

**By-Laws  
of the  
Farmer Pirates Cooperative, Inc.**

**ARTICLE I**

**MEMBERS**

- A. Eligibility for Membership. Any person, cooperative, non-profit corporation or corporation (each, a “Person”) may, as provided below, become a member of the Cooperative by:
- (1) Filing with the Cooperative an application for membership in such form and containing such terms as shall be from time to time determined by the Board of Directors;
  - (2) Being approved for membership by the Cooperative’s Board of Directors;
  - (3) Becoming the holder of a share of the Cooperative’s Common stock; and
  - (4) Receiving from this Cooperative written notification and a copy of the Bylaw providing for consent to take patronage distributions received from the Cooperative into income in the manner provided in the Internal Revenue Code, 26 U.S.C. §1385(a);
  - (5) Meeting such other membership criteria or requirements as established from time to time by the Cooperative’s Board of Directors.
- B. Termination of Membership.
- (1) Membership may be terminated voluntarily by a member upon notice to the Cooperative.
  - (2) The Board of Directors may in its sole discretion terminate the membership of any member upon notice and with a chance to respond if the Board of Directors determines:
    - a. The member is dead if an individual or has ceased to exist if an entity;
    - b. The member has conducted activities contrary to the best interests of the Cooperative;
    - c. That the member has intentionally and repeatedly violated the terms of the Cooperative’s Certificate of Incorporation or these By-Laws, or the Policies.
    - d. The member fails to meet the share purchase obligation or who fails to patronize the cooperative for a period of two (2) years
  - (3) Upon termination of membership, regardless of the reasons therefore, all rights and interests in the Cooperative shall cease except for rights to redemption of capital funds pursuant to these By-Laws.

- (4) Upon membership termination, the Cooperative shall, at its option: (1) purchase the terminated member's common stock at the lesser of its par value or book value; or (2) convert the terminated member's common stock into nonvoting certificate(s) or other non-voting equity interest representing the lesser of the par value or book value of such common stock.
- (5) Such nonvoting certificate(s) of interest shall not be entitled to receive interest or dividends, and the terminated member shall thereafter have no voting rights in the Cooperative.
- (6) A terminated member's equity credits and unit retains shall be revolved or retired in the same manner as the patronage credits or equities of active members.

C. Member Rights.

- (1) Each member in good standing shall have one vote only in the affairs of the Cooperative.
- (2) Each member in good standing shall be eligible for other benefits as may be offered from time to time by the Cooperative that are generally to members.
- (3) Members shall be provided reasonably adequate and timely information as to the organizational and financial affairs of the Cooperative and shall provide inspection of the books and records, as provided for under Section 624 of New York's Business Corporation Law.

## **ARTICLE II**

### **MEETINGS OF MEMBERS**

A. Annual Meeting.

- (1) The Annual Meeting of the Cooperative shall be held following the close of the Cooperative's fiscal year at the principal place of business of the Cooperative or at any other place conveniently located within the area served by it at such time as the Board of Directors shall determine.
- (2) The Officers of the Cooperative shall submit to the Members at the Annual Meeting a written report including a balance sheet showing the true assets and liabilities of the Cooperative, and an operating statement for the fiscal period under review.
- (3) At the Annual Meeting, the Members shall elect Directors of the Cooperative for the terms of office and in the manner prescribed by these

By-Laws and transact any other such business as may properly come before the meeting.

B. Special Meetings.

- (1) Special meetings of the members of the Cooperative may be called when a majority of directors or 20% per cent of the members submit a petition in writing and request a special membership meeting, which shall be called by the Board of Directors within thirty days of that request.
- (2) No business shall be conducted at any Special Meeting except that business which has been set forth in the notice of such meeting.

C. Notice.

- (1) Written notice of every regular and Special Meeting of members shall be prepared and mailed by first class mail or email to the last known post office address of each member not fewer than ten (10) nor more than sixty (60) days before such meeting.
- (2) Such notice shall state the nature of the business expected to be conducted and the time and place of the meeting.

D. Voting.

- (1) Each member shall have one vote only upon any matter submitted to vote of the members.
- (2) In the case of any member that is not an individual, such member shall file a written notice with the Cooperative pursuant to Section 41 of New York's Cooperative Corporations Law that designates an individual to act on the member's behalf in conducting the affairs of this Cooperative. That designation shall remain in effect until written notice of a properly authorized change in the designated individual shall be received by the Cooperative.
- (3) Unless otherwise stated in the Certificate of Incorporation, or these By-Laws, or required by applicable law, all questions shall be decided by a vote of a majority of the members voting thereon.

E. Absentee Voting.

- (1) Voting may be by written ballots, which must be sent to all members with the notice of a meeting, if authorized by the Board of Directors.
- (2) Members shall be allowed to vote on written ballots until the close of the voting period as set by the Board of Directors.

F. Quorum.

- (1) At any regular or Special Meeting of the members, a quorum necessary for the transaction of business shall be at least ten percent (10%) of the total number of members of the Cooperative.
- (2) Only members in actual attendance at the meeting shall count towards a quorum.
- (3) Once a quorum is established, it is not broken by the withdrawal of members from the meeting.

### **Article III**

#### **BOARD OF DIRECTORS**

A. Powers and Duties.

- (1) The business and affairs of the Cooperative shall be managed under the direction of the Board of Directors.
- (2) The Board of Directors shall make all necessary rules and regulations not inconsistent with law or with these By-Laws.
- (3) The Board of Directors shall have the power to select one or more financial institutions to act as depositories of the funds of the Cooperative and to determine the person or persons who will have the authority to sign checks and other instruments.
- (4) The Board of Directors shall have power to hire, oversee and dismiss a General Manager to coordinate and facilitate the daily functioning of the Cooperative.
- (5) Directors shall be responsible at all times for discharging their duties in good faith and with the degree of care which an ordinarily prudent person in a like position would under similar circumstances.

B. Number, Eligibility.

- (1) The Cooperative shall have a Board of Directors of at least nine (9) directors, each of whom shall be a member of the Cooperative in good standing, or, for those members who are not natural persons, a designated representative of such member.
- (2) A person with a conflict of interest so continuing and pervasive that he is unable to effectively fulfill the responsibilities of a Director with the Cooperative shall not be qualified to serve as a Director.

C. Terms, Limits.

- (1) Directors will be elected for three (3) year terms at the Annual Meeting of members.

(2) Terms of office shall be so staggered that one-third shall expire in each year.

(3) Directors shall hold office until their successors are elected.

D. Election.

(1) Directors shall be elected by the membership at the Annual Meeting of the Members.

(2) Nominations for Directors shall be made by the Board or by a petition signed by at least 25 members entitled to vote and submitted to the Secretary of the Cooperative at least 30 days prior to the Annual Meeting.

E. Termination.

(1) The term of office of a Director may be terminated prior to its expiration in any of the following ways (i) voluntarily by a Director upon notice to the Cooperative; (ii) automatically upon termination of membership in the Cooperative; (iii) by action at a meeting of the members whenever the best interests of the Cooperative would thereby be served; and (iv) for cause by the members in accordance with Section 63 of New York's Cooperative Corporations Law.

(2) A Director who is absent from three (3) consecutive Board meetings, unless excused, shall be presumed to have resigned.

F. Vacancies.

(1) Any vacancy among Directors elected by the members may be filled by appointment by the Board of Directors and shall serve until the next Annual Meeting, at which the members shall elect a Director to complete the pertinent term.

G. Compensation.

(1) Compensation of the Board of Directors shall be determined by resolution of the Board of Directors.

(2) All decisions regarding Directors' compensation shall be announced to the membership of the Cooperative at the next regular or Special Meeting of the members.

(3) Officers and Directors shall also be entitled to reimbursement for actual expenses incurred in attending Board of Directors meetings or other business of the Cooperative. Such expense claims shall be approved by a majority of the Board of Directors.

G Contracts for Profit.

- (1) During her or his term of office, a Director shall not be a party to a contract for profit with the Cooperative which in substance shall differ in any way from similar contracts by it with members or with others, or which shall vary from terms generally current among members.

H. Conflict of Interest.

- (1) Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the Board of Directors.
- (2) Directors having a potential conflict of interest may not participate in the discussion or decision of the matter.
- (3) A transaction in which a Director has an interest shall be prohibited unless the transaction is fair to the Cooperative and is approved by no less than a two-thirds majority of all disinterested Directors.

I. Limitation on Director Liability.

- (1) No Director of the Cooperative shall be liable personally to the Cooperative or to any of the Cooperative's members for damages for any breach of duty in his or her capacity as a Director, provided that this provision shall not eliminate or limit the liability of any Director if a judgment or other final adjudication adverse to the Director established that his or her actions or omissions: (i) were in bad faith; (ii) involved intentional misconduct or a knowing violation of law; (iii) resulted in the Director personally gaining in fact a financial profit or other advantage to which the Director was not legally entitled; or (iv) violated Section 719 of New York's Business Corporation Law, as amended, or any successor statute.

J. Indemnification of Directors.

- (1) This Cooperative shall indemnify each Director, Officer, or Manager of this Cooperative, and any person serving at the request of this Cooperative as a Director, Officer or Manager of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred to the greatest extent to which such Officers, Directors or Manager of the Cooperative may be indemnified under the New York's Business Corporation Law, as amended, or any successor statute.

K. Insurance Regarding Directors.

- (1) This Cooperative shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Manager, Employee, or Agent of this Cooperative, or is or was serving at the request of this Cooperative as a Director, Officer, Manager, Employee, or Agent of

another corporation, partnership, joint venture, trust or other enterprise against any liability asserted and incurred in any capacity.

L. Committees.

- (1) By resolution, the Board of Directors may establish and dissolve standing and ad hoc committees, subject at all times to the direction and control of the Board of Directors.

**ARTICLE IV**

**MEETINGS OF BOARD OF DIRECTORS**

A. Meetings.

- (1) The Board of Directors shall meet within thirty (30) days after the Annual Meeting of the Members for the purpose of electing officers of the Cooperative and for the transaction of such other business as may come before the meeting.
- (2) Regular meetings of the Board of Directors shall be held at least quarterly, at such times and places as the Board of Directors may determine.
- (3) The Board of Directors shall take action by an affirmative vote of a majority of the Directors present at a duly noticed and held meeting.
- (4) Regular Board meetings shall be open to members; provided, however, that sessions of a Board meeting may be closed to discuss issues of personnel, litigation, real estate, or other issues of a sensitive nature and the Board meeting include or exclude some or all members.
- (5) All members in attendance at any open board meeting shall be entitled to vote on business presented to that meeting.

B. Special Meetings.

- (1) A Special Meeting of the Board of Directors shall be held whenever called by the president or by any three Directors.
- (2) Each call for a Special Meeting shall be in writing, shall be signed by the person or persons calling the meeting, shall be addressed and delivered to the secretary, and shall state the time and place of such meeting.
- (3) Only the business specified in the written notice shall be transacted at a Special Meeting.
- (4) Any members in attendance at any Special Board meeting shall be entitled to vote on business presented to that meeting.

C. Action Without a Meeting.

- (1) Any action permitted to be taken at a meeting of the Board of Directors may be made without a meeting if consent by written action signed by all of the Directors of the Cooperative who would be eligible to attend and vote at a regular meeting of the Board of Directors.
- (2) Any such written Action shall be filed with the Secretary of the Cooperative.

D. Electronic Communication.

- (1) Any Director may take part in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time.
- (2) Any Director participating by such means shall be considered present in person at the meeting.

E. Notice of Meetings.

- (1) Written notice of each meeting of the Board of Directors shall be given to each Director and to the membership by the President or Secretary of the Cooperative not less than seven (7) days prior to the time of meeting, unless a shorter time period is agreed to. Email shall be considered written notice.
- (2) Notice may be waived by any Director.
- (3) Appearance by a Director at a meeting shall constitute a waiver of notice.

F. Quorum.

- (1) A majority of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors.

## **ARTICLE V**

### **OFFICERS**

A. Designation of Officers.

- (1) At the first meeting following the Annual Meeting of members, the Board of Directors shall elect a President and Vice President, Secretary and Treasurer from among the Directors, and may, in their discretion, combine the offices of Secretary and Treasurer.
- (2) All such officers shall hold office for a term of one (1) year, or until their successors have been elected and qualified.



- (3) No Person shall hold more than one office, except in the case of a combined secretary/treasurer office.
- (4) Such officers shall serve at the will of the Board of Directors and may be removed by the Board of Directors and successors elected at any Board of Directors meeting.

B. Duties of President.

- (1) The president shall (1) preside over all meetings of the Cooperative and of the Board of Directors, (2) call Special Meetings of the Board of Directors, (3) perform all acts and duties usually performed by an executive and presiding officer, and (4) sign all membership (or stock) certificates and such other papers of the Cooperative as (s)he may be authorized or directed to sign by the Board of Directors; provided, however, that the Board of Directors may authorize any other officer or agent of the Cooperative to sign any or all checks, contracts, and other instruments in writing on behalf of the Cooperative.
- (2) The president shall perform such other duties as may be prescribed by the Board of Directors.

C. Duties of Vice President.

- (1) The Vice President shall have the Powers and duties as may be prescribed by the Board of Directors.
- (2) In the absence of the President, the Vice-President shall perform the duties and exercise the powers of the President.

D. Duties of Secretary.

- (1) The secretary shall keep a complete record of all meetings of the Cooperative and of the Board of Directors and shall have general charge and supervision of the books and records of the Cooperative.
- (2) The secretary shall sign all and such other papers pertaining to the Cooperative as he may be authorized or directed to sign by the Board of Directors.
- (3) The secretary shall serve all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to his office to the members at the Annual Meeting.
- (4) The secretary shall keep the corporate seal and affix it to all papers requiring a seal.
- (5) The secretary shall keep complete membership (and stock certificate) records.

- (6) The secretary shall make all reports required by law and shall perform such other duties as may be required of him or her by the Cooperative or the Board of Directors.

E. Duties of Treasurer.

- (1) The treasurer shall perform such duties with respect to the finances of the Cooperative, including, maintaining financial records, reporting of financial information and the filing of required reports and returns, and shall deliver a financial report at the Annual Meeting of the members.

## ARTICLE VI

### CAPITAL STOCK

A. Common Stock.

- (1) Only members of this Cooperative may be holders of Common Shares. Only one share of common stock shall be issued to each member of the Cooperative upon full payment of their purchase or subscription price.
- (2) Each certificate of common stock shall show on its face its designation by class and the privileges, voting rights, or restrictions and qualifications applicable to shares of such class as specified in the Certificate of Incorporation.

B. Preferred Stock.

- (1) Only members of this Cooperative may be holders of Preferred Shares.
- (2) Each certificate of preferred stock shall show on its face the preferences, privileges, restrictions and qualifications of such stock as specified in the Certificate of Incorporation.
- (3) No voting rights shall be attached to the ownership of preferred stock.

C. Certificates.

- (1) Owners of fully-paid shares of capital stock shall be entitled to receive one or more certificates evidencing such holdings.
- (2) All certificates shall be signed by the President and Secretary and shall be numbered and registered by the Cooperative.
- (3) Certificates shall be issued only upon full payment of their purchase or subscription price or any membership fee associated therewith.

D. Replacement of Stock Certificates.

- (1) When existing stock certificates are to be replaced, they must be surrendered before new certificates are issued.
- (2) Each surrendered certificate and the stub of the certificate shall be canceled, with the date of cancellation noted on the certificate.
- (3) In the event that any stock certificate has been lost or destroyed, the registered owner of the certificate shall be required to deliver appropriate indemnification commitments to the Cooperative before the Cooperative issues a replacement certificate for the lost or destroyed certificate.

E. Restrictions of Transfer.

- (1) Capital stock, patronage equities, certificates interest, unit retains, and other equity credits (“Equity Interests”) may be sold or transferred only with the prior written approval and consent of the Board of Directors.
- (2) No proposed transfer of Equity Interests shall be binding on this Cooperative without such prior written approval and consent of the Board of Directors and not until the transfer shall have been entered in the books of this Cooperative.
- (3) The Board of Directors may withhold its consent to proposed transfers for any reason whatsoever, or for no reason.
- (4) No Equity Interests shall be transferred unless any and all indebtedness owed to the Cooperative by the holder of such Equity Interests shall first be paid.
- (5) The Equity Interests held by a transferee following approval and consent of the Board of Directors shall remain subject to the provisions (including transfer restrictions) set forth in the Certificate of Incorporation of this Cooperative and these By-Laws.

F. Legend on Stock Certificates.

- (1) Each outstanding stock certificate or other certificates or instruments representing patronage equities, certificates of interest, unit retains, and other equity credits of the Cooperative shall bear the following endorsement in bold print, reflecting the restrictions on transfer set forth in this Article of these By-Laws:

The shares of stock [or patronage equities, certificates of interest, unit retains, and other equity credits of the Cooperative] represented by this certificate and the transfer thereof are subject to certain conditions imposed by the Certificate of Incorporation, the By-Laws, as each may be amended from time to time, copies of

which shall be furnished by the Cooperative to the holder hereof upon written request and without charge.

## **ARTICLE VIII**

### **FISCAL MATTERS**

A. Fiscal Year.

- (1) The fiscal year of the Cooperative shall be January 1 through December 31.

B. Annual Audit and Report.

- (1) The operations of the Cooperative for each fiscal year may be audited by an experienced bookkeeper or accountant or firm of accountants not regularly employed by the Cooperative.
- (2) A written report of the audit, including a statement of services rendered by the Cooperative, with total amount of business transacted, balance sheet, and income and expense statement, shall be submitted to the Annual Meeting of members, and shall at all times be available for inspection by any member.

C. Bonding.

- (1) Any Officer or Employee of the Cooperative who handles funds or securities of the Cooperative amounting to one thousand dollars (\$1,000) or more in a year may be covered by an adequate bond approved by the Board of Directors.
- (2) The costs of any bond shall be paid by the Cooperative.

## **ARTICLE IX**

### **PROCEEDS AND DISPOSITION OF PROCEEDS (Patronage Dividends)**

- A. Operation at Cost. The Cooperative shall at all times be operated on a cooperative service-at-cost basis for the mutual benefit of its members or patrons. Thus, in accordance with Section 1381 of the Internal Revenue Code, this Cooperative shall allocate and distribute any net savings and declare a patronage dividend to be distributed among the members in proportion to the total amount of purchases made by such patron during the preceding fiscal year.

B. Patronage Dividend.

- (1) The Patronage Dividend, as determined by the Board of Directors, shall be in the form of “qualified written notices of allocation” as defined in Section 1388 of the Internal Revenue Code.
- (2) In accordance with Section 1382 of the Internal Revenue Code, the patronage dividends declared by the corporation are deductible from the taxable income of the Cooperative and must be included in the taxable personal income of the Member to the extent required by law.
- (3) Each Member shall have an internal capital account in his, her or its name.
- (4) The net savings of the Cooperative, after allocations to a Reserve Fund, shall be allocated to members as a patronage dividend. Unless otherwise decided by the Board of Directors, the patronage dividend shall be credited to the member’s internal capital account.
- (5) The Cooperative shall within 8 ½ months after the close of the fiscal year notify each member or patron, in the form of a written notice of allocation (as defined in 26 U.S.C. 1388), of the amount of capital so credited to his/her account.
- (6) The Patronage Dividend shall include at least a twenty percent (20%) payment to the Member in cash or a check or a greater amount at the discretion of the Board of Directors.
- (7) The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each member or patron is clearly reflected and credited in an appropriate record to the capital account of each member or patron.

C. Revolving Capital.

- (1) If at any time, the Board shall determine that the financial condition of the Cooperative will not be impaired thereby and that such action is permissible under applicable law, the capital then credited to members’ and patrons’ internal accounts may be retired in full or in part.
- (2) Any such retirement of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired.
- (3) Notwithstanding any other provision of these By-Laws, the Board of Directors, at its discretion, shall have the power to retire any capital credited to members’ and patrons’ accounts on such terms and conditions as may be agreed upon by the parties in any instance in which the interests of the Cooperative and its members and patrons are deemed to be furthered thereby and funds are determined by the Board of Directors to be available for such purposes.

- (4) Any amounts retained in a member's capital account shall be subject at all times to being offset by amounts otherwise due and payable to the Cooperative.

## **ARTICLE X**

### **CONSENT TO TAKE PATRONAGE DISTRIBUTIONS INTO INCOME**

Each person or organization that hereafter applies for and is accepted for membership in this Cooperative and each member of this Cooperative on the effective date of this Bylaw who continues as a member after the effective date shall, by these acts alone, consent that the amount of any distributions with respect to patronage which are made in written notices of allocation (as defined in 26 U.S.C. §1388), and which are received by the member from this Cooperative, will be taken into account by the member at their stated dollar amounts in the manner provided in 26 U.S.C. §1385(a) in the taxable year in which the written notices of allocation are received.

#### Explanation of Patronage Refund Consent Provision.

The Internal Revenue Code generally requires each person receiving a patronage refund to include the amount of such distribution in his or her gross income in the taxable year in which it is received. The mere acceptance or retention of membership in the Cooperative constitutes consent to such inclusion in taxable income, including the portion of the patronage refund that is retained by the Cooperative for its capital needs.

The Cooperative has been advised by legal counsel, however, that the general rule for inclusion in income of patronage refunds is subject to an exception that is applicable to consumer cooperatives. Under that exception, a patronage refund is not required to be included in gross income if the member-owner's purchases from the Cooperative related to "personal, living or family items." The patronage refund would be taxable to a member-owner if his or her purchases related to the operation of a trade or business or other income-producing activities.

In effect, the consent provision is of no significance to members of the Cooperative, except as to organizational members and except where the purchases of members who are natural persons are for business or income-producing purposes.

## **ARTICLE XI**

### **MERGER, CONSOLIDATION, OR DISSOLUTION**

#### **A. Dissolution of the Cooperative.**

- (1) Dissolution can proceed only with two-thirds vote of members present in person or by written ballots at a meeting called and conducted in accordance to these By-Laws.

- (2) A committee of three members, selected by the membership, shall carry out the dissolution.
- (3) Notice of dissolution must be provided to the members of the Cooperative.
- (4) Upon dissolution, after (1) all debts and liabilities of the Cooperative shall have been paid, (2) the par value of stockholders' shares returned, and (3) all capital furnished through patronage shall have been retired without priority, the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each member bears to the total patronage of all such members, unless otherwise provided by law.

## **ARTICLE XI**

### **AMENDMENTS**

#### **A. Amendments to the By-Laws.**

- (1) These By-Laws may be amended by the affirmative vote of two-thirds of the members voting thereon at any regular or Special Meeting held after due written notice setting forth the proposed action and the purpose of the meeting.
- (2) These By-Laws may be amended by the Board of Directors, but any amendment adopted by the Board of Directors shall be reported to the next Annual Meeting of members and, if not affirmatively approved thereat, shall cease to be in effect.

#### **B. Amendments and Certificate of Incorporation.**

- (1) The Certificate of Incorporation may be amended as approved by the affirmative vote of two-thirds of the members voting thereon at any regular or Special Meeting held after due written notice as provided in Section 12 of the Cooperative Corporation Law.