policies to suspend the Patron Member's voting rights in lieu of termination of membership until such time as the Patron Member patronizes the Cooperative at minimum levels established by the Board of Directors.

(f) **Patronage Refund.** As required by Article VI, the Patron Members collectively are entitled to patronage refunds of at least 15% of the Total Net Savings (i.e., net earnings) of the Cooperative at least annually, in the form of (i) cash distributions, (ii) credits or discounts against future purchases (including free attendance at events), (iii) patronage capital designated in the name of the Patron Members, or (iv) in any combination of the foregoing as determined by the Board of Directors. The allocation of Total Net Savings to Patron Members shall be determined on the basis of patronage.

(g) **Preferred Equities.** The Board of Directors by resolution may establish and issue to any person (whether member, nonmember patron, or other person) one or more than one class or series of equity instruments, may set forth the designation of classes or series



of such equity instruments, and may fix the relative rights, preferences, privileges and limitations of each class or series of equity instruments, including, without limitation, one or more than one class or series of preferred equities designated as Preferred Stock. Dividends may be paid on the equity capital of this cooperative which is evidenced by an equity instrument established pursuant to this Article II, Section 4 in amounts established by the Board of Directors at the time the preferred equities are authorized. Dividends may be cumulative. Equity instruments established pursuant to this Article II, Section 4 shall not entitle the holder to voting rights. Unless otherwise expressly authorized by the Board of Directors, equity instruments established and issued pursuant to this Article II, Section 4 may only be sold or transferred with the approval of the Board of Directors of the Cooperative.

(h) **Household Memberships.**

(i) The Board of Directors may establish a process by which members of a household may become joint Patron Members under the same membership.

(ii) Under such a Household Membership, all members shall be bound by all the same terms of these Bylaws as well as the Cooperative's Articles of Organization and Board of Directors adopted policies.

(iii) Under such a Household Membership, both members shall have all the same rights and privileges of any other Patron Member, except that they shall have no more than one vote between them.

(iv) Nothing in this subsection shall be read to prevent multiple members of the same household from otherwise becoming separate individual members.

**Section 5 - Nonpatron Membership.**

(a) **Eligibility Requirements.** Any Qualified Person may become a Nonpatron Member if, (a) in the case of issuance of additional Nonpatron Member Units, both a majority of the members of the board of Directors and Nonpatron Members holding at least two-thirds of the total number of Nonpatron Member Units vote to approve the sale of the Nonpatron Member Units, or (b) in the case of the transfer of outstanding Nonpatron Member Units, the transfer of the Nonpatron Units is permitted by Article IX.

(b) **Voting Rights.** The Nonpatron Members shall, collectively, have 85% of the total member voting rights in the affairs of the Cooperative for which both Member and Nonpatron Members are entitled to vote, and each Nonpatron Member shall have a number of votes proportional to the Nonpatron Member Units owned by such Nonpatron Member as compared to the total number of outstanding Nonpatron Member Units.

(c) **Transfer.** Nonpatron Units may be transferred as provided in Article IX.

(d) **Distribution of Profits or Losses as Cash or Capital.** As required by



Article VI, the Nonpatron Members shall, collectively, be entitled to nonpatronage distributions of 85% of the Total Net Savings (i.e., net earnings) of the Cooperative at least annually, in the form of (i) cash distributions, (ii) nonpatronage capital designated in the name of the Nonpatron Members, or (iii) in any combination of the foregoing as determined by the Board of Directors; provided, however, the percentage of Total Net Savings to which the Nonpatron Members are entitled may be reduced below 85% if both a majority of the members of the Board of Directors and holders of at least 85% of the Nonpatron Member Units vote to approve the reduced percentage. The allocation of Total Net Savings to Nonpatron Members shall be determined on the basis of the number of Nonpatron Member Units held by the Nonpatron Members.

### **ARTICLE III.** **Meetings of Members**

**Section 1 - Annual & Special Meetings.** The Cooperative shall hold an annual meeting of members at a time and place fixed by the Board of Directors. A special meeting may be called by a majority vote of the Board of Directors or by written petition of either a majority of the Patron Members or a unanimous vote of the Nonpatron total members. Such a written petition shall state the purpose of the special meeting. The special member's meeting shall then be held at a time and place specified either by the Board of Directors or by the written petition not less than 7 days and not more than 30 days after the vote by the Board of Directors or submission of the member petition. Notice of the meeting shall be provided to all members in accordance with Section 2 of this Article and notice shall also state the purpose of the meeting. No business shall be considered at a special meeting other than as mentioned in the notice of the meeting.

**Section 2 - Notice.** Notice shall be given by the Records Officer of all members meetings by any or all of the following: 1) written letter to the registered address of each member; 2) electronic communication via e-mail or comparable technology to each member; or 3) publication in any regular periodical produced by the Cooperative for benefit of and distribution to the membership as a whole. Notice shall be provided not less than 7 and not more than 60 days prior to the meeting, except in the case of special meetings according to Section 1. The notice shall state the date, time and place of the meeting, and in the case of a special meeting, the purposes for which the meeting is called. The Records Officer shall execute a certificate that contains a copy of the notice, shows the date of mailing, communication, or publication of the notice, and states that the notice was mailed, communicated, or published as prescribed by these Bylaws. The certificate shall be made a part of the minutes of the meeting. The failure of any member to receive notice shall not invalidate any action that may be taken by the members at a meeting.

**Section 3 - Voting.** The Board of Directors shall create a standard method of voting by mail and/or some electronic means. Vote by mail or electronic means will always be available for votes for members of the Board of Directors. The Board of Directors will have complete discretion to allow or disallow such remote voting in all other circumstances.



**Section 4 - Presiding Officer.** The Chair or his or her designee shall preside at all meetings of the members. In the event of an emergency absence or incapacitation of the Chair, then the next most senior available Officer shall preside at all meetings until either the Chair is available or the Board of Directors appoints a new Chair.

**Section 5 - Quorum.** At any regular or special meeting of the members, a quorum necessary for the transaction of business shall be: (1) the lesser of 10% of the total number of Patron Members of the Cooperative or 50 such members if there are more than 500 such members; as well as (2) holders representing at least 10% of the total number of Nonpatron Member Units issued and outstanding. Members who have already provided their vote by electronic or some other remote means shall be considered present for the purposes of quorum. Only members in actual attendance at the meeting shall count towards a quorum, except for matters submitted to the membership by mail or electronic voting.

#### **ARTICLE IV. Directors**

**Section 1 - Board of Directors.** The business and affairs of the Cooperative shall be governed by the Board of Directors, except that certain matters specified in Article IV Section 10 shall require approval of the Nonpatron Members. The Board of Directors shall consist of at least 9 and not more than 19 directors, as determined from time to time by a two-thirds supermajority vote of all the directors in office. The Board of Directors may adopt any policies, rules, regulations, and may take any actions in furtherance of the Cooperative except where inconsistent with the law, Articles of Organization, or these Bylaws. The Board of Directors may establish any number of committees and vest in them any power and authority that it deems necessary.

**Section 2 - Director Qualifications.** Each director shall be a member of the Cooperative or an officer or employee of a member that is a corporation or other form of legal entity. If the director is not the sole owner of his or her membership interest, then he or she must be the only director under that membership interest.

**Section 3 - Election of Directors.** At or around each annual meeting a vote shall be held to fill any vacancies that will be created by the expiration of a director's term. All directors shall serve a term of 3 years (except in the case of a director filled by the Board of Directors or elected by the members due to a vacancy), continuing until the annual meeting three years subsequent to their election. The Board of Directors may fix a shorter term for new directors elected due to an increase in the board size to stagger their terms and ensure that a more equal number of Directors are elected each year. The Board of Directors may also from time to time establish policies and procedures governing the nomination and election of directors. The nomination and election policies and procedures shall ensure that at least a majority of the directors are elected by a vote of only the Patron Members and that at least 33% of the directors are elected in an at-large election in which Patron Member votes constitute 15% of the total vote and Nonpatron Member votes constitute 85% of the total vote. The nomination and election policies and procedures may also provide for election of directors





by or from Patron Members of particular taprooms or other patronage locations or regions.

**Section 4 - Vacancies.** Each vacancy occurring on the Board of Directors may be filled, until the next annual meeting of members, by a vote of the remaining directors. At the next annual meeting of members, the members shall elect a director to serve for the unexpired term; the election shall be either an at-large election or a Member Patron only election depending on the election status of the director causing the vacancy. Any vacancy created by an increase in the number of directors shall be filled at the next annual meeting of the members following the increase, unless otherwise specified by the amendment creating the increase.

**Section 5 - Removal.**

(a) **Removal by members for cause.** Any director of this cooperative may, for cause related to the duties of the position of director, at any annual or special meeting of the members, be removed from office by a majority vote of the voting power of members present and who would have been entitled to vote on the director's seat. The members shall remove no director from office unless he or she has been informed of the meeting at which the matter is to be considered at least ten days before such meeting. Notice shall be given by certified mail addressed to him or her at his or her last known address, and he or she shall be entitled to be heard at this meeting. In case of removal by action of the members, the members shall fill the vacancy for the unexpired term of the removed director by special election.

(b) **Removal by Board of Directors for cause.** Any director of this cooperative may, for cause related to the duties of the position of director, at any regular or special meeting of the Board of Directors, be removed from office by a vote of at least two-thirds of all of the remaining directors. No director shall be removed from office under this subsection unless he or she has been informed of the meeting at which the matter is to be considered at least ten days before this meeting, unless the director has been charged with, arrested for, or convicted of a crime related to the consumption of alcohol. Notice shall be given by certified mail addressed to him or her at his or her last known address, and he or she shall be entitled to be heard at such meeting. In case of removal of a director by action of the Board, the Board may fill the resulting vacancy until the next meeting of the members of this cooperative. In the event that a director has been charged with, arrested for, or convicted of a crime related to the consumption of alcohol, the Board of Directors may remove him or her immediately without notice or chance for a hearing.

**Section 6 - Meetings.** The Board of Directors shall hold regular meetings at any time or place that it determines is necessary. The Board of Directors shall hold an annual organizational meeting to install new directors and elect officers no less than thirty days after the annual membership meeting. Special meetings may be called at any time by the Chair or by any three directors. The Board of Directors may prescribe any method of notice for meetings that it deems sufficient. The Board of Directors may allow directors to participate in meetings remotely via telephone or any other electronic mode of communication. Directors may vote by





proxy.

**Section 7 - Quorum and Voting.** A quorum shall consist of a majority of the directors. A majority vote of the directors present when there is a quorum shall decide all questions before the Board of Directors except where otherwise proscribed by law, the Articles of Organization, or these bylaws.

**Section 8 - Action Without Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if all directors consent in writing and the writing or writings are held with the minutes or proceedings of the Board of Directors.

**Section 9 - Audit Committee.** There shall be an Audit Committee comprised of three Directors. Members of the Audit Committee shall be appointed at the annual organizational meeting. The Audit Committee shall then appoint a chairperson to oversee the committee. The Audit Committee is charged with all financial oversight and reporting that the Board of Directors may need for any appropriate purpose. The Audit Committee may hire any consultants, accountants, or other outside advisors that it deems necessary to fulfill its duties. The initial audit committee shall be composed of the organizers of the Cooperative as named in the Articles of Organization.

**Section 10 - Matters That Require Approval of Nonpatron Members.** The following matters shall require approval by both a majority of the Board of Directors and holders of at least 66% of the Nonpatron Member Units:

- (i) Substantially change the present or now intended nature of the Cooperative's business operations;
- (ii) Alter, amend or restate the Articles of Organization of the Cooperative;
- (iii) Increase the total number of authorized Nonpatron Member Units that may be issued as provided in Article VI, Section 1;
- (iv) Merge with or into any other entity, exchange equity interests with any other entity, or lease or sell more than seventy-five percent (75%) of its property and assets to any other entity in any one transaction or series of related transactions;
- (v) Cause the Cooperative to elect to be taxed under Subchapter T of the Internal Revenue Code; or
- (vi) Cease the operation of the business of the Cooperative.

**Section 11 - Matters That Require Approval of at Least 2/3 of all the Directors.** The following matters shall require approval by 2/3 of the total number of members of the



Board of Directors:

- (i) dispose of any equity interest in any other entity that was acquired by an investment of more **\$100,000.00**;
- (ii) declare any distribution pursuant to Article VI (other than any distribution in proportions in accordance with the Members' respective Units), or
- (iii) Expend more than **\$100,000.00** individually or **\$500,000.00** in the aggregate for capital items in any fiscal year;
- (iv) Prepay any indebtedness greater than **\$100,000.00** prior to the time for payment thereof as provided in the promissory note or contract evidencing or creating such indebtedness;
- (v) Obtain any credit or loan procuring the advance of money, whether for the benefit of the Cooperative or any other person, other than in the ordinary course of business, for an aggregate amount in excess of **\$500,000.00** for any consecutive twelve-month period;
- (vi) Grant a security interest in, pledge, hypothecate or otherwise encumber any assets of the Cooperative in an aggregate amount in excess of **\$500,000.00** for any consecutive twelve-month period;
- (vii) Loan money or other assets to or guarantee the obligations of any person or entity.

## **ARTICLE V.** **Officers**

**Section 1 - Election of Officers.** At each annual organizational meeting of the Board of Directors, the Board shall elect from its membership a Chair, one or more Vice- Chair, a Records Officer, and a Financial Officer with authority and duties prescribed by the Board of Directors and these bylaws. Other than the offices of Chair and Vice- Chair, one person may hold one or more of the offices if eligible to hold each office. If any vacancy occurs among the officers of this Cooperative, it shall be filled by the Board of Directors at its next regular or special meeting following the vacancy. Other than the Officers prescribed by these bylaws, the Board of Directors may appoint any Officers or committees it deems necessary, and these need not be represented entirely of Members or Directors.

**Section 2 - Chair.** The Chair shall preside at all meetings of the members and the Board of Directors. The Chair shall also have whatever powers and abilities the Board of Directors choose to delegate or assign to him or her.

**Section 3 - Vice-Chair.** In the absence of the Chair, the Vice-Chair shall perform



his or her duties. The Vice-Chair shall also have whatever powers and abilities the Board of Directors choose to delegate or assign to him or her.

**Section 4 - Records Officer.** The Records Officer shall be responsible for documenting and keeping all records of the affairs of the Board of Directors, as well as any other duties that the Board of Directors may deem appropriate.

**Section 5 - Financial Officer.** The Financial Officer shall be responsible for reviewing all financial records of the Cooperative and presenting them to the Board of Directors.

**Section 6 - Chief Executive Officer.** The Chief Executive Officer shall be appointed by the Board of Directors and shall oversee the general operations of the Cooperative. He or she shall have any authority to execute all certificates, contracts, and other documents on behalf of the Cooperative as delegated to the Chief Executive Officer by the Board of Directors. The Chief Executive Officer shall have final, but delegable, authority to hire and fire any employees of the Cooperative not appointed directly by the Board of Directors.

## **ARTICLE VI.**

### **Membership Interests**

**Section 1 - Authorized Membership Interests.** This cooperative shall have an unlimited number of authorized units of Nonpatron Member Units and an unlimited number of units of Patron Membership. However, no more than 85,000 Nonpatron Member Units may be issued unless the number in excess of 85,000 Nonpatron Member Units is approved by (a) holders of 66% of the Nonpatron Member Units and (b) 2/3 of the total number of members of the Board of Directors.

**Section 2 - Transfer of Membership Interests.** Nonpatron Membership interests are freely transferable and assignable, subject to the restrictions under Article IX, and approval by the Board of Directors. Patron Membership interests may not be transferred or assigned under any circumstances except to the Cooperative as described in Article II, Section 4(E).

**Section 3 - Dissolution & Winding Up.** In the event that the Cooperative is dissolved or liquidated and in the process of winding up, after all of the Cooperative's trade creditors have been paid and all other obligations have been satisfied, the remaining proceeds of liquidation shall be applied, first, to satisfy any patronage capital designated in the name of Patron Members, second, to satisfy any nonpatronage capital designated in the name of Nonpatron Members, third, to pay to the owners of Patron Member Units the amount paid by such holders, fourth, to pay to the owners of Nonpatron Member Units the value of the Units at the time of their initial issuance, fifth, to pay 15% of any excess proceeds to the Patron Members based on their patronage determined over an equitable historical period as determined by the Board of Directors and to pay 85% of any excess proceeds to the Nonpatron Members determined on the basis of Nonpatron Member Units held by each Nonpatron



Member.

**ARTICLE VII.**  
**Distribution of Surplus or Loss**

**Section 1 - Annual Net Savings.**

(a) **Gross Receipts.** Annually, the Cooperative shall determine the gross receipts for the year, which shall be all proceeds from all sales and services provided to both members and non-members, along with all other sums received by the Cooperative from all sources (except the proceeds of extraordinary gains such as gains from the sale of capital assets or interests in other organizations).

(b) **Deductions from Gross Receipts.** The Cooperative shall deduct all expenses from the Gross Receipts that were incurred in the course of business during the year.

(c) **Total Net Savings.** The amount remaining after reducing the Gross Receipts in Subsection (a) by the deductions in Subsection (b) shall constitute the Total Net Savings, or net earnings, of the Cooperative for the year.

**Section 2 - Allocation of Total Net Savings.** The Board of Directors shall allocate and distribute to Members the Total Net Savings annually and soon after the end of each year. The Board of Directors shall determine when and how such allocations and distributions will be made, including the amount (if any) distributed in (i) cash, (ii) credits or discounts against future purchases, (iii) patronage capital designated in the name of the Patron Members or nonpatronage capital designated in the name of the Nonpatron Members, or (iv) in any combination of the foregoing as determined by the Board of Directors. The Board of Directors shall also determine whether the allocations will be made in one or more divisions, departments or allocation units, and whether all or part of the excess margins shall be set-aside in capital or other necessary reserves. In establishing the allocation and distribution, the Board of Directors must ensure that (a) 15% of the Total Net Savings shall be distributed to the Patron Members on the basis of patronage and (b) 85% of the Total Net Savings shall be allocated and distributed to Nonpatron Members on the basis of the number of Nonpatron Member Units held by the Nonpatron Members; provided, however, the percentage of Total Net Savings to which the Nonpatron Members are entitled may be reduced below 85% and the percentage to which Patron Members are entitled may be increased above 15% if both a majority of the members of the Board of Directors and holders of at least 85% of the Nonpatron Member Units vote to approve the increased percentage for Patron Members.

**Section 3 - Extraordinary Gain.** Net gain produced by a transaction (such as income from the lease of premises, investment in securities, or from the sale or exchange of capital assets) which is directly related to the Cooperative's business will be deemed to be patronage sourced margins and shall be distributed (a) 85% to the Nonpatron Members on the basis of the number of Nonpatron Member Units owned and (b) 15% to the Patron Members in proportion, insofar as is practicable, to their patronage during any period to which such margins



are attributable, as determined by the Board. The net gain may be distributed in the form of (i) cash, (ii) credits or discounts against future purchases, (iii) patronage capital designated in the name of the Patron Members or nonpatronage capital designated in the name of the Nonpatron Members, or (iv) in any combination of the foregoing as determined by the Board of Directors.

**Section 4 - Payment of Patronage Capital and Nonpatronage Capital.** The Board of Directors may authorize retirement of amounts distributed as patronage capital or nonpatronage capital with cash payments from time to time, when and if it determines the capital is no longer needed for the business of the Cooperative or can be replaced with additional patronage capital or nonpatronage capital. Retired patronage capital and nonpatronage capital may be retired on any equitable basis determined by the Board of Directors.

**Section 5 - Allocation of Losses.** If the Gross Receipts minus all deductions from Section 1 of this Article are negative, then the Cooperative has operated at a loss for the year. If the Cooperative operates at a loss for a year, then there shall be no Patronage Refund nor Nonpatron Distribution distributed. The Board of Directors may allocate losses among the members during the year of loss so that the loss will, to the extent practicable, be borne by those Members with respect to the loss year on an equitable basis, including charging the loss against allocated reserves, unallocated surplus or the patronage and nonpatronage capital.

**ARTICLE VIII.**  
**Fiscal Matters**

**Section 1 - Fiscal Year.** The fiscal year for this cooperative shall end on December 31.

**Section 2 - Borrowing.** Subject to any Nonpatron Member approvals required by Article IV Section 10, the Board of Directors shall have power to authorize and approve the borrowing of money and the pledging and mortgaging of any or all of the assets of this cooperative as security for the sums so borrowed.

**Section 3 - Financial Statements.** The Cooperative is authorized to use unaudited financial statements.

**Section 4 - Compensation & Reimbursement.** Compensation, if any, for the Board of Directors shall be determined by a resolution of the Board of Directors. The Board of Directors shall also decide issues of any additional compensation provided for directors and managers. Director compensation shall be disclosed to the membership at large. All officers and directors shall be entitled to reimbursement for legitimate expenses incurred in attending meetings of the Board of Directors or conducting other business of the Cooperative. These expense claims must be approved by a majority vote of the Board of Directors.



**ARTICLE IX.**  
**Certain Rights of Nonpatron Members**

**Section 1 - Registration, Transfer and Exchange**

The Cooperative shall keep at the Principal Office a record of all Nonpatron Members on which the Records Officer shall record all transfers; provided, however, that the Records Officer shall not reflect on such record any transfer that is not made in compliance with this Article 9. The Cooperative may treat the Person or Persons in whose name Units are recorded as the absolute owner of such Units. The Records Officer shall deliver a copy of each amendment of the record to each Nonpatron Member promptly after each amendment.

**Section 2 - Restriction on Transfers**

In addition to any restrictions imposed by the federal securities laws, any applicable state securities or “blue-sky” laws, and the Bylaws of the Cooperative, no Member may transfer all or any part of any Unit, whether for consideration or not, and no transferee thereof shall have any rights in the Cooperative or be or have any rights as a Member with respect to all or any part of any such Unit attempted to be transferred, and any such attempted transfer of all or any part of a Unit shall be entirely null and void, unless (a) the Board of Directors consents to the transfer and the admission of such transferee as a Member and (b) the transferor and the transferee comply with the provisions of Article 8, Section 6. The appropriate Cooperative records shall be noted to prevent any transfers in violation of this Article 8, Section 2. No Member may transfer any portion of such Member’s rights in or obligations to the Cooperative as a Member except pursuant to a transfer of Units.

**Section 3 - Right of Purchase**

(a) Any Member who desires to transfer Units or requests the Cooperative purchase some or all of the Member’s Units (such Member being hereinafter referred to as the “**Selling Member**”) shall give written notice to the Cooperative of such intention. The notice shall specify the number of Units which are the subject of the proposed transfer (the “**Sale Units**”), the proposed purchase price and other proposed terms of the proposed transfer (the “**Sale Notice**”).

(b) Upon receipt of a notice specified in Article 8, Section 3(a), the Cooperative shall have an exclusive right to purchase the Sale Units. The Cooperative shall have no less than ninety (90) days immediately following receipt of the Sale Notice (“**Option Period**”) to exercise its right of purchase by delivering to the Selling Member, within the Option Period, a written notice specifying the terms of the exercise of the option, including the number of Units for which the Cooperative is exercising its option and the price for the Sale Units (the “**Exercise Notice**”).

(c) If the purchase price set forth for the Sale Units is different from the purchase price set forth in the Exercise Notice, the Cooperative and the Selling Member shall



have no less than ninety (90) days following the receipt of the Exercise Notice to arrive at a mutually agreeable purchase price for the Units (the “**Negotiation Period.**”)

(d) If during the Option Period or the Negotiation Period, the Cooperative and the Selling Member mutually agree on the purchase price, the Cooperative in its sole discretion may (i) consummate the purchase according to the purchase price and terms so agreed to between the parties, or (ii) assign its option to purchase to a third party (without the consent of the Selling Member) who shall consummate the purchase according to the purchase price and terms so agreed to between the Cooperative and the Selling Member.

(e) If the Cooperative and Selling Member have not agreed on the purchase price for the Sale Units before the end of the Negotiation Period, the purchase price for the Sale Units shall be established by appraisal pursuant to Article 8, Section 3(f) below. Except as set forth in Article 8, Section 3(f), the closing of the purchase of the Sale Units shall occur no later than 180 days following the Cooperative’s Exercise Notices (the “**Closing Date**”).

(f) If the purchase price is to be established by appraisal, the Cooperative and Selling Member shall work diligently and in good faith during the 90 days following the end of the Negotiation Period (the “**Appraisal Period**”) to engage one or more appraisers to establish the purchase price. Initially, the Cooperative and the Selling Member shall mutually select an appraiser and shall share the costs of such appraiser equally. If an appraiser is not mutually selected prior to 5:00 pm on the 90<sup>th</sup> day after written demand to do so from any party to the other party, both the Cooperative and the Selling Member shall have 15 days to select two appraisers, one to be selected by the Cooperative and one to be selected by the Selling Member. Both the Cooperative and the Selling Member shall pay the costs of their respective appraisers. If only one appraiser is selected prior to 5:00 pm on such 15<sup>th</sup> day, such appraiser, at the cost of the party who selected such appraiser, shall determine the purchase price of the Sale Units. If two appraisers are selected by 5:00 pm on the 15<sup>th</sup> day, and both such appraisers fail to agree upon the purchase price by 15 days following their selection, they shall appoint a third appraiser, the cost of which shall be shared equally between the Cooperative and the Selling Member. If the two appraisers cannot agree upon a third appraiser by one week following, the District Court for the County in which the Cooperative’s Principal Office is located shall choose a third appraiser on petition of either the Cooperative or the Selling Member. The purchase price determined by the majority of the three appraisers shall be binding upon all parties. If a majority of the appraisers are unable to agree upon the purchase price by 85 days following the end of the Negotiation Period, each of the appraisers shall individually determine the purchase price. The purchase price shall then be determined as follows: The middle value of the three values shall first be determined. If the two other values differ from the middle value by an equal amount, the purchase price shall be the middle value. If the difference between each of the other two values and the middle value is not the same, then the value whose difference from the middle value is the greatest shall be discarded; the purchase price shall be the average of the two remaining values. Unless otherwise agreed, in order to be eligible to be an appraiser under this Article 8, Section 3(f), the individual or entity must be a competent appraiser of businesses. Unless otherwise agreed to by the Cooperative





and Selling Member in writing, only appraisals completed in writing and delivered to the Cooperative and the Selling Member within the specified time periods shall be considered valid. Delivery, to be effective, shall be by personal service or by certified mail addressed to the Records Officer of the Cooperative at the Cooperative's Principal Office, and to the address of the Selling Member listed in the Cooperative's records. The Cooperative shall at all times allow all of its books, records and operations to be reviewed by all chosen appraisers for the purposes of determining the purchase price. If the purchase price has not been established pursuant to this Article 8, Section 3(f) by 85 days following the end of the Negotiation Period, the Closing Date shall occur on the later of 90 days following the end of the Negotiation Period, or 10 days following the establishment of the purchase price pursuant to this Section.

#### **Section 4 - Third Party Offers**

(a) If the Cooperative or its assignee elects not to purchase any of the Sale Units for whatever reason, or if the Cooperative or its assignee is unable to consummate the purchase of the Sale Units during the periods set forth in this Agreement, the Selling Member shall be free for a period of 60 days to sell such Sale Units to a third party ("**Remaining Units**"). Any such transfer shall comply, in terms of form and effect, with the requirements of this Article 8. If ownership of the Remaining Units has not been acquired by the transferee within the 60-day period, the Remaining Units shall remain subject to all the provisions of this Agreement, and may not be transferred without again complying with the terms hereof. Ownership of the Remaining Units shall be deemed to have been acquired by the transferee even if the Remaining Units are pledged to the Selling Member by the transferee to secure payment of the purchase price.

(b) If the Cooperative elects not to purchase the Sale Units, any Sale Units acquired by a transferee under the provisions of this Article 8, Section 4(b) shall remain fully subject to the provisions of this Agreement. Any transfer to a transferee other than the Cooperative shall comply, in terms of form and effect, with the requirements of Article 8. Moreover, the transferee shall not be entitled to be admitted as a Substitute Member except as set forth in Article 8, Section 6.

#### **Section 5 - Cooperative Option to Purchase Units Upon Death or Other Transfer Without Consideration**

(a) In the event of the Transfer or purported Transfer of Units ("**Transfer Units**") by gift, upon the death of a Member, pursuant to judicial action (including any transfer in connection with a dissolution of a marriage), or in any other manner other than by voluntary act of a Member in which consideration is paid ("**Transfer Without Consideration**"), the Cooperative shall have an option to purchase all of the Transfer Units subject to the Transfer Without Consideration. In the event of a Transfer Without Consideration or purported or intended Transfer Without Consideration, the Member (or legal representative of the Member) and the transferee or intended or purported transferee shall provide written notice thereof to the Cooperative. For a period of 45 days following the receipt of such notice, the Cooperative shall have the right to buy all of the Transfer Units pursuant to this Article 8, Section 5(a). The



Cooperative's option may be assigned to any other person, whether or not such person is currently a party to this Agreement; provided, however, that the assignee shall hold any Transfer Units subject to the provisions of this Agreement. The Cooperative or its assignee shall exercise its option by delivering to the Member (or legal representative of the Member) and the transferee or intended or purported transferee, within the 45-day period, written notice specifying its exercise of the option.

(b) The purchase price per Transfer Unit for purposes of this Article 8, Section 5(b) shall be the fair market value of the Unit. Such fair market value shall be determined by agreement of the Member (or legal representative) and the Cooperative. If such agreement is not reached within 30 days after the exercise of the option, such fair market value shall be the fair market value of the Unit established by appraisal in accordance with Article 8, Section 5(c), below.

(c) If the purchase price is to be established by appraisal, the Cooperative and the transferring Member ("**Transferor**") shall mutually select an appraiser and shall share the costs of such appraiser equally. If an appraiser is not mutually selected within 30 days after written demand to do so from any party to the other party, both the Cooperative and the Transferor shall have 15 days to select two appraisers, one to be selected by the Cooperative and one to be selected by the Transferor. Both the Cooperative and the Transferor shall pay the costs of their respective appraisers. If only one appraiser is selected during this 15-day period, such appraiser, at the cost of the party who selected such appraiser, shall determine the purchase price of the Transfer Units. If two appraisers are selected within said 15-day period and both such appraisers fail to agree upon the purchase price within 15 days after the appointment of the second of them, they shall appoint a third appraiser, the cost of which shall be shared equally between the Cooperative and the Transferor. If the two appraisers cannot agree upon a third appraiser within 10 days after said 15-day period, the District Court for the County in which the Cooperative's Principal Office is located shall choose a third appraiser on petition of either the Cooperative or the Transferor. The purchase price determined by the majority of the three appraisers shall be binding upon all parties. If a majority of the appraisers are unable to agree upon the purchase price within 15 days after the appointment of the third of them, each of the appraisers shall individually determine the purchase price. The purchase price shall then be determined as follows: The middle value of the three values shall first be determined. If the two other values differ from the middle value by an equal amount, the purchase price shall be the middle value. If the difference between each of the other two values and the middle value is not the same, then the value whose difference from the middle value is the greatest shall be discarded; the purchase price shall be the average of the two remaining values. Unless otherwise agreed, in order to be eligible to be an appraiser under this Article 8, Section 5(c), the individual or entity must be a competent appraiser of businesses. Only appraisals completed in writing and delivered to the Cooperative and the Transferor within the specified time periods shall be considered valid. Delivery, to be effective, shall be by personal service or by certified mail addressed to the Records Officer of the Cooperative at the Cooperative's Principal Office, and to the address of the Transferor listed in the Cooperative's records. The Cooperative shall at all times allow all of its books, records and operations to be



reviewed by all chosen appraisers for the purposes of determining the purchase price.

(d) The Transferor shall transfer the Transfer Units to the Cooperative at a closing to be held within 120 days after the Cooperative exercises its purchase option, or, if later, within 30 days after the purchase price is established. Twenty percent (20%) of the purchase price shall be paid in cash at closing. The remainder shall bear interest from the date of closing at a rate per annum equal to the “base,” “prime,” or equivalent reference rate publicly announced from time to time by Wells Fargo Bank, N. A., changing as such rate changes. The remainder shall be paid in 60 equal monthly installments of principal, commencing one month after the closing. Each monthly installment of principal shall be accompanied by payment of all interest accrued through the date of payment.

(e) If the Cooperative elects not to purchase Transfer Units upon a Transfer Without Consideration, the Transfer Units may be transferred in accordance with such Transfer Without Consideration, but any Transfer Units acquired by a transferee under the provisions of this Section 0 shall remain fully subject to the provisions of this Agreement. Any transfer to a transferee other than the Cooperative shall comply, in terms of form and effect, with the requirements of Article 8. Moreover, the transferee shall not be entitled to be admitted as a Substitute Member except as set forth in Article 8, Section 6.

#### **Section 6 - Conditions to Transfers**

No transfer otherwise permitted by any provisions of this Agreement shall be valid unless and until the following conditions are satisfied (any of which may be waived by the Board of Directors in its sole discretion):

(a) The transferor and transferee shall execute and deliver to the Cooperative such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Cooperative to effect such transfer and confirm the agreement of the transferee to be bound by the provisions of this Agreement; provided, however, that in the case of a transfer of Units at death or involuntarily by operation of law, the transfer shall be confirmed by presentation to the Cooperative of legal evidence of such transfer, in form and substance satisfactory to counsel of the Cooperative.

(b) Unless waived by the Cooperative in writing, the transferor shall furnish to the Cooperative an opinion of counsel, which counsel and opinion shall be satisfactory to the Cooperative, to the effect that:

(i) The transfer will not violate state law with regard to Cooperative or brewery ownership;

(ii) The transfer is either exempt from all applicable registration requirements and such transfer will not violate any applicable federal and state laws regulating the transfer of securities, or the Cooperative Units to be transferred are duly and properly registered under all applicable federal and



state securities laws; and

(iii) The transfer will not cause the Cooperative to be deemed to be an “investment company” under the Investment Company Act of 1940.

(c) The transferor and transferee shall furnish the Cooperative with the transferee’s taxpayer identification number, sufficient information to determine the transferee’s initial tax basis in the Units transferred and any other information reasonably necessary to permit the Cooperative to file all required federal and state tax returns and other legally required information statements or returns. The Cooperative shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Units until it has received such information.

(d) The transferee shall reimburse the Cooperative for all costs and expenses reasonably incurred by the Cooperative in connection with such transfer including, without limitation, legal fees and costs of the preparation, execution, filing or publishing of any amendment to the Articles of Organization or this Agreement.

#### **Section 7 - Effect of Termination of Services**

(a) If a Nonpatron Member’s position as Nonpatron Member shall be terminated for Cause, then, effective upon and as of such termination, (i) such Nonpatron Member shall, automatically and without any further action by the Cooperative or any Member, lose all right, title and interest in and to all of such Member’s Units, and such Units shall cease to exist, (ii) such Member’s Capital Account shall be determined as of the effective date of such termination without adjustment for any unrealized appreciation or depreciation as of such date, (iii) such Member shall not be entitled to any further allocations of Profits or Losses, if any, and (iv) such Member shall not be entitled to receive any further distributions, if any.

(b) If a Nonpatron Member’s position as Nonpatron Member shall terminate other than by reason of a removal for Cause, then, effective upon and as of such termination, automatically and without any further action by the Cooperative or any Member such Member’s Voting Units, if any, shall become Nonvoting Units.

#### **Section 8 - Acquit Cooperative**

In the absence of written notice to the Cooperative of any assignment by a Member of a Membership Interest, any payment to the assigning Member or its representatives shall acquit the Cooperative of liability to the extent of such payment to any other person who may have an interest in such payment by reason of an assignment by the Member.

### **ARTICLE X. Miscellaneous**

**Section 1 - Indemnification.** The Cooperative shall indemnify, as allowed by law,



any officer, Director, or employee of the Cooperative, for expenses and costs actually and necessarily incurred in connection with any claim asserted by reason of the person being or having been such officer, Director, or employee, except in relation to matters of negligence, fraud, criminal acts, or intentional misconduct in respect of the matter in which indemnity is sought. The Cooperative may carry appropriate liability insurance to protect its officers, Directors, employees, and the Cooperative itself against the costs of such indemnification.

**Section 2 - Adoption.** These Bylaws may be amended, repealed or altered in whole or in part by a majority vote of a quorum of the members present at a meeting or voting by mail. However, any portions governing the allocation of returns or voting share between Nonpatron and Patron Members must be approved by a 85% vote of that class of members whose share is being reduced. These Bylaws may also be amended by an affirmative vote of the Board of Directors in order to fix typographical mistakes or other oversights; fully implement affirmative votes by a majority vote of members; or clarify existing ambiguous provisions.

