

**AMENDED AND RESTATED BYLAWS  
OF  
WESTBY COOPERATIVE CREAMERY**

**ARTICLE 1**

**NAME AND PRINCIPAL OFFICE**

1.1 Name. The name of the Cooperative shall be WESTBY COOPERATIVE CREAMERY (the “Cooperative”).

1.2 Principal Office. The principal office of the Cooperative shall be located in Westby, Wisconsin, or such other place within or outside of the State of Wisconsin as the Board of Directors of the Cooperative (the “Board”) may determine from time to time.

1.3 Other Offices. Other offices of the Cooperative for the transaction of business shall be located at such places as the Board may determine from time to time.

**ARTICLE 2**

**PURPOSES AND LIMITATIONS**

2.1 Permitted Activity. The cooperative may engage in any activity within the purpose for which cooperatives may be organized under Chapter 185 of the Wisconsin Statutes, as amended from time to time, and any successor thereto.

2.2 Purpose. The purpose of the Cooperative shall principally be to act as principal or agent to buy, sell, process, manufacture, handle, transport, store and market any or all farm products, especially milk and cream and products into which milk or cream enters, and such products as are needed by the patrons of the Cooperative in the production of farm products; and to do all things incidental or convenient thereto, including buying, selling, exchanging, renting and leasing real or personal property and furnishing services and storage.

2.3 Limitations. The cooperative shall not market the products of patrons who are not members of the Cooperative in an amount the value of which exceeds the value of the products marketed for members. The Cooperative shall not purchase supplies and equipment for patrons who are not members in an amount the value of which exceeds the value of the supplies and equipment purchased for members. The Cooperative shall not purchase supplies and equipment for patrons who are neither members nor producers of agricultural products in an amount the value of which exceeds fifteen percent (15%) of all of the Cooperative’s purchases.

2.4 Certain Definitions. As used in these Bylaws, the following definitions shall apply:

a. The term “member” shall refer to any member in good standing of the Cooperative.

b. The term “patron” shall refer to any member or nonmember with respect to business conducted with the Cooperative on a patronage basis.

### **ARTICLE 3**

#### **MARKETING AUTHORITY**

Each member of the Cooperative, by reason of its membership, hereby agrees to consign and deliver to the Cooperative, as directed by the Cooperative, for sale or disposal as herein provided, all milk produced by such member or from the cows owned or controlled by such member, except such part thereof as may be required for such member’s home or farm use. The milk shall be delivered by each member at such time and place as may be designated by the Cooperative, and when so delivered shall be pure and unadulterated and shall meet the conditions specified by the Cooperative or as set forth in any written agreement between the Cooperative and such member and also the requirements of all applicable health ordinances.

### **ARTICLE 4**

#### **MEMBERSHIP**

4.1 Qualifications. Natural persons, partnerships, corporations, limited liability companies and unincorporated associations that meet all of the following requirements are eligible for membership in the Cooperative:

- a. They must be milk producers as owners or operators of farms.
- b. They must be currently delivering their milk to or through the Cooperative.
- c. They must own at least one share of membership stock of the Cooperative or have started milk deliveries to or through the Cooperative on an understanding that they will accept one share of that stock to be paid for out of the first net proceeds of the Cooperative distributable to them.

4.2 Acceptance. Membership shall be accepted or rejected by the Board. The Board shall have the conclusive right to determine whether the qualifications required for membership are being met at any time, both for the purpose of accepting a member and termination of membership. In any case where two or more persons may be eligible to be members based on a single operation, the Board shall also have the power to determine if more than one membership will be permitted or required.

4.3 Evidence. The Cooperative shall issue one share of common stock as evidence of membership.

4.4 Termination.

- a. A member shall automatically cease to be a member and lose the right to vote as a member when it ceases to meet any of the qualifications set forth above.

b. Any member may be discharged or expelled by a majority vote of the Board at any meeting or majority vote of the members at any meeting if, in the latter case, written notice signed by the Cooperative's secretary stating the reason for the proposed vote of expulsion is mailed to the members thirty (30) days prior to the date of meeting.

4.5 Transfers. Neither the shares of stock in the Cooperative nor membership in the Cooperative is transferable.

## ARTICLE 5

### MEMBER MEETINGS

5.1 Annual Meeting. The annual meeting of the members of the Cooperative shall be held as soon as practicable after the audit report for the immediately preceding fiscal year is completed, but not later than one hundred eighty (180) days after the end of any fiscal year, at such time and at such place in Vernon County, Wisconsin, as the Board shall determine.

5.2 Notice. Not less than seven (7) nor more than thirty (30) days before each annual meeting of members, written notice of the time and place of the meeting shall be given to the each member personally or by U.S. mail, postage prepaid, to such member's last known address as shown in the Cooperative's records.

5.3 Special Meeting.

a. The president or the Board may call a special meeting of the Cooperative upon giving notice to the members in the manner herein described for an annual meeting, except that the notice shall also specify the purpose of the special meeting.

b. Upon written demand signed by at least twenty percent (20%) of the members, the president shall call a special meeting for the purpose to which the demand relates, in the manner herein described.

5.4 Quorum. A quorum at a meeting shall be ten percent (10%) of the first one hundred (100) members plus five percent (5%) of additional members, present in person or represented by delegates; provided, however, that a quorum shall never be more than fifty (50) members nor less than five (5) members, or a majority of all members, whichever is smaller. Members represented by signed ballot may be counted in computing a quorum only on those questions as to which the signed ballot is taken.

5.5 Voting. Each member is entitled to one and only one vote on each question. All questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by law, the articles of incorporation or these bylaws. Voting by proxy is not allowed in the Cooperative, but the Board, in its discretion, may permit a member who will be unable to attend a member meeting to vote by submitting a signed ballot, including for the election of directors pursuant to Section 6.2. Unless a ballot is included with the meeting notice or otherwise delivered by the Cooperative, in order to vote by ballot for any upcoming vote a member must request a ballot from the Cooperative. A signed ballot must be either delivered to the office of the Cooperative so as to reach the Cooperative's office prior to the

member meeting, or delivered to an officer or representative of the Cooperative at the member meeting prior to the closing of any vote for which the ballot is cast. Any ballot not personally delivered by the member whose vote is represented by such ballot must be submitted in a sealed envelope bearing the signature on the outside of the member whose vote is represented by the ballot. If the motion for which the ballot pertains is amended, any ballot cast on the motion in its form prior to the amendment shall be void. The Cooperative shall disqualify any ballot not validly completed or submitted; provided, however, the Board, in its discretion, reserves the right to accept and count toward any vote ballots with minor or insignificant errors.”

5.6 Order of Business. The order of business at annual meetings and so far as applicable to other meetings of the members, shall be substantially as follows:

- a. Roll call or registration
- b. Proof of due notice of meeting.
- c. Reading and disposal of unapproved minutes.
- d. Reports of officers and committees.
- e. Unfinished business.
- f. New business.
- g. Election of directors.
- h. Adjournment.

5.7 Rules of Order. Meetings of the members and of the Board shall be conducted according to and governed by such rules as shall be determined by the chair of the meeting.

5.8 Action without a Meeting. Any action required or permitted by the Articles of Incorporation or Bylaws, or any provision of law, to be taken by the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote on such action. Such consent shall have the same force and effect as a unanimous vote at a meeting of the members.

## **ARTICLE 6**

### **BOARD OF DIRECTORS**

6.1 Number, Qualifications and Terms of Office. The business and affairs of the Cooperative shall be governed by the Board. The number of directors shall be seven (7). Each director must be a member of the Cooperative or an elected or appointed representative of a non-individual member. Except as otherwise provided in this section, all directors shall serve three-year terms and until their successors are duly elected and qualified. Directors shall not be permitted to serve more than four (4) consecutive, full three-year terms. In order to preserve continuity of governance, the terms of the directors shall be staggered such that one-third of the

incorporating or appointed directors (or as nearly as possible) are elected at each annual meeting of the members. The Board of Directors shall adopt a procedure to achieve the desired staggered effect prescribed by the Bylaws (including one that prescribes certain director terms of less than three (3) years, as necessary). Each director shall hold office until his or her successor is elected and enters upon his or her duties or until his or her prior death, resignation, retirement or removal from office.

## 6.2 Nominations and Elections of the Board.

a.. (1) **Nomination.** Prior to each annual meeting of the members at which a director will be elected, a slate of nominees for such director position shall be established. Candidates up for election to such position may only be nominated by either (i) the Board and/or (ii) a member upon submitting to the Cooperative a petition nominating a candidate that is signed by at least three (3) members in good standing and received by the Cooperative no later than sixty (60) days prior to the one-year anniversary of the most recent annual meeting. Candidates may not be nominated from the floor at meetings of the members or by any other process.

(2) **Election.** The Board will include all duly nominated candidates on a ballot to be sent to each member together with the notice of annual meeting. Members shall vote for those persons nominated for election to the Board at the annual meeting of the members. Those nominees, who receive the most votes cast, including those votes cast in person and those votes cast by ballot, shall be elected to the Board. For example purposes only, if six persons have been nominated and are running for the two available director seats, that person receiving the highest number of votes shall be elected to the Board and that person receiving the second highest number of votes shall also be elected to the Board. The President or the Board shall appoint one (1) or more election inspectors to tally all accepted ballots. The results of each such election shall be announced at the annual meeting

b. Any vacancy existing on the Board, including as a result of an increase in the number of directors, may be filled until the next annual meeting of the members by appointment by a majority of the directors then in office

c. At its next meeting following the election of any directors, the Board shall appoint a Chairman of the Board, who shall preside over all regular and special meetings of the Board.

6.3 Attendance. Any director not attending Board meetings regularly may be replaced by the Board, which shall appoint another member to serve as a director to complete his or her term.

6.4 Reporting Changes. The Cooperative shall report all changes in the membership of the Board to the Wisconsin Department of Financial Institutions within twenty (20) days of the effectiveness of any such change.

6.5 Meetings.

a. The Board shall hold its annual meeting within ten (10) days after annual meeting of the members and shall hold regular meetings such time and place as the Board shall fix. The president may call an additional meeting at any time and shall do so upon the demand of a majority of the directors.

b. Notice need not be given of the annual meeting of the Board if it is held immediately after the annual meeting of the members. Notice of all other Board meetings shall be given to each director, or a meeting may be held on written waiver of notice signed by all of the directors.

c. A majority of the directors shall be a quorum at a Board meeting, but a less number may adjourn to another time upon giving notice to the absent directors of the time and place of the adjourned meeting.

d. Any or all directors may participate in an annual, regular or special meeting of the Board by, or the Board may conduct the meeting through the use of, any means of communication by which either of the following occurs: (i) all participating directors can simultaneously hear each other during the meeting; or (ii) all communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors. If a meeting will be conducted through the use of any means described in this section, all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in this section is deemed to be present in person at the meeting. If requested by a director, minutes of the meeting shall be prepared and distributed to each director

6.6 Compensation. The compensation, if any, of the directors may be fixed at any annual or special meeting of the members of the Cooperative; but upon failure of the members to do so, the Board may do so.

6.7 Employees. The directors shall employ a manager and such other employees as they deem necessary, and shall fix the compensation of all employees and the limits within compensation of each position may vary.

6.8 Insurance. The Board shall provide for insurance of the property of the Cooperative and property in its possession, or stored by it, and not otherwise adequately insured, and for adequate insurance covering liability of its employees.

6.9 Corporate Seal. The Board may adopt, alter or abandon the use of a corporate seal.

6.10 Action without a Meeting. Any action required or permitted by the Articles of Incorporation or Bylaws, or any provision of law, to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote at a meeting of the Board.

## **ARTICLE 7**

### **OFFICERS AND DUTIES**

#### 7.1 Appointment.

a. The Board, at its annual meeting, shall appoint from its number a president and a vice president. It shall also appoint a secretary and a treasurer, both of which positions may be held by one person, and such other officers as may be necessary who may or may not be directors.

b. All officers may be reelected to as many terms of office as the directors approve.

c. The directors shall elect an eligible person as an officer for the remainder of any term for which there is a vacancy

d. The Cooperative shall report all changes officers of the Board to the Wisconsin Department of Financial Institutions within twenty (20) days of the effectiveness of any such change.

#### 7.2 Duties of Officers.

a. The duties of each officer shall be those generally considered to be the duties of the representative office and in addition such other duties as may be prescribed by the Board.

b. The principal duties of the president shall be to preside at all regular and special meetings of the members, and to have general supervision of the affairs of the Cooperative. The president shall sign all certificates and contracts and legal documents.

c. The principal duties of the vice president shall be to discharge the duties of the president in the event of the absence or disability of the latter.

d. The principal duties of the secretary shall be to keep a record of the proceedings of all meetings of the Board and the proceedings of the members of the Cooperative at their regular and special meetings, and to safely and systematically keep all books, papers, records, documents and correspondence belonging to the Cooperative, or in any way pertaining to the provisions thereof.

e. The principal duties of the treasurer shall be to have custody of funds and securities of the Cooperative; to keep full and accurate accounts of the receipts and

disbursements in the Cooperative books and records; to disburse the funds of the Cooperative as may be ordered by the Board, taking and retaining proper vouchers for such disbursements; to render, as may be required, true accounts of all financial transactions of the Cooperative and accurate statements of the financial condition of the Cooperative.

7.3 Check Signing. All checks, notes, bills of exchange and other instruments calling for the payment of money that shall be issued by the Cooperative shall be signed by such officers as the Board from time to time may designate.

7.4 Borrowing and Mortgaging. The Board may borrow money for any of the Cooperative's purposes, and to secure such loans may mortgage or otherwise encumber the Cooperatives assets and revenues.

## ARTICLE 8

### CAPITAL STRUCTURE

8.1 Patronage Capital. The Cooperative shall be so operated that the current and active patrons, members and nonmembers alike, through their patronage will furnish money on the basis of patronage for capitalizing the Cooperative.

8.2 Per-Unit Retain Capital. The Board shall be authorized to establish a per-unit charge to patrons, members and nonmembers alike, on a fair and equitable basis for capitalizing the Cooperative.

8.3 Evidence. The capital so furnished by patrons on a patronage or retain basis shall be evidenced by the issuance of either Capital Equity Certificates or Credits in capital ledger accounts evidenced to the patron annually by written notice.

8.4 Revolving Capital. It is the policy of the Cooperative that its currently active patrons at all times shall be its voting members and its owners in proportion to the amount of business done by each with the Cooperative. In addition to any other method, this shall be accomplished as follows: In each even numbered year the Board, so far as in their judgment the financial condition of the Cooperative will permit, shall adjust the stock-holdings of patrons by recalling that portion of the preferred stock which said Board deems necessary and paying for it in cash.

8.5 Stock Redemption. When stock is called for redemption, notice of the call shall be mailed to the holder thereof, directed to such holder's last post office address as shown in the Cooperative's records. No other notice shall be required. Stock that has been redeemed may be retired or reissued in the discretion of the Board.

8.6 Debts Due From Patrons. When retiring any stock, stock credits, reserve equity certificates or reserve equity accounts, the Cooperative in making payment therefor may deduct any sum owing to it by the holder thereof. In the event any patron shall fail to make the deposits for service or supplies within the time prescribed in these Bylaws or established by the Board, the Board in its discretion, for the purpose of reimbursing the Cooperative for all or any



part of the sum owing to it by the patron may elect to retire all or any of the stock, stock credits, reserve equity certificates or reserve equity accounts held by such patron.

8.7 Patrons' Tax Obligations on Patronage Refunds. Each patron of the Cooperative acknowledges and agrees that the amount of any distributions with respect to such patron's patronage that are made in written notices of allocation (as defined in Title 26, United States Code, Section 1388) and that are received by such member from the Cooperative, will be taken into account by such member at their stated dollar amounts in computing gross income in the manner provided in Title 26, United States Code, Section 1385(a) in the taxable year in which such written notices of allocation are received by such member.

8.8 Patrons' Tax Obligations on Per-Unit Retains.

a. Each patron of the Cooperative acknowledges and agrees that such patron will treat the stated dollar amount of all per-unit notices of retained capital received by such patron in connection with products marketed through the Cooperative on and after the effective date as representing a cash distribution which such patron has constructively received and has reinvested in the Cooperative.

b. Nonmember patrons of the Cooperative shall be required by the Board to contribute capital retains in the same manner as members. The Board may require nonmember patrons to include by prior agreement capital retains they invest in the Cooperative in their income at face value.

8.9 Losses. In the event the Cooperative suffers a loss in any year, the Board shall prescribe the basis on which the capital furnished by the patrons shall be reduced on account of any such loss so that it will be borne by the patrons on as equitable a basis as the Board finds practicable.

## **ARTICLE 9**

### **PATRON PROCEEDS**

Each member of the Cooperative, by reason of such member's membership, gives the full power and authority to collect the entire amount due for milk delivered either to the Cooperative or as otherwise directed by the Cooperative. Each member of the Cooperative authorizes the Cooperative to collect the proceeds of the sale of milk otherwise due the member, and to blend the proceeds thereof with the proceeds derived from the milk delivered by other producers and establish the rates therefor in such a manner as the Cooperative shall determine, giving consideration to quality, location of the farm where the milk is produced and the market in which the milk is sold.

## **ARTICLE 10**

### **NET PROCEEDS**

10.1 Arriving at the Net Proceeds. At least once annually the Board shall determine the total net proceeds by making the following deductions:

- a. All operating expenses and costs.
- b. The cost of supplies, commodities, equipment and other property or services procured or sold for patrons.
- c. The cost of services performed for patrons.
- d. All taxes and all other expenses.
- e. Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices.

The remainder of the total proceeds after the foregoing deductions is net proceeds.

10.2 Distribution of Net Proceeds. The net proceeds, unless provided otherwise in the Articles of Incorporation or Bylaws, shall not be considered income to the Cooperative but shall be distributed to patrons, whether members or not, as follows:

- a. A share of the net proceeds may be set aside for or paid to officers or employees, or both, of the Cooperative. Such amount shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.
- b. Reasonable reserves for necessary purposes may be created which shall be credited to patrons in accordance with the ratio which their patronage bears to total patronage.
- c. All the remainder of the net proceeds shall be distributed to patrons in accordance with the ratio which their patronage bears to total patronage.
- d. There shall be no distinction between the patrons entitled thereto, but such reserves and distributions may be based upon business done with particular departments or in particular commodities, supplies or services, or upon classification of business according to the type or nature thereof.

## **ARTICLE 11**

### **MANAGEMENT TEAM**

11.1 Appointment. The Board shall appoint a management team for the Cooperative, which shall be led by general manager. The general manager shall develop with the Board a description of his or her position. The general manager and the Board shall develop descriptions

of sufficient competent staff personnel to provide for the management team, which shall clearly define by classification a line of authority among the management team.

11.2 Other Business Forbidden. The management team shall not engage in business of like nature to that of the Cooperative nor be employed or engaged by any other party in such a business

11.3 General Powers and Duties. The general manager shall have general charge of the ordinary and usual business operation of the Cooperative, under and subject to the direction, approval and conduct of the Board.

11.4 Accounts. The general manager shall be required to maintain records and accounts in such manner that the condition of the business of the Cooperative may be correctly ascertained therefrom at any time. The general manager shall render annual and periodic statements in the form and manner prescribed by the Board. The general manager shall carefully preserve all books, documents, correspondence and records of whatever kind pertaining to the business which may come into his or her possession.

11.5 Other Employees. The general manager may employ and discharge employees of the Cooperative, subject to the general employment policies established by the Board.

11.6 Funds. The general manager shall handle and account for in the manner and form prescribed by the Board all monies and other property belonging to the Cooperative that shall come into his or her possession.

## **ARTICLE 12**

### **FISCAL YEAR**

12.1 The fiscal year of the Cooperative shall end on November 30.

## **ARTICLE 13**

### **AUDITS**

13.1 At the close of each fiscal year and at such other times as the Board shall determine the officers shall make or cause to be made an accurate written statement of the financial condition of the company, including when required, an accurate inventory of all its property.

13.2 At the close of each fiscal year and at such other times as the Board shall determine the books and accounts of the Cooperative shall be audited by a competent and disinterested accounting firm, which accounting firm shall make a detailed written report thereon.

## ARTICLE 14

### INDEMNIFICATION AND INSURANCE

14.1 Indemnification. The Cooperative shall indemnify each director, officer and manager of the Cooperative, and any person who is serving at the request of the Cooperative as a director, officer or manager of another corporation, partnership, joint venture, trust or other enterprise, against expenses actually and reasonably incurred, including attorneys' fees, judgments, fines and amounts paid in settlement, to the extent to which directors, officers or managers of a cooperative may be indemnified under the laws of the State of Wisconsin.

14.2 Insurance. The 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 the Cooperative, or who is or was serving at the request of the 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.

## ARTICLE 15

### MERGER OR CONSOLIDATION; DISSOLUTION

15.1 Merger or Consolidation. If the terms of a merger or consolidation of which the Cooperative is a party do not provide the members of the Cooperative with an economic interest in the surviving entity that is substantially similar to the economic interest possessed by such members in the Cooperative immediately before such merger or consolidation, the value of the consideration received shall be divided among them in the same manner as a comparable amount of net liquidation proceeds would be distributed pursuant to Section 16.2. This shall not be construed to prevent issuance of differing forms of consideration to different groups of members to the extent allowed by law.

15.2 Liquidation, Dissolution and Winding-Up. In the event of a liquidation, dissolution or winding up of the affairs of the Cooperative, whether voluntary or involuntary, amounts remaining after satisfaction of the Cooperative's indebtedness and other obligations shall be distributed in the following order: first, to the holders of the stock of the Cooperative to the extent of and in proportion to the number of shares held; second, to the holders of written notices of allocation to the extent of and in proportion to the face amount thereof; and, third, to current and former members in proportion to their patronage over such period as may be determined to be equitable and practicable by the Board. Such obligation to distribute shall be construed as a preexisting duty to distribute any patronage sourced net gain realized in the winding up process to the maximum extent allowable by law.

## ARTICLE 16

### AMENDMENT OF BYLAWS

16.1 By the Members. These Bylaws, or any portion thereof, may be adopted, amended or repealed by a majority vote at any regular member meeting or at any special meeting

when a statement of the nature of the amendment has been contained in the notice of such special meeting.

16.2 By the Board. The Board is authorized to adopt or amend these Bylaws, or any portion thereof, except Article 6. Bylaws adopted or amended by the Board shall be reported at the next regular member meeting and shall be subject to repeal or amendment by the members.

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