

N10000004873

Florida Department of State
Division of Corporations
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H10000130209 3)))



H100001302093ABCQ

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 617-6380

From:

Account Name : C T CORPORATION SYSTEM
Account Number : FCA0000000023
Phone : (850) 222-1092
Fax Number : (850) 878-5368

FILED
10 JUN -4 AM 10:34
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

****Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.****

Email Address: _____

**MERGER OR SHARE EXCHANGE
MME COOPERATIVE, INC.**

Certificate of Status	2
Certified Copy	0
Page Count	31
Estimated Charge	\$70.00

RECEIVED

2010 JUN -4 AM 8:00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Merge/MC

COVER LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: MME Cooperative, Inc.
Name of Surviving Corporation

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

Chad G. Bartell, Esq.

Contact Person

Michael Best & Friedrich LLP

Firm/Company

P.O. Box 1806

Address

Madison, WI 53701-1806

City/State and Zip Code

cgbartell@michaelbest.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Chad Bartell

Name of Contact Person

At (608)

283-4420

Area Code & Daytime Telephone Number

☒ **Certified copy (optional) \$8.75** (Please send an additional copy of your document if a certified copy is requested)

STREET ADDRESS:

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

FILED
10 JUN -4 AM 10:34
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, Florida Statutes.

First: The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
<u>MME Cooperative, Inc.</u>	<u>Florida</u>	<u>NK000004873</u>

Second: The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u> (If known/ applicable)
<u>Mid-Missouri Energy, Inc.</u>	<u>Missouri</u>	

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR / / (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days after merger file date.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)
The Plan of Merger was adopted by the shareholders of the surviving corporation on May 11, 2010

The Plan of Merger was adopted by the board of directors of the surviving corporation on _____ and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on _____

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on May 11, 2010 and shareholder approval was not required.

(Attach additional sheets if necessary)

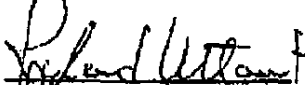
Seventh: SIGNATURES FOR EACH CORPORATION

Name of Corporation

Signature of an Officer or
Director

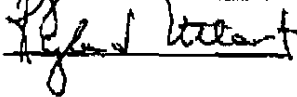
Typed or Printed Name of Individual & Title

MME Cooperative, Inc.



Ryland Utlaut, President

Mid-Missouri Energy, Inc.



Ryland Utlaut, President

PLAN OF MERGER
(Merger of subsidiary corporation(s))

The following plan of merger is submitted in compliance with section 607.1104, Florida Statutes, and in accordance with the laws of any other applicable jurisdiction of incorporation.

The name and jurisdiction of the parent corporation owning at least 80 percent of the outstanding shares of each class of the subsidiary corporation:

Jurisdiction

Missouri

The name and jurisdiction of each subsidiary corporation:

Jurisdiction

Florida

The manner and basis of converting the shares of the subsidiary or parent into shares, obligations, or other securities of the parent or any other corporation or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, and other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

Upon the Effective Date, each share of common stock of MME Cooperative, Inc. that is outstanding shall be cancelled. Each of Ryland Utlaut, Don Arth and Mark Casner shall receive One Dollar (\$1.00) in consideration for the cancellation of their shares.

(Attach additional sheets if necessary)

If the merger is between the parent and a subsidiary corporation and the parent is not the surviving corporation, a provision for the pro rata issuance of shares of the subsidiary to the holders of the shares of the parent corporation upon surrender of any certificates is as follows:

Each membership interest in Mid-Missouri Energy, Inc. represented by a membership unit shall be surrendered and cancelled and converted into a membership interest in MME Cooperative, Inc. represented by one (1) issued and outstanding membership unit of MME Cooperative, Inc.

If applicable, shareholders of the subsidiary corporations, who, except for the applicability of section 607.1104, Florida Statutes, would be entitled to vote and who dissent from the merger pursuant to section 607.1321, Florida Statutes, may be entitled, if they comply with the provisions of chapter 607 regarding appraisal rights of dissenting shareholders, to be paid the fair value of their shares.

Other provisions relating to the merger are as follows:

1. Pursuant to the merger described in these Articles of Merger and Plan of Merger (the "Merger"), Mid Missouri Energy, Inc., a Missouri nonprofit, nonstock cooperative marketing association (the "Parent"), shall merge into MME Cooperative, Inc., a Florida nonprofit agricultural cooperative marketing association (the "Survivor"), with the Survivor being the surviving entity of the Merger.

2. The terms and conditions of the merger and the mode of carrying it into effect are as follows:

a. The directors and officers of the Parent as they exist on the Effective Date (as defined below) shall become the officers and directors of the Survivor, such officers shall maintain the same title and position with the Survivor as previously held with the Parent, and shall hold office until their successors shall be elected and duly qualified, or until their prior death, resignation or removal.

b. Pursuant to Section 351.458.3 of the Missouri Revised Statutes, the Merger shall become effective on date and time specified in the Articles of Merger filed with respect to the Merger with the Florida Secretary of State (the "Effective Date").

c. Pursuant to Section 351.450 of the Missouri Revised Statutes, upon the Effective Date, the Survivor shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the Parent and the Survivor; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all and every other interest, of or belonging to or due to each of the Parent and the Survivor so merged, shall be taken and deemed to be vested in the Survivor without further act or deed; and the title to any real estate, or any interest therein, under the laws of the State of Missouri vested in the Survivor shall not revert or be in any way impaired by reason of the Merger.

d. Pursuant to Section 607.1106 of the Florida Statutes, upon the Effective Date, the title to all real estate and other property, or any interest therein, owned by each of the Parent and the Survivor is vested in the Survivor without reversion or impairment.

e. Amended and Restated Articles of Incorporation of the Survivor in substantially the form attached hereto as Exhibit A (the "Amended and Restated Articles") shall be filed with the Florida Secretary of State to be effective as of the Effective Date.

f. Amended and Restated Bylaws of the Survivor in substantially the form attached hereto as Exhibit B shall be adopted effective as of the Effective Date.

EXHIBIT A
TO
ARTICLES OF MERGER

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION**

OF

MME COOPERATIVE, INC.

**AN ASSOCIATION ORGANIZED UNDER
CHAPTER 618 OF THE FLORIDA
AGRICULTURAL COOPERATIVE MARKETING ASSOCIATIONS LAW**

The undersigned, in order to form a cooperative under Florida Statutes, Chapter 618, do hereby adopt and execute the following Amended and Restated Articles of Incorporation (the "Articles") of MME Cooperative, Inc. (the "Association"):

ARTICLE I

NAME, PRINCIPAL PLACE OF BUSINESS, REGISTERED OFFICE AND AGENT

The name of this Association is Mid-Missouri Energy, Inc. The principal office within Florida for this Association is 1200 South Pine Island Rd., Plantation, FL 33324.

ARTICLE II

PURPOSES AND POWERS

Section 2.1 Purposes, Not For Profit. This Association is organized not for profit as such, but for the following purposes:

(a) to develop and contract an ethanol production facility itself or with others as an investor/owner of a limited liability company developing one ethanol production project;

(b) to store, market, and process the agricultural products grown by members of the Association ("Members") and other patrons;

(c) to construct or otherwise provide processing, storage, and other facilities and related services to and for its Members;

(d) to engage in any activity in connection with the marketing, harvesting, processing, storing, handling or utilization of agricultural products or their byproducts delivered to the Association, or the providing of labor, or in connection with the purchase, hiring or use by its patrons of supplies, machinery or equipment, or in the financing of any such activities;

(e) to engage in any activity connected with or related to any such purposes, and to engage in any other lawful purpose;

To this end, the business and activities of this Association shall be conducted on a cooperative basis, as may be further provided in these Articles or the Bylaws of this Association.

Section 2.2 Powers. In addition to other powers, this Association may perform every act and thing necessary, proper, incidental or convenient to the conduct of its business or the accomplishment of its purposes. This Association shall have all powers, privileges and rights conferred upon it by applicable law. Without limiting the foregoing, this Association shall have the power:

- (a) to borrow money from and to loan money to its Members, nonmember patrons and others; to guarantee or stand as surety on loans made to its Members, nonmember patrons and others by lenders; to issue bonds, deeds of trust, debentures, notes, and other obligations and to secure the same by pledge, mortgage, or trust deed on any real or personal property of this Association; to draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants, warehouse receipts, certificates and other obligations, and negotiable or transferable instruments for any purpose deemed necessary to further the objects for which this Association is formed;
- (b) to acquire, purchase, hold, lease, encumber, sell, exchange, and convey such real estate, buildings, and personal property as the business of this Association may require;
- (c) to purchase, acquire, own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, equity or debt securities created by any other corporation or other legal entity wherever organized, with all the rights, powers and privileges of ownership thereof;
- (d) to borrow money, to incur obligations and to assume obligations of any other person, individual, corporation or other legal entity, in any amount; and to make contracts for hire;
- (e) to issue equity and debt securities, whether certificated or uncertificated, as further provided in the Articles and in the Bylaws;
- (f) to join with other cooperatives, limited liability companies, corporations, partnerships, associations or other entities to form district, state, or national marketing, manufacturing, purchasing and service organizations, and other organizations engaged in the general purposes for which this Association is formed, and to purchase, acquire, and hold the capital stock or other equity interests and the notes, bonds and other obligations of such organizations;
- (g) to have one or more offices, and to conduct any or all of its operations and business, and promote its purposes without restriction as to places of amounts; and
- (h) to carry on any other business in connection with the foregoing and to engage in any of said activities on its own account or as agent for others, or alone or in association with others; and to employ agents, consultants and nominees to perform any or all of the powers described or referred to herein.

The powers, privileges and rights specified herein shall, except where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms of any other provision of these Articles. The enumeration of powers, privileges and rights herein shall

not be held to limit or restrict in any manner the general powers, privileges and rights conferred upon this Association under applicable law.

Section 2.3 Limitation on Nonmember Business. This Association shall not market the products of nonmembers in an amount the value of which exceeds the value of the products marketed for Members. It shall not purchase supplies and equipment for nonmembers in an amount the value of which exceeds the value of the supplies and equipment purchased for Members. It shall not purchase supplies and equipment for persons who are neither Members nor producers of agricultural products in an amount the value of which exceeds 15 percent of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the limitations imposed by this section.

ARTICLE III DURATION

This Association shall have perpetual existence.

ARTICLE IV MEMBERSHIP AND EQUITY

Section 4.1 Organized Without Capital Stock. This Association is organized without capital stock.

Section 4.2 Authorized Membership Interests. This Association is organized with Membership interests which are divided into delivery units ("units"). The authorized number of units of this Association is 40,000,000. The property rights of the Members holding units will be unequal to the extent the Members hold different amounts of units and to the extent Members' patronage the Association is in different amounts. The Association shall issue one or more Membership Certificates stating the number of units held by the Member. Except as may be limited by applicable law, these Articles or the Bylaws, the Board of Directors of this Association (the "Board of Directors") has the authority and power to establish and issue one or more classes of units, to set forth the designation of different classes of units, to fix the relative rights, preferences, privileges and limitations of each class of units; and to establish and maintain such capital reserve, revolving capital, unit retains, and other types of equity credits as further provided in these Articles and the Bylaws.

Section 4.3 Membership and Units.

(a) Membership in this Association is restricted to the persons or entities who subscribe to a minimum number of units as prescribed by the Board of Directors of this Association, and each Member of this Association must hold at least the minimum number of units prescribed by the Board of Directors. The property rights of the Members holding units will be unequal to the extent the Members hold different amounts of units and to the extent a Member's patronage with the Association is in different amounts. Only Members have voting power in this Association. To become a Member and share in the property of this Association, a producer must: (1) sign and complete a Membership Application and pay any membership fee prescribed by the Board of Directors for this Association; (2) sign and complete a Uniform Marketing and Delivery Agreement requiring the Member to deliver annually to the Association

a specified number of bushels of grain (as outlined in the Bylaws of this Association) per unit held by the Member; and (3) comply with other requirements of membership as stated in these Articles and the Bylaws. The right to purchase delivery units from the Association is restricted to producers of agricultural products and associations of such producers who meet the requirements and conditions of membership as provided in these Articles and in the Bylaws. Each Member has one vote in the affairs of this Association regardless of the number of units held by the Member. The provisions of this Section 4.3(a) may not be altered, amended, or repealed except by the written consent or vote of three-fourths of the Members voting thereon, or such vote as may be required by Fla. Stat. § 618.04(6), as amended from time to time.

(b) The units are transferable only with the approval of the Board of Directors, and then only to persons or entities eligible to hold the units. No purported transfer or assignment of any units to any person or entity not eligible to hold such units passes any privileges or rights on account of such units. No holder of units has any right whatsoever to require the redemption of its units. The units may be redeemed only at the option of the Board of Directors in accordance with the provisions of these Articles and the Bylaws. The Board of Directors has the authority to establish a redemption policy on terms and conditions it deems advisable in its sole discretion; provided, however, that a unit may never be redeemed for more than the value of the consideration for which the unit was issued. No dividends will be paid on the units of this Association.

(c) For purposes of these Articles and the Bylaws, "producers of agricultural products" means persons (including individuals and joint ventures, corporations, partnerships, limited liability companies, limited liability partnerships, unincorporated associations or other legal entities owned or controlled by individual farmers, ranchers or their family groups) that are engaged in the production of one or more agricultural products, including tenants of land used for the production of such products and lessors of such land that receive as rent therefor any part of the product of such land.

Section 4.4 Ineligibility of a Member.

(a) As may be more particularly provided for in the Bylaws, if the Board of Directors finds that any units of this Association have come into the hands of any person or entity who is not eligible to own units or who has otherwise become ineligible for membership in this Association, the Board of Directors of this Association has the right, at its option, (1) to redeem the unit at an amount equal to the value of the consideration for which the unit was issued; or (2) to convert the unit into a nonvoting certificate of interest or other nonvoting equity credit at an amount equal to the value of the consideration for which the unit was issued. Upon such redemption or conversion, such ineligible holder of the units ceases to be a Member of this Association and ceases to have voting rights in this Association.

(b) In exercising its right to redeem or to convert the unit under the preceding paragraph, this Association may cancel the certificate or certificates of such units on its books in the event the holder fails to deliver the certificate or certificates evidencing such units to the Association. If this Association exercises its right to convert the units into a nonvoting certificate of interest or other nonvoting equity credit, this Association has no obligation to

redeem such nonvoting equity interest, nor does the holder of such interest have any right to demand the redemption of the interest, units or credits.

(c) Except as specifically provided for in the Bylaws, no action taken by this Association with respect to its units modifies the obligations and liabilities of any holder thereof to this Association under any uniform marketing and delivery contract or other contract between the holder and this Association, nor impair the rights of this Association under the contracts.

Section 4.5 Nonmember Patronage Transactions. Producers of agricultural products and associations of such producers who patronize this Association under conditions established by the Board of Directors or as provided in the Bylaws but who are otherwise ineligible to be Members of this Association may nevertheless conduct business with this Association on a patronage basis as a nonmember patron, as more particularly provided in the Bylaws or by policies and procedures established by the Board of Directors. The nonmember patrons are not Members and are not entitled to voting rights or other rights and privileges incident to membership.

ARTICLE V

NET INCOME AND LOSS

The net income of this Association in excess of additions to reserves shall be distributed to members and nonmember patrons annually or more often on the basis of patronage and the records of this Association may show the interest of members and nonmember patrons in the reserves. Patronage may be different for Members and nonmember patrons delivering into different patronage pools or allocation units as determined by the Board of Directors. Net income may be accounted for and distributed on the basis of allocation units that may be functional, divisional, departmental, geographic, or otherwise. Net income may be distributed in cash, credits, allocated patronage equities, revolving fund certificates, securities of this Association, other securities, or any combination thereof. Any such allocated equity shall be redeemable only at the option of the Board of Directors. The net loss of an allocation unit or units may be offset against the net income of other allocation units to the extent permitted by law. The net income or net loss of this Association or any allocation unit may be determined by including the Association's proportionate share of the net income or loss of other entities in which the Association owns an equity interest. The foregoing provisions of this Article shall be implemented as more particularly provided in the Bylaws of this Association.

ARTICLE VI

LIQUIDATION

In the event of any dissolution, liquidation or winding up of this Association, whether voluntary or involuntary, all debts and liabilities of this Association shall be paid first according to their respective priorities. As more particularly provided in the Bylaws, the remaining assets shall then be paid to the holders of units and other equity capital to the extent of their interests shown on the books of the Association and any excess shall be paid to the patrons of this Association on the basis of their past patronage or to the patron's designees and assigns. The Bylaws may provide more particularly for the allocation among the Members and nonmember

patrons of this Association of the consideration received in any merger or consolidation to which this Association is a party.

ARTICLE VII

FIRST LIEN

This Association has a first lien on all units, equity credits, accounts, including accounts payable under marketing contracts or otherwise, and other interests standing on its books for all indebtedness of the respective holders or owners thereof to this Association. This Association also has the right, exercisable at the option of the Board of Directors, to set off such indebtedness against the amount of such units, equity credits, accounts or other interests standing on its books; provided, however, that nothing contained herein gives the owners of units, equity credits, accounts or other interests any right to have such set off made.

ARTICLE VIII

BOARD OF DIRECTORS; INCORPORATORS

Section 8.1 Number and Board. The business and affairs of this Association shall be managed by a Board of Directors of fifteen (15) persons. Directors shall be elected by the members at the annual meeting of the Members of this Association for three-year terms in the manner as the Bylaws prescribe. The names and addresses of those who are serving as directors until the election and qualification of their successors in the manner prescribed by the Bylaws, are as follows:

<u>Name</u>	<u>Address</u>
Ryland Utlaug	Rt 1, Box 1A Alma, MO. 64001
Donald Arth	31604 Admiral Ave. Malta Bend, Mo. 65339
Brian Miles	27372 Mt. Olive Rd. Marshall, Mo. 65340
Ron Linneman	30989 Cty Rd 257, Carrollton, Mo. 64633
Joe Brockmeier	31866 Hwy. 24 Carrollton, Mo. 64633
Mark Casner	22625 Cty Rd 360 Carrollton, Mo. 64633
Ed Dysart	P.O. Box 621 Marshall, Mo. 65340

<u>Name</u>	<u>Address</u>
Ron Gibson	405 Grider Ave. Norborne, Mo. 64668
Dale Griffith	36495 Hwy 24 DeWitt, Mo. 64639
Dennis Hensiek	26536 Cty Rd 271 Carrollton, Mo. 64633
Beverly Rolf	27677 Highway 20 Alma, Mo. 64001
Bobby Scheiderer	24697 Redd School Ave Salisbury, Mo. 65281
David Swearingin	P.O. Box 14 Carrollton, Mo. 64633
Jim Wheeler	14595 Cty Rd 350 Norborne, Mo. 64668
Marvin Oerke	Rt 4, Box 752 Butler, MO 64730

Section 8.2 Limitation on Liability. No director of this Association shall be personally liable to this Association or its Members for monetary damages for breach of fiduciary duty as a director, except for liability:

- (a) for a breach of the director's duty of loyalty to this Association or its Members;
- (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- (c) for a transaction from which the director derived an improper personal benefit; or
- (d) for an act or omission occurring prior to the date when the provisions of these Articles became effective.

It is the intention of the Members of this Association to eliminate or limit the personal liability of the directors of this Association to the greatest extent permitted under Florida law. If amendments to the Florida Statutes are passed after these Articles becomes effective which authorize cooperatives to act to eliminate or further limit the personal liability of directors, then

the liability of the directors of this Association shall be eliminated or limited to the greatest extent permitted by the Florida Statutes, as so amended. Any repeal or modification of these Articles by the unitholders of this Association shall not adversely affect any right of, or any protection available to a director of this Association which is in existence at the time of the repeal or modification.

Q:\CLIENT\015944\001\VA\186299.1

EXHIBIT B
TO
ARTICLES OF MERGER

AMENDED AND RESTATED

BYLAWS

OF

MID-MISSOURI ENERGY, INC

**AN ASSOCIATION ORGANIZED UNDER
THE AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION LAW
(FLA. STAT., CHAPTER 618)**

**AMENDED AND RESTATED
BYLAWS
OF**

MID-MISSOURI ENERGY, INC

AN ASSOCIATION ORGANIZED UNDER
THE AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION LAW
(FLA. STAT., CHAPTER 618)

**BYLAW 1
MEMBERSHIP**

Section 1.01. Eligibility for Membership. Producers of agricultural products and associations of such producers who are eligible to become a member of this cooperative and patronize this cooperative under uniform conditions as may be established by the Amended and Restated Articles of Incorporation (the "Articles"), the Amended and Restated Bylaws (the "Bylaws"), or the Board of Directors of this cooperative (the "Board of Directors") may, upon the approval of the Board of Directors, become a member of this cooperative by:

- (1) signing a membership application in a form approved by the Board of Directors and paying a membership fee which may be prescribed by the Board of Directors; and
- (2) becoming the holder of a minimum number of Units prescribed by the Board of Directors by the date established by the Board of Directors as the date on and after which holding such minimum number of Units becomes a requirement of membership; and
- (3) entering into an uniform delivery and marketing agreement with this cooperative by the date established by the Board of Directors as the date on and after which entering into such agreement becomes a requirement of membership; and
- (4) receiving from this cooperative written notification and a copy of the consent bylaw providing for consent to take patronage distributions and per unit retains into income; and
- (5) meeting other membership criteria or requirements established from time to time by the Board of Directors.

Section 1.02. Termination of Membership. Membership in this cooperative may be terminated by the Board of Directors in their discretion if the Board of Directors determines that a member has:

- (1) become ineligible for membership for any reason;
- (2) failed to patronize this cooperative for a period of one year or more;
- (3) not paid any required membership fees;
- (4) died or ceased to exist as a legal entity and leaves no successor; or
- (5) the Board of Directors by resolution finds that a member has:
 - (i) intentionally or repeatedly violated any provision of the Articles, the Bylaws, or Board policies of this cooperative;
 - (ii) taken actions that will impede this cooperative from accomplishing its purposes;
 - (iii) takes or threatens actions that adversely affect the interests of this cooperative or its members;
 - (iv) willfully obstructed any lawful purpose or activity of this cooperative; or
 - (v) breached any contract with this cooperative.

The Board of Directors may only terminate the membership of a member at a meeting of the Board of Directors, 20 days written notice of which was served upon the member alleged to be ineligible by United States Certified Mail. The notice shall state with reasonable particularity the grounds upon which the member is alleged to be ineligible and the member shall be entitled to speak to the termination at the meeting.

Section 1.03. Consequences of Membership Termination.

(1) If the Board of Directors finds that any Unit of this cooperative has come into the hands of any person who is not eligible to own Units or who has otherwise become ineligible for membership in this cooperative, the Board of Directors of this cooperative shall have the right, at its option, to redeem the Units at an amount equal to the value of the consideration for which the Units were issued. Upon redemption, the ineligible holder of the Unit shall cease to be a member of this cooperative and shall cease to have voting rights in this cooperative. Further, upon redemption, the Board of Directors shall have the right, but not the obligation, to terminate the ineligible holder's right and obligation to deliver agricultural products to this cooperative under any contract with this cooperative; provided, however, that neither this section nor any contract with the cooperative shall give an ineligible holder of Units or an ineligible member any right to have delivery rights and obligations under a contract terminated.

(2) In exercising its right to redeem a Unit under the preceding paragraph, this cooperative may cancel the certificate or certificates of the Units on its books if the holder fails to deliver the certificate or certificates evidencing the Unit to the cooperative.

(3) Other than as provided in Section 1.03(1), the termination of membership or other action taken by this cooperative with respect to a member or the member's Units shall not modify the obligations and liabilities to this cooperative under any uniform marketing and delivery contract or other contract between the member and this cooperative, nor impair the rights of this cooperative under any such contracts.

BYLAW 2

MEETINGS OF MEMBERS

Section 2.01. Annual Meetings. The annual meeting of the members of this cooperative shall be held at a time and place as shall be determined by the Board of Directors following the close of each fiscal year of this cooperative. The notice of the meeting shall state the date, place and hour of the meeting. The Secretary shall give notice of annual members' meetings. The officers of this cooperative must submit reports to the members at the annual meeting covering the business of this cooperative for the previous fiscal year that show the condition of this cooperative at the close of the fiscal year. At the annual meeting, the members shall elect directors of this cooperative for the terms of office and in the manner prescribed by the Bylaws and transact other business as may properly come before the meeting.

Section 2.02. Special Member Meetings. Special meetings of the members of this cooperative shall be held at the place specified in the notice of the meeting. The notice shall state the time, place and purpose of the special members' meeting. A special meeting of the members may be called by a majority vote of the Board of Directors, or upon the written petition of at least 20% of the members submitted to the President of this cooperative. The President shall give notice of a special members' meeting. If a special members' meeting is called by the written petition of members, the notice of the special members' meeting shall be given within 10 days from and after the date of the presentation of the members' petition, and the special members' meeting must be held by 30 days after the date of the presentation of the members' petition. No business shall be considered at a special members' meeting except as covered in the notice of the meeting.

Section 2.03. Notice. Notice of all annual and special members' meetings, together with a statement of the purposes thereof, shall be given by:

- (1) publication in a legal newspaper published in the county of the principal place of business of this cooperative;
- (2) publication in a magazine, periodical, or other publication of this cooperative that is regularly published by or on behalf of this cooperative and circulated generally among members;
- (3) mailing the notice of the meeting together with the statement of the purposes thereof to each member personally at the member's last known post office address, which for a

member cooperative means notice mailed to the secretary of the member cooperative, at least ten (10) days prior to the meeting; or

- (4) otherwise providing notice in a manner prescribed by applicable law.

Failure of a member to receive notice of an annual or special members' meeting shall not invalidate an action that is taken by the members at a members' meeting. The Secretary shall execute a certificate containing a correct copy of the mailed or published notice; the date of mailing or publishing the notice; and a statement that the notices were mailed or published. The certificate shall be made a part of the record of the meeting.

Section 2.04. Quorum. At any annual or special members' meeting, a quorum necessary for the transaction of business shall be 10% of the first 100 members plus 5% of additional members. A quorum may never be more than fifty members nor less than five members. In determining a quorum at a meeting, on a question submitted to a vote by mail, members present in person or represented by mail vote shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members present in person or by mail ballot at the meeting. The registration shall be verified by the President and Secretary of this cooperative and shall be reported in the minutes of the meeting. A quorum may not be more than fifty members nor less than five members.

Section 2.05. Voting. Each member shall be entitled to only one vote, regardless of the number of Units held by the member. A member's vote at a members' meeting must be in person or may be by mail if a mail vote is authorized by the Board of Directors. Voting by proxy and cumulative voting is not permitted. Members that are not individual persons must designate a representative (and may also designate an alternate representative) authorized to cast their vote in the affairs of this cooperative. The designation must be in writing, must be properly authorized by the member, and must be provided to the Secretary of this cooperative at or before the member meeting. The written designation will remain effective until it is superseded by a more recent written designation meeting the same criteria. Except where a higher percentage is specified in the Bylaws or required by applicable law, members shall take action on all matters submitted to them by the affirmative vote of a majority of the votes cast at a duly held meeting, either in person or by mail vote if a mail ballot has been authorized by the Board of Directors.

Section 2.06. Mail Vote. A member who is absent from a members' meeting may vote by mail on the ballot prescribed hereunder on any motion, resolution, or amendment that the Board of Directors submits for vote by mail to the members. The mail vote must be cast on a ballot that is in the form prescribed by the Board of Directors, that contains the exact text of the proposed motion, resolution or amendment to be acted upon at the meeting, that contains spaces in which the member may indicate an affirmative or negative vote thereon, and that otherwise meets the requirements of Florida law. The ballot, when completed by an absent member and received by this cooperative in the manner prescribed by the Board of Directors, shall be counted as the vote of the member at the meeting.

Section 2.07. Order of Business. Insofar as practical, the order of business at the annual members' meeting and, where applicable, at all other meetings of the members shall be:

1. Registration of Members
2. Proof of Notice of Meeting
3. Reading of Minutes of Prior Meeting
4. Reports of Officers and Committees
5. Election of Directors
6. Unfinished Business
7. New Business
8. Adjournment

**BYLAW 3
DIRECTORS**

Section 3.01. Number, Qualifications and Terms of Office. The business and affairs of this cooperative shall be governed by the Board of Directors. The number of directors shall be fifteen. All directors must be a member of this cooperative or an elected or appointed representative of a non-individual member of this cooperative. 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 three, consecutive, full three-year terms. In order to preserve continuity of governance and the harmonious transition of the first Board of Directors to the elected Board of Directors, the first term of the incorporating directors (or such director appointed by the incorporating directors to fill a vacancy) shall be staggered such that one-third of the incorporating or appointed directors (or as nearly as possible) are elected at the annual members' meeting following the date on which the Board of Directors determines that the initial membership in this cooperative has been established and at each annual meeting thereafter. The Board of Directors shall adopt a procedure to achieve the desired staggered effect prescribed by the Bylaws.

Section 3.02. Annual Meeting. Within 30 days after each annual members' meeting, the Board of Directors shall meet for the purpose of electing officers of this cooperative and for the transaction of such other business as shall come before the meeting. The annual meeting of the Board of Directors shall be held at such time and place as may be fixed by resolution adopted by the Board of Directors.

Section 3.03. Regular Meeting. Regular meetings of the Board of Directors shall be held from time to time at a time and place as may be fixed by resolution adopted by the Board of Directors.

Section 3.04. Special Meetings. Special meetings of the Board of Directors may be called by the President, the Secretary or by any three of the directors and shall be held from time to time at a time and place as may be designated in the notice of the meeting.

Section 3.05. Notice of Meetings. Notice of each annual, regular or special meeting of the Board of Directors shall be given by the President or Secretary who shall give at least five days prior notice of the meeting to each director by mail, telephone, telephonic facsimile transmission, telegram, electronic mail or in person unless, a shorter time period is otherwise agreed to. Notice shall be deemed given upon mailing, if notice is given by mail.

Section 3.06. Waiver of Notice. Notice of any meeting of the Board of Directors may be waived either before, at or after the meeting, in writing signed by each director. A director, by attendance at any meeting of the Board of Directors, shall be deemed to have waived notice of such meeting, except when a director attends the meeting and objects to the transaction of business because the meeting was not lawfully convened.

Section 3.07. Quorum; Board Action. A majority of the members of Board of Directors shall constitute a quorum for the transaction of business except that, when a vacancy or vacancies exist, a majority of the remaining directors shall constitute a quorum. The Board of Directors shall take action by the affirmative vote of a majority of the directors present at a duly held meeting.

Section 3.08. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken by written action signed by all of the directors. The written action is effective when signed by all of the directors, unless a different effective time is provided in the written action.

Section 3.09. Electronic Communications. Any meeting of the Board of Directors may be conducted by telephonic or other electronic means of communication through which the directors may simultaneously hear one another.

Section 3.10. Vacancies. If a director's position is vacant, or if a vacancy is created by an amendment to the Articles or Bylaws which increases the number of directors, the Board of Directors may appoint a member of this cooperative to fill the vacancy until the next annual or special members' meeting. At the next annual or special members' meeting, the members shall elect a director to fill the unexpired term of the vacant director's position.

Section 3.11. Removal. Members may remove a director at a members' meeting for cause related to the duties of the position of the director and fill the vacancy caused by the removal in accordance with Section 618.14 of Fla. Stat., Chapter 618.

Section 3.12. Compensation. Directors who are not salaried officers of this cooperative shall receive such fixed sum per meeting attended or such fixed annual sum as shall be determined, from time to time, by resolution of the Board of Directors. All directors shall receive their expenses, if any, of attendance at meetings of the Board of Directors or any committee of the Board of Directors. Nothing in these Bylaws shall be construed to preclude any director from serving this cooperative in any other capacity and receiving proper compensation for the service.

BYLAW 4 DUTIES OF DIRECTORS

Section 4.01. General Powers. The Board of Directors shall govern the business and affairs of this cooperative and shall exercise all of the powers of this cooperative, except those powers that are conferred upon or reserved to the members by law, the Articles of Incorporation, or these Bylaws. The Board of Directors shall adopt such policies, rules, and regulations and shall take such actions as it may deem advisable, provided that the Board of Directors does not act in a manner inconsistent with law, the Articles of Incorporation, or these Bylaws.

Section 4.02. Committees. By resolution, the Board of Directors may designate three or more directors, one of whom shall be the President of this cooperative, to constitute an Executive Committee. The Executive Committee shall have and exercise only such authority of the Board of Directors in the management of this cooperative to the extent provided in the resolution. The Board of Directors may establish such other committees from time to time as it deems advisable, having such authority as provided by the Board of Directors. Committees are subject at all times to the direction and control of the Board of Directors.

Section 4.03. Employment of CEO. Following the date established by the Board of Directors, the Board of Directors may select, employ, and fix the compensation of the Chief Executive Officer ("CEO") of this cooperative, who shall not be a member of the Board of Directors. The CEO shall have responsibility for all administrative and operational aspects of this Cooperative, and shall perform any other duties that may be assigned by the Board of Directors. The Board of Directors may terminate the employment of the CEO with or without cause at any time, subject to the terms of any written employment contract, if any, between this cooperative and the CEO.

Section 4.04. Contracting Administrative Functions. The Board of Directors may contract with other persons or entities for any administrative functions of this cooperative.

Section 4.05. Bonds and Insurance. The Board of Directors may require all officers, agents, and employees charged by this cooperative with responsibility for the custody of any of its funds or property to give bonds. Bonds shall be furnished by a responsible bonding company and approved by the Board of Directors, and the cost shall be paid by this cooperative. The Board of Directors shall provide for insurance of the property of this cooperative and its affiliates, or property which may be in the possession of this cooperative or its affiliates and not otherwise adequately insured by the owner of the property, unless such insurance is otherwise provided for by an affiliate. In addition, the Board of Directors shall provide for insurance covering liability of this cooperative or its affiliates to all employees and the public, unless such insurance is otherwise provided for by an affiliate.

Section 4.06. Accounting System. The Board of Directors shall install and maintain an adequate system of accounts and records. At least once each year, the financial records of this cooperative shall be audited, and a report of the audit shall be made at the annual meeting of the members.

Section 4.07. Financial Matters. The Board of Directors shall have the power to select one or more banks or other financial institutions to act as depositories of the funds of this cooperative, and to determine the person or persons who shall have authority to sign checks and other instruments.

BYLAW 5 OFFICERS

Section 5.01. Officers. The officers of this cooperative shall be a President, a Vice President, a Secretary and a Treasurer, who shall be elected in the manner as provided in Section 5.07 of these Bylaws. The offices of the Secretary and Treasurer may be combined and when so

combined shall be termed "Secretary-Treasurer." Except for the Secretary-Treasurer, no offices may be held concurrently by the same person. The President and Vice President must be directors and members of this cooperative. The Board of Directors may elect other officers from time to time as it deems advisable or as required by these Bylaws, and in such event shall establish appropriate duties and responsibilities for any such other officers. The Treasurer, Secretary and any such additional officers need not be directors or members.

Section 5.02. President. The President shall see that all orders and resolutions of the Board of Directors are carried into effect and shall preside at all meetings of the members and directors. The President shall be the official representative of this cooperative to all outside associations or organizations of which this cooperative is a member, unless another person is appointed by the President or other action is taken by the Board of Directors. The President shall sign and deliver in the name of this cooperative any deeds, mortgages, bonds, contracts and other instruments pertaining to the business of this cooperative, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Articles or the Bylaws or the Board to some other officer or agent of this cooperative. This broad signing authority shall not be construed so as to preclude the Board of Directors from authorizing any other officer or agent of this cooperative to sign any deeds, mortgages, bonds, contracts and other instruments pertaining to the business of this cooperative on behalf of this cooperative. The President shall have such other duties as may, from time to time, be assigned by the Board of Directors.

Section 5.03. Vice President. The Vice-President shall have powers and perform duties as may be specified in the Bylaws or prescribed by the Board of Directors or by the President. In the event of the absence or disability of the President, the Vice-President shall perform the duties and exercise the powers of the President.

Section 5.04. Secretary. The Secretary shall attend all meetings of the members and Board of Directors; record all votes at and keep minutes of all the meetings; and record all proceedings of the meetings in the minute book of this cooperative. The Secretary shall give proper notice of meetings of the members and of the Board of Directors. The Secretary shall perform such other duties as may, from time to time, be prescribed by the Board of Directors or by the President.

Section 5.05. Treasurer. The Treasurer shall be the custodian of all funds, securities and properties of this cooperative and shall perform such other duties with respect to the finances of this cooperative as may be prescribed by the Board of Directors or by the President.

Section 5.06. Compensation. The officers of this cooperative shall receive compensation for their services as may be determined, from time to time, by resolution of the Board of Directors. No officer who is a director may take part in the vote on his or her salary for services rendered to the cooperative.

Section 5.07. Election of Officers. At its annual meeting, the Board of Directors shall elect from its members a President and one or more Vice-Presidents. Election for persons to fill any other offices established by these Bylaws or by the Board of Directors pursuant to Section 5.01 of these Bylaws shall be held at the annual meeting of the Board of Directors or at any other

meeting of the Board of Directors, provided that notice of such election has been given in the notice of such meeting if other than the annual meeting. The officers shall hold their offices until their successors have been elected and have qualified, subject to any removal provisions of these Bylaws.

Section 5.08. Removal of Officers. In accordance with Section 618.14 of Fla. Stat., Chapter 618, the members may remove an officer at a members' meeting and fill the vacancy caused by the removal. In addition, any officer may be removed by the Board of Directors whenever in its judgment the best interests of the cooperative will be served. Any vacancy among the officers caused by such removal shall be filled by the Board of Directors. No election or appointment to an office of this cooperative shall itself create any contract rights.

BYLAW 6

INDEMNIFICATION AND INSURANCE

Section 6.01. Indemnification. This cooperative shall indemnify each person who is or was a director, officer, manager, employee or agent of this cooperative, and any person 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 expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred to the extent to which such directors, officers, managers, employees or agents of this cooperative may be indemnified under the law of Florida.

Section 6.02. Insurance. 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 against liability asserted against and incurred by the person in the person's capacity as a director, officer, manager, employee or agent, or arising from the person's status as a director, officer, manager, employee, or agent of the cooperative.

BYLAW 7

OPERATIONS ON A COOPERATIVE BASIS

Section 7.01. Cooperative Operation. This cooperative shall be operated upon the cooperative basis in carrying out its business within the scope of the powers and purposes defined in the Articles of Incorporation. Accordingly, the net income of this cooperative in excess of amounts credited by the Board of Directors to capital reserves and amounts of dividends, if any, paid with respect to equity capital shall be accounted for and distributed annually on the basis of allocation units (as authorized by the Board of Directors) as provided in this bylaw. In determining the net income or net loss of this cooperative or its allocation units, there shall be taken into account this cooperative's share of the net income or net loss of any unincorporated entity (including without limitation, limited liability companies and partnerships, whether general or limited) in which it owns an equity interest, patronage dividends distributed by other cooperatives of which this cooperative is a patron and, to the extent prospectively determined by the Board of Directors, its share of the undistributed net income or net loss of any corporation in which this cooperative owns an equity interest.

Each transaction between this cooperative and each member shall be subject to and shall include as a part of its terms each provision of the Articles of Incorporation and Bylaws of this cooperative, whether or not the Articles of Incorporation or the Bylaws are expressly referred to in the transaction or the transactions documentation. Except in the case of emergency or sideline purchases, each member or nonmember for whom this cooperative markets or procures goods or services shall be entitled to the net income arising out of said transaction as determined on a patronage basis.

Section 7.02. Patrons; Patronage Business; Nonpatronage Business. As used in this bylaw, the following definitions shall apply:

- (1) The term "patron" shall refer to any member or nonmember with respect to business conducted with this cooperative on a patronage basis in accordance with Section 7.01.
- (2) The term "patronage business" shall refer to business done by this cooperative with or for patrons.
- (3) The term "nonpatronage business" shall refer to business done by this cooperative that does not constitute "patronage business."

Section 7.03. Establishment of Allocation Units. Allocation units may be established by the Board of Directors on a reasonable and equitable basis and they may be functional, divisional, departmental, geographic, or otherwise. Until different allocation units are established by the Board of Directors, the entire business of this cooperative shall be considered one and the only allocation unit and allocated to members on the basis of patronage. The Board of Directors shall adopt reasonable and equitable accounting procedures as will, in the Board's judgment, equitably allocate among the allocation units and patronage units this cooperative's income, gains, expenses and losses and, to the extent provided in Section 7.01, patronage dividends received by this cooperative and its share of income, gain, loss and deduction of other entities in which this cooperative owns an interest.

Section 7.04. Determination of the Patronage Income or Loss of an Allocation Unit. The net income from patronage business for each fiscal year shall be the sum of (1) the gross revenues directly attributable to goods or services marketed or procured for patrons of the allocation unit, plus (2) an equitably apportioned share of other items of income or gain attributable to this cooperative's patronage business, less (3) all expenses and costs of goods or services directly attributable to goods or services marketed or procured for patrons of the allocation unit, less (4) an equitably apportioned share of all other expenses or losses attributable to this cooperative's patronage business, dividends on equity capital and distributable net income from patronage business that is credited to the Capital Reserve pursuant to Section 7.08. The foregoing amounts shall be determined in accordance with the accounting treatment used by the cooperative in calculating its taxable income for federal income tax purposes; provided, however, that the Board of Directors may prospectively adopt a reasonable alternative method. Expenses and cost of goods or services shall include without limitation such amounts of depreciation, cost depletion and amortization as may be appropriate, amounts incurred for the promotion and encouragement of cooperative organization, and taxes other than federal income

taxes. Such net income or net loss shall be subject to adjustment as provided in Sections 7.06 and 7.09(2) relating to losses.

Section 7.05. Allocation of Patronage Income Within Allocation Units. The net income of an allocation unit from patronage business for each fiscal year, less any amounts that are otherwise allocated in dissolution pursuant to Bylaw 9, shall be allocated among the patrons of the allocation unit according to patronage units. The Board of Directors may adjust the allocations to patronage units within any allocation unit on the basis of quantity or value determined by the Board of Directors.

Section 7.06. Treatment of Patronage Losses of an Allocation Unit.

(1) Methods of Handling Patronage Losses. If an allocation unit incurs a net loss in any fiscal year from patronage business, this cooperative may take one or more of the following actions:

- (i) Offset all or part of the net loss against the net income of other allocation units for the fiscal year to the extent allowed by law;
- (ii) Establish accounts payable by patrons of the allocation unit that incurs the net loss that may be satisfied out of any future amounts that may become payable by this cooperative to the patron;
- (iii) Carryall or part of the loss forward to be charged against future net income of the allocation unit that incurs the loss;
- (iv) Offset all or part of the net loss against the Capital Reserve; and
- (v) Cancel outstanding Patrons' Equities.

(2) Allocation of Net Loss Among Patrons of Loss Unit. Any cancellation of equities and/or establishment of accounts payable pursuant to this Section 7.06 shall be made among the patrons of an allocation unit in a manner consistent with the allocation of net income of the allocation unit.

(3) Restoration of Net Loss out of Future Net Income. The future net income of an allocation unit that incurs a net loss may be reduced by part or all of the net loss that was offset against the Capital Reserve, Patrons' Equities of patrons of another allocation unit or against the net income of another allocation unit and may be used to restore the Capital Reserve, restore the Patrons' Equities or to increase the future net income of other allocation units; provided that reasonable notice of the intent to do so is given to the patrons of the loss unit.

(4) Board Discretion. The provisions of this Section 7.06 shall be implemented by the Board of Directors, having due consideration for all of the circumstances which caused the net loss, in a manner that it determines is both equitable and in the overall best interest of this cooperative.

(5) No Assessments against Members or Nonmember Patrons. There is no right of assessment against members or nonmembers patrons for the purpose of restoring impairments to capital caused by net losses.

Section 7.07. Distribution of Net Income.

(1) Patronage Refunds. The net income allocated to a patron pursuant to Sections 7.05 and 7.09 shall be distributed annually or more often to the patron as a patronage refund; provided, however, that no distribution need be made where the amount otherwise to be distributed to a patron is less than a de minimis amount that may be established from time to time by the Board of Directors.

(2) Form of Patronage Refunds. Patronage refunds shall be distributed in cash, Units, allocated patronage equities, revolving fund certificates, securities of this cooperative, other securities, or any combination thereof designated by the Board of Directors (all except cash and other securities referred to collectively in these Bylaws as "Patrons' Equities"), including, without limitation, the following instruments:

(i) Equity Certificates in one or more than one class or series, in the designations or denominations, and with the relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, and bearing no interest, dividend or other annual payment.

(ii) Debt Certificates in one or more than one class or series, in the designations or denominations, and with the relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, and bearing the maturity and rate of interest, if any, as may be fixed by the Board of Directors. Debt certificates shall be callable for payment in cash or other assets at times as may be determined by the Board of Directors.

(iii) Non-Patronage Earnings Certificates in one or more than one class or series, in the designations or denominations, and with relative rights, preferences, privileges and limitations as may be fixed by the Board of Directors, with no maturity date, and bearing no interest, dividend or other annual payment. Non-Patronage Earnings Certificates may be distributed only to members and to nonmember patrons as part of the allocation and distribution of nonpatronage income. The certificates shall be callable for payment in cash or other assets at the times as may be determined by the Board of Directors.

(3) Written Notice of Allocation. The noncash portion of a patronage refund distribution that is attributable to patronage business shall constitute a written notice of allocation as defined in 26 U.S.C. Section 1388 which shall be designated by the Board of Directors as a qualified written notice of allocation, as a nonqualified written notice of allocation or any combination thereof as provided in that section.

(4) No Voting Rights. Patrons' Equities shall not entitle the holders to any voting or other rights to participate in the affairs of this cooperative (which rights are reserved solely for the members of this cooperative).

(5) Transfer Restriction. Patrons' Equities may only be transferred with the consent and approval of the Board of Directors, and by an instrument of transfer as may be required or approved by the Board of Directors.

(6) Board Authority to Allow Conversion. The Board of Directors of this cooperative also shall have the authority to allow conversion of Patrons' Equities into other debt and/or equity instruments of this cooperative on the terms as shall be established by the Board of Directors.

(7) Revolverment Discretionary. No person or entity shall have any right whatsoever to require the retirement or redemption of any Patrons' Equities except in accordance with their term, or of any allocated capital reserve. The redemption or retirement is solely within the discretion and on the terms as described from time to time by the Board of Directors of this cooperative.

Section 7.08. Capital Reserve. The Board of Directors shall cause to be created a Capital Reserve and, except as otherwise provided in Section 7.09, shall annually add to the Capital Reserve the Sum of the following amounts:

- (1) the annual net income of this cooperative attributable to non patronage business;
- (2) annual net income from patrons who are unidentified or to whom the amount otherwise to be distributed is less than the de minimis amount provided in Section 7.07(1); and
- (3) an amount not to exceed 10% of the distributable net income from patronage business, provided that the discretion to credit patronage income to a Capital Reserve may be exercised only with respect to the net income of any period following the adoption of a Board of Directors resolution that irrevocably provides for the discretion to add such amount (up to 10%) with respect to the period (the Board shall have no discretion to credit such amount to the Capital Reserve if such resolution is not adopted).

Federal income taxes shall be charged to the Capital Reserve. The reserves shall be credited to the allocation units and the patrons of the allocation units in the same manner as patronage income is allocated within the allocation unit.

Section 7.09. Allocation and Distribution of Nonpatronage Income and Loss.

(1) Nonpatronage Income. The Board of Directors shall have the discretion to allocate to allocation units amounts that are otherwise to be added to the Capital Reserve pursuant to Section 7.08(1). The allocation may be made on the basis of any reasonable and equitable method. Amounts so allocated to allocation units shall be further allocated among the patrons of the allocation units on a patronage basis using a method that the Board of Directors determines to be reasonable and equitable. Amounts so allocated shall be distributed to those patrons in the form of cash, property, Non-Patronage Earnings Certificates, or any combination thereof designated by the Board of Directors.

(2) Nonpatronage Loss. If the cooperative incurs a net loss on its nonpatronage business or if a net loss is incurred with respect to the nonpatronage business of an allocation