

Bylaws of Mad River Glen Cooperative

(Adopted April 1995; Amended April 1996, August 1997, April 7, 2001, and April 7, 2018)

Article I

Organization

Section 1.1 - **Name.** The name of the corporation is Mad River Glen Cooperative (hereinafter "the Cooperative").

Section 1.2 - **Location.** The Cooperative shall be located on Stark Mountain in Fayston, Vermont. Its mailing address at such location is Route 17, Waitsfield, VT 05673.

Section 1.3 - **Purpose.** The purpose for which the Cooperative was formed is to preserve and protect the forests and mountain ecosystem of Stark Mountain in order to provide skiing and other recreational access and to maintain the unique and historic character of the area for present and future generations. The Cooperative shall be operated exclusively on a cooperative and nonprofit basis for the primary and mutual benefit of its owners and other patrons.

Section 1.4 - **Nondiscrimination.** The Cooperative shall not arbitrarily or unreasonably discriminate on the basis of race, national origin, religion, gender, sexual orientation, gender identification, age, handicap or other arbitrary basis. *[Amended April 6, 1996.]*

Article II

Ownership

Section 2.1 - **Eligibility.** Ownership in the Cooperative shall be voluntary and open to any individual who: (i) is in accord with, and desires to further, the purpose of the Cooperative; (ii) will purchase, or subscribe for, not less than one nor more than four shares of common stock; and (iii) will equally with all other owners in good standing, during each fiscal year of the Cooperative provide advance service revenues limited to a maximum annual commitment as follows: In 1995, the maximum commitment shall be \$200.00 for each owner; and in each year after 1995, the maximum annual commitment shall be increased in proportion to the increase, if any, in the consumer price index during the preceding calendar year. For purposes hereof, the consumer price index shall be the U.S. Consumer Price Index (All Urban Consumer Items, [CPI-U]), published by the United States Department of Labor, Bureau of Labor Statistics or the successor to such index or the most similar or comparable index subsequently compiled and so designated by the Cooperative's Board of Trustees.

Section 2.2 - **Admission.** Eligible applicants shall, subject to availability of ownership interests under Section 9.1 hereof, be admitted to ownership upon submitting required information on an application form provided by the Cooperative. In case of doubtful eligibility, admission shall be subject to approval by the Board of Trustees or its designee at any time within six months after application. Before being admitted to ownership, each applicant shall be provided with a copy of these Bylaws and a written explanation of the patronage rebate consent provision in Section 10.5 hereof. By applying for and obtaining ownership, each applicant shall thereby agree to be bound by the Articles of Incorporation and Bylaws of the Cooperative, including any amendments subsequently adopted.

Section 2.3 - **Rights.** In addition to other rights set forth in these Bylaws, each owner shall have preferred access to the services provided by the Cooperative and other entitlements as determined by the Board of Trustees.

Section 2.4 - **Obligations.** Owners shall remain reasonably current in payments of their share subscription and service revenue requirements. An owner who becomes delinquent in meeting such obligations to an extent determined by the Board shall, no sooner than thirty days after delivery of written notification, be placed into inactive status. His or her voting and other rights shall then be suspended, and the Cooperative may issue to another owner the ownership interest held by such person. An owner in inactive status may attain good standing only upon full payment of all arrearages, with interest, and only when and as an ownership interest shall become available. Owners shall notify the Cooperative of any changes to their name or address. References herein to the rights and entitlements of owners shall be understood to refer only to owners in good standing.

Section 2.5 - **Reserved powers.** No decision that would make fundamental changes in policy or operations, authorize capital expenditures exceeding \$300,000 (increased to reflect the accumulated effects of inflation) or increase the annual operating budget (not including capital expenditures) over that of the previous year by more than ten percent plus the prevailing rate of

inflation shall be made or implemented until such matter is first approved by a vote of owners. Inflation for such purposes shall be measured in accordance with the Consumer Price Index for All Urban Consumers for all items (CPI-U) or the successor to such index or the most similar or comparable index subsequently compiled. In addition, as more fully described in the Articles of Incorporation of the Cooperative, certain actions that would upgrade ski lifts by materially increasing lift capacity, or permit snow making or other improvements unrelated to skiing operations above 2,300 feet in altitude or change the purpose of the Cooperative can only be made or implemented by being first approved by a two-thirds vote of owners, provided that owners participating in such vote constitute a majority of all owners entitled to vote.

Section 2.6 - Access to information. Owners shall be provided reasonably adequate and timely information as to the organizational and financial affairs of the Cooperative. Owners shall be entitled to receive copies of minutes of all meetings of the Board except minutes of closed sessions pursuant to Section 5.7 hereof. Owners shall have access to the books and records of the Cooperative during usual business hours for any proper purpose related to their interests as owners.

Section 2.7 - Termination. Ownership may be terminated voluntarily by a owner at any time upon written notice to the Cooperative and tender of all outstanding stock certificates. Ownership may be terminated for sufficient cause by the Board, provided that such person is accorded a fair hearing, including adequate notice of the charges and the opportunity to speak and present evidence. Upon termination of ownership for any reason, all rights and interests in the Cooperative shall cease except for rights to return of invested capital pursuant to Articles IX and X hereof.

Article III

Meetings of Owners

Section 3.1 - Annual meeting. An annual meeting of owners shall be held in March of each year or at such other time as may be determined by the Board. The purposes of the meeting shall be to receive reports on the operations and finances of the Cooperative, to elect trustees and to conduct such other business as may properly come before the meeting.

Section 3.2 - Special meetings. Special meetings of owners may be called by the Board, by any three trustees or by the President. A special meeting shall be called within sixty days after receipt of petitions signed by at least ten percent of owners, provided such petitions specify the business to be conducted at the meeting. Such petitions may include a written statement for inclusion with the notice of the meeting.

Section 3.3 - Place of meetings. The time and place of all meetings of owners shall be determined by the Board or, if the Board fails to do so, by the person or persons authorized to call the meeting. Meetings need not be held at the principal office of the Cooperative.

Section 3.4 - Notice. Notice of the time, place and purpose of any meeting of owners shall be delivered electronically, first class mail, or a combination of each to all owners not less than thirty days nor more than sixty days before the date of the meeting. Decisions on issues not included in the notice of a meeting shall be of an advisory nature only.

Section 3.5 - Quorum and voting. The presence in person or by absentee ballot of five percent of owners shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of owners unless a higher number or percentage is required by law or by these Bylaws. Each owner shall have one vote and no more on each matter submitted to a vote of owners. Proxy voting shall not be permitted. Issues shall be decided by majority of votes cast unless a higher number or percentage is required by law or by these Bylaws. Meetings of owners shall be conducted in accordance with Robert's Rules of Order, Newly Revised.

Section 3.6 - Record date. Owners of record at the close of business on the sixtieth day preceding the date of a meeting shall be entitled to vote with respect to a meeting. The Board may set another record date for a particular meeting, provided that such date is not earlier than the date of mailing of notices of such meeting.

Section 3.7 - Absentee ballots. Voting by absentee ballots shall be permitted in connection with all meetings of owners. Absentee ballots may be used in conjunction with or in lieu of a meeting. If used in lieu of a meeting, all references herein to meetings of owners shall be read as including a meeting conducted solely by absentee balloting, and such balloting shall comply with all relevant requirements of law and of these Bylaws. Use of absentee ballots shall be subject to the following conditions.

(a) Owners shall be advised of the full text of any issue to be decided and the notice shall include any reasonable and proper statements related to the issue that are approved by the Board or submitted by petition of at least twenty owners. The Cooperative

shall provide all candidates a reasonable and equal opportunity to communicate to owners their qualifications and reasons for candidacy. Notices shall be accompanied by ballots and by envelopes addressed to the Cooperative.

(b) Ballots must be returned to the Cooperative in sealed envelopes either in person or by mail. Sealed envelope must be received by the Cooperative no later than adjournment of the meeting.

(c) The Board may allow electronic ballots or a combination of electronic and paper ballots under a process that conforms with Section 3.8.

(d) The results of the balloting shall be reported to owners at the meeting, if any, and by electronic notice provided to all owners.

Section 3.8 - Integrity of voting process. The Board shall take reasonable precautions to ensure the integrity of voting and balloting processes. At the request of any owner or trustee, the Board shall appoint one or more election inspectors. Election inspectors shall be so constituted and shall perform such duties as may be determined by the Board.

Section 3.9 - Issues submitted by owners. Notices of a meeting of owners shall include any issues and related statements submitted by petition of ten percent of owners. Petitions must include the legibly printed name and address of each owner signing the petition. Petitions must be received at the office of the Cooperative at least ninety days before the date of the meeting.

Article IV

Board of Trustees

Section 4.1 - Powers and duties. Except as to matters reserved to owners by law or by these Bylaws, the business and affairs of the Cooperative shall be directed and controlled by a Board of Trustees (sometimes referred to herein as "the Board"). The powers and duties of the Board shall include, but not be limited to, setting policy, engaging management and monitoring and evaluating its performance, overseeing the operations of the Cooperative, establishing budgets and fiscal controls, maintaining communication with owners and ensuring that the purpose of the Cooperative is properly carried out.

Section 4.2 - Qualifications. The Board shall consist of nine trustees. Six of such trustees shall be Vermont residents and three of such trustees shall be nonresidents of Vermont, except only when there are insufficient qualified candidates to meet such residency requirements. To be qualified as a trustee, a person shall be an owner and shall not have an overriding conflict of interest. The Board shall determine whether such qualifications are met.

Section 4.3 - Nomination. Candidates for trustees shall be nominated by the Board, by a nominating committee or by petitions signed by at least twenty owners. The Board shall endeavor to assure that the number of candidates sufficiently exceed the number of positions to be filled so as to present a meaningful choice to owners.

Section 4.4 - Election and term. Trustees shall be elected at the annual meeting. The three persons who receive the greatest number of votes shall be considered to have been elected. Terms of office of trustees shall begin upon their election, and trustees shall hold office until their successors are elected and qualified or until their offices are sooner terminated in accordance with these Bylaws. The terms of trustees shall be staggered so that one-third shall expire in each year. At the first election subject to these Bylaws, trustees shall be elected for specific one, two or three year terms in order to accomplish this result. Trustees may serve no more than two consecutive full three-year terms.

Section 4.5 - Compensation. Trustees may receive such compensation for their services as trustees as may be approved at a meeting of owners. Trustees shall be reimbursed for reasonable expenses incurred in connection with business of the Cooperative.

Section 4.6 - Standards of conduct. Trustees are responsible at all times for discharging their duties in good faith, in a manner that they reasonably believe to be in the best interests of the Cooperative and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

Section 4.7 - Conflicts of interest. Trustees shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the Board. Trustees having such an interest may, if permitted by the Board, participate in the discussion but not in the decision of the matter.

Section 4.8 - **Contracts for profit.** During his or her term of office, a trustee shall not be a party to a contract for profit with the Cooperative differing in any way from the business relations accorded each owner or others or upon terms differing from those generally current among owners.

Section 4.9 - **Termination.** The term of office of a trustee may be terminated prior to its expiration in any of the following ways: (I) voluntarily by a trustee upon notice to the Cooperative; (ii) automatically upon termination of ownership in the Cooperative; (iii) involuntarily by action at a meeting of owners whenever the best interests of the Cooperative would thereby be served; and (iv) for sufficient cause by the Board, provided that the accused trustee is accorded a fair hearing, including adequate notice of the charges and the opportunity to speak and present evidence.

Section 4.10 - **Vacancies.** Any vacancy among trustees occurring between annual meetings shall be filled by the Board for the balance of the unexpired term.

Article V

Meetings of the Board

Section 5.1 - **Convening.** Meetings of the Board shall be held at least four times in the interim between annual meetings. Meetings may be called by the Board or by the President and shall be called upon request of any three trustees.

Section 5.2 - **Notice.** Meetings called by the Board shall require no further notice to trustees than the decision of the Board, it being the responsibility of absent trustees to make inquiry as to meetings that may be scheduled in their absence. All other meetings shall require written, electronic, or oral notice to all trustees. Written or electronic notice shall be delivered at least seven days before the date of the meeting and oral notices shall be given in person or by telephone at least four days before the date of the meeting. In an emergency situation, as determined by the President, actual notice to all trustees of twenty-four hours shall be sufficient.

Section 5.3 - **Quorum and procedures.** The presence in person at the opening of the meeting of a majority of trustees shall be necessary and sufficient to constitute a quorum for the transaction of business at any meeting of the Board. Unless a higher percentage is required by law or by these Bylaws, all issues shall be decided by majority of votes cast. Meetings of the Board shall be conducted in accordance with Robert's Rules of Order, Newly Revised.

Section 5.4 - **Telephone or electronic conferences.** Meetings of the Board may be conducted by means of a telephone conference or other communications equipment whereby all persons participating can hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting. Telephone or electronic conferences shall not be used for the purpose of excluding owners.

Section 5.5 - **Action without a meeting.** Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if a written consent to the action is signed by all trustees and filed with the minutes of meetings. Action without a meeting shall not be used for the purpose of excluding owners.

Section 5.6 - **Referendum.** A decision of, or issue before, the Board shall be referred to a meeting of owners for ratification or decision if, in the opinion of any three trustees, such matter is of vital importance to the Cooperative. Such meeting of owners shall be called as soon as practicable. Any such decision of the Board shall stand until modified by owners. Rejection or modification by owners shall not impair rights previously acquired by outside parties.

Section 5.7 - **Open meetings.** Meetings of the Board and of all committees shall be open to all owners. Sessions of a meeting may be closed only as to issues of a particularly sensitive nature. Such closed session shall be for purposes of discussion only and no decisions shall be made in closed session. Owners may otherwise be excluded only for disruptive conduct or other sufficient cause.

Article VI

Officers

Section 6.1 - **Designation.** The principal officers of the Cooperative shall consist of President, Vice President, Secretary and Treasurer. The Board may appoint other officers or assistant officers.

Section 6.2 - **Qualifications, election, term and removal.** Officers shall be elected by the Board. The principal officers shall be trustees. Officers shall serve for terms of one year or until election of their successors. Officers may be removed by the Board at any time whenever the best interests of the Cooperative would thereby be served.

Section 6.3 - **Duties.** Officers shall sign or attest to formal documents on behalf of the Cooperative as authorized or directed by the Board, and shall have the following duties together with such additional duties as may be determined by the Board:

(a) The President shall preside over meetings of the Board and owners, coordinate the activities of the Board and present a report to the annual meeting on the organizational affairs of the Cooperative;

(b) The Vice President shall perform the duties of President in his or her absence and shall, as requested, assist the President in the performance of his or her duties;

(c) The Secretary shall oversee the issuance of required notices, the adequacy of ownership records and the keeping of minutes of Board and owner meetings; and

(d) The Treasurer shall oversee the maintenance of financial records, safeguarding the property of the Cooperative and the filing of required reports and returns and shall present a report to the annual meeting on the financial affairs of the Cooperative.

Article VII

Committees

Section 7.1 - **Executive Committee.** The Board may designate an Executive Committee to act on urgent business when it is impractical to assemble the whole Board, except that such committee may not take action affecting basic or long-range policies or the legal status of the Cooperative. The committee shall be composed exclusively of trustees, including the President, Treasurer and Secretary. The Committee may be convened by the President or by any two members of the committee upon electronic, oral, or other notice to all of its members and a quorum of at least three of its members. Any action of the Executive Committee shall be reported to the Board at its next following meeting. The functioning of the Executive Committee shall not operate to relieve the Board of its legal responsibilities in the oversight of the Cooperative.

Section 7.2 - **Other committees.** The Board may designate standing or special committees and appoint their members. Such committees shall advise the Board or exercise such authority as the Board shall designate. Such committees shall consist only of owners, at least one trustee, and shall be chaired or co-chaired by an owner(s) appointed by the Board.

Article VIII

Fiscal Matters

Section 8.1 - **Fiscal year.** The fiscal year of the Cooperative shall begin on the first day of October in each year and end on the last day of September of the succeeding year.

Section 8.2 - **Accountability.** Financial statements of the Cooperative for each fiscal year shall be audited or reviewed by an independent public accountant selected by the Board of Trustees. The engagement of such accountant shall include a management review and report to the Board concerning management performance, adherence to governing policy, adequacy of operating controls and procedures and such other matters as may be determined by the Board.

Section 8.3 - **Bonding.** All employees, officers and other agents who handle funds or securities of the Cooperative shall be covered by bonds of indemnity for faithful performance of duties in such amounts and on such terms as may be determined by the Board of Trustees. Premiums on all such bonds shall be paid by the Cooperative.

Section 8.4 - **Open bidding.** Whenever feasible, the letting of contracts shall be based upon open bidding. Contracts shall be let to the lowest evaluated bid.

Article IX

Capital Stock

Section 9.1 - **Authorization.** To evidence capital funds provided by owners, the Cooperative is authorized to issue up to three thousand shares of common stock, having a par value of \$1,500 per share. The Cooperative shall issue shares to no more than two thousand owners in good standing at any one time (such limitation being referred to herein as "ownership interests" or "available ownership interests"). Except for transfers permitted under Section 9.5 hereof, such available ownership interests shall be issued on a first-come-first-served basis.

Section 9.2 - **Issuance and terms.** Shares may be issued only to persons who are eligible for and admitted to ownership in the Cooperative. Shares shall not be issued in any joint form of ownership. No more than four such shares shall be issued to, or held by, any person. Shares shall be entitled to no dividend or other monetary return on investment.

Section 9.3 - **Payment for shares.** Shares shall be issued only upon full payment of their purchase or subscription price which shall not be less than par value. Promissory notes of owners may be accepted by the Cooperative as full or partial payment for shares. In such case, the Cooperative shall hold the shares as security for the payment of the note. Until such notes are paid in full, the corresponding shares, to the extent of unpaid balances, shall be carried on the books of the Cooperative and upon all financial statements made by the Cooperative as "capital stock issued for notes," and the notes shall be carried on such books and statements as "notes given for capital stock."

Section 9.4 - **Certificates.** Owners shall be entitled to receive certificates evidencing their holdings. Each certificate shall contain a prominent notation that its transferability is limited, that it may not be pledged or hypothecated and that voting rights pertain only to ownership in accordance with the Bylaws of the Cooperative. Certificates shall be signed by the President or Vice President and by the Secretary and shall be numbered and registered by the Cooperative. Any or all of the signatures on certificates may be facsimile. In case any officer who has signed or whose facsimile signature has been placed on the certificate shall have ceased to be such officer before the certificate is issued, it may be issued by the Cooperative with the same effect as if such person were an officer at the date of issue. The Cooperative may issue a replacement certificate for any certificate of stock alleged to have been lost, stolen or destroyed without requiring the giving of a bond or other security against related losses.

Section 9.5 - **Limited transferability.** Shares shall be transferable only to: (i) other members of the owner's immediate family; (ii) in the case of a person who owns a house on Stark Mountain, to the purchaser of such house; or (iii) in the case of a person who is a member of a ski club on Stark Mountain, to another bona fide member of such club. No such transfer shall be made without the prior written consent of the Cooperative, which consent shall not be unreasonably withheld. In no event shall transfer be made to a person who is determined by the Cooperative to be ineligible for ownership, nor may transfer proceeds exceed the carrying value of the shares on the books of the Cooperative. Shares may not otherwise be transferred, pledged or hypothecated. Any attempted transfer contrary to this section shall be wholly void and shall confer no rights on the intended transferee.

Section 9.6 - **Redemption.** Shares may be redeemed upon request of the holder following termination of ownership for any reason or under other extraordinary circumstances approved by the Board. Redemption shall be made only after replacement capital is obtained from another owner. Redemption proceeds shall be limited to the carrying value of the share on the books of the Cooperative or the Cooperative's net book value per share, whichever is lesser, less a reasonable processing fee, if any, as determined by the Board. Reapplication for ownership following redemption of shares shall be subject to purchase of a share of stock of the Cooperative. For all purposes of this Article of the Bylaws, the term "carrying value" shall mean the price paid to the Cooperative for a share at the time the share is first issued.

Section 9.7 - **Lien and offset.** The Cooperative shall have a first lien on all shares for amounts otherwise due and payable to the Cooperative by the owner. The Cooperative may, at any time after such amounts remain due and payable for thirty days, offset such amounts against accumulated payments for shares. Such offset may not be effected by the owner or by anyone acting in the right of the owner.

Article X

Patronage Rebates

Section 10.1 - **Allocations to owners.** In order to assure that it will operate on a nonprofit basis relative to its transactions with owners, the Cooperative shall allocate and distribute to its owners its adjusted net savings from business done with them in the manner set forth in this Article. Any allocations of such a nominal amount as not to justify the expenses of distribution may, as determined by the Board, be excluded from distribution provided that they are not then or later distributed to other owners.

Section 10.2 - **Adjusted net savings.** In determining amounts distributable to owners, the net savings of the Cooperative derived from the excess or deficit of revenues over costs and expenses shall first be determined in accordance with generally accepted accounting principles. Such net savings shall then be reduced by amounts not attributable to business done with owners, by other amounts which are not allowable under federal tax laws and by such reasonable reserves for necessary business purposes as may be determined by the Board. In determining and allocating such adjusted net savings, the Cooperative shall use a single allocation unit except to the extent that it shall, subsequent to the adoption of these Bylaws, engage in any new and distinct line of business.

Section 10.3 — **Basis of Allocation.** Adjusted net savings shall be allocated to each owner in the proportion which his or her patronage bears to the total of all owner patronage during the fiscal year. Patronage shall be understood to mean goods and services purchased from the Cooperative and shall be measured in terms of its dollar amount.

Section 10.4 - **Distribution and notice.** Patronage rebates shall be evidenced by written or electronic notices of allocation delivered to recipient owners within eight months and fifteen days following the close of the fiscal year. Written notices shall state the dollar amount of the allocation which constitutes a "patronage dividend" within the meaning of federal tax laws. Such written notices for each fiscal year may, as determined by the Board, be made either "qualified" or "nonqualified," within the meaning of federal tax laws. All qualified notices, except those subject to Section 10.8 hereof, shall be accompanied by checks in an amount determined by the Board which must be at least twenty percent of the total allocation.

Section 10.5 - **Consent of owners.** By obtaining or retaining ownership in the Cooperative, each owner shall thereby consent to take into account, in the manner and to the extent required by Section 1385 of the Internal Revenue Code, the stated dollar amount of any qualified written notice of allocation in the taxable year in which such notice is received.

Section 10.6 - **Retained amounts.** Patronage rebates not currently distributed by check shall be credited or charged to revolving capital accounts in the names of recipient owners. Retained patronage rebates shall accrue no dividend or interest, and shall not be transferable or assignable except with the express consent of the Cooperative. The Cooperative shall have a first lien on retained patronage rebates for amounts otherwise due and payable to the Cooperative by the owner. The Cooperative may, at any time after such amounts remain due and payable for thirty days, offset such amounts against retained patronage rebates to the extent such amounts may exceed accumulated payments for shares. Such offset may not be effected by the owner or by anyone acting in the right of the owner.

Section 10.7 - **Redemption.** Retained patronage rebates that are no longer needed for capital purposes of the Cooperative may be redeemed in such amounts and at such times as may be determined by the Board of Trustees. At that time they shall be redeemed only in the order of the oldest outstanding amounts and only on a ratable basis among such amounts for each fiscal year. Retained patronage rebates shall be redeemed at their carrying value on the books of the Cooperative or their net book value, whichever is lesser.

Section 10.8 - **Allocation of net loss.** In the event the Cooperative shall incur a net loss in any fiscal year, such loss may be charged against retained savings or other unallocated equity accounts. If the net loss exceeds such amounts, or in any event if the Board so determines, the amount of such loss may either be carried forward to offset adjusted net savings of subsequent fiscal years or allocated to owners in the same manner as for adjusted net savings except that such allocation shall not exceed the total of invested capital. Any such allocated net loss shall be charged first against retained patronage rebates of prior fiscal years and then against patronage rebate allocations of subsequent fiscal years. Allocated net losses which are not so offset may be charged against the carrying value of shares only upon termination of ownership. Allocated net losses shall not otherwise be assessed to or collected from owners.

Article XI

Indemnification

Section 11.1 - **Rights.** Subject to the conditions and limitations in this article, the Cooperative shall indemnify its current and former trustees and officers against all liabilities and expenses, including reasonable attorneys fees, to which they may become subject by reason of their positions with the Cooperative or their service in its behalf. Such indemnification shall include direct payment of liabilities and expenses, and shall apply whenever such person was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative. Payment of expenses in advance of a final disposition of the action or proceeding may be made only upon receipt by the Cooperative of a contractual undertaking by or on behalf of such person to repay such amounts unless he or she shall be determined to be entitled to indemnification under this Article.

Section 11.2 - **Limitations.** No indemnification shall be provided unless the person to be indemnified is successful on the merits in defense of the action or proceeding or unless, irrespective of the outcome of any related legal proceeding, such person is specifically determined to have acted in good faith and in the reasonable belief that his or her actions were in the best interests of the Cooperative and, in regard to criminal proceedings, to have had no reasonable cause to believe that his or her actions were unlawful. If such determinations are not made in a legal proceeding related to the claim, they may be made by a quorum of trustees who were not parties to the action or proceeding or by independent legal counsel selected by such quorum. If not made or able to be made by either, such determinations shall be made by independent legal counsel selected by owners. In any action or proceeding by or in the right of the Cooperative or in which such person is charged with receiving an improper personal benefit, indemnification shall be provided only as to reasonable expenses and only if the person is not adjudged liable to the Cooperative on such bases.

Section 11.3 - **Payments and insurance.** Indemnification payments and advances of expenses shall be made only in such increments and at such times as will not jeopardize the ability of the Cooperative to pay its other obligations as they become due. All such payments made shall be reported in writing to owners with or before the notice of the next meeting of owners. The Cooperative may purchase and maintain insurance on behalf of its trustees and officers against any liabilities and expenses related to their position with, or service on behalf of, the Cooperative irrespective of whether the Cooperative could have indemnified them under this Article against such liabilities and expenses.

Article XII

Mediation and Arbitration

Section 12.1 - **Applicability and effect.** The procedures in this Article shall apply to any grievance or dispute between the Cooperative and any owner or former owner concerning their respective rights and duties under these Bylaws or in connection with any ownership transaction that cannot be resolved through normal interaction. This Article shall not, however, apply to any dispute that involves the legal validity of any portion of these Bylaws or that raises constitutional or civil rights issues, such issues being subject to binding resolution only by judicial process. The restrictions imposed by this Article upon the ability of the parties to bring a lawsuit concerning a grievance or dispute are knowingly and freely accepted in the interests of obtaining a speedy, equitable and cost-effective means of resolving disputes. The parties shall equally share any expenses of the mediation and arbitration processes.

Section 12.2 - **Mediation.** Either party may notify the other by written notice of the initiation of the process of non-binding mediation whereby an impartial mediator may facilitate negotiations between the parties and assist them in developing a mutually acceptable settlement of their dispute. The mediator shall be a person who is agreed upon by both parties. Efforts to achieve a resolution through mediation shall end as soon as either party announces that, despite good faith effort, the parties are unable to resolve their dispute. Neither party may resort to the arbitration procedures in this Article without first utilizing these mediation procedures and pursuing resolution of the dispute in good faith.

Section 12.3 - **Arbitration.** Upon failure of the mediation procedures set forth above to resolve the dispute, the parties may agree upon a disinterested arbitrator or either party may notify the other by written notice of its selection of an arbitrator. Within fifteen days of receipt of such notice, the other party may by written notice to the initiator of the arbitration process select a second arbitrator. These two arbitrators shall select a third arbitrator. If the other party fails to timely name an arbitrator in response to the receiving of the notice from the initiator, the arbitrator selected by the initiator shall be the sole arbitrator.

Section 12.4 - **Arbitration procedures.** The arbitrator or arbitrators shall hold a hearing as soon as reasonably possible after the initial notice by the initiator of the arbitration process. At the hearing the parties shall each have an opportunity to present evidence and question witnesses in the presence of each other. As soon as reasonably possible after the hearing, the arbitrator or arbitration panel shall make a written report to the parties of its findings and decision and the reasons for such decision. The arbitrators shall decide the dispute or claim in accordance with the substantive law of the jurisdiction and what is just and equitable under the circumstances. The decisions and awards of the arbitrator or a majority of the arbitration panel shall be binding and final between the parties.

Article XIII

Notice

Section 13.1 - **Notice.** Except for when these Bylaws specify that oral or electronic notice is allowed, any notice required under these Bylaws shall be deemed delivered when deposited in the United States mail, first class postage prepaid, with names and addresses as they appear in the records of the Cooperative.

Section 13.2 - **Waiver of notice.** Any notice of a meeting required under these Bylaws may be waived in writing at any time before or after the meeting for which notice is required. The attendance of any person at a meeting shall constitute a waiver of notice of the meeting except where the person attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully convened.

Article XIV

Dissolution

Section 14.1 - **Dissolution.** As more fully described in its Articles of Incorporation, the assets of the Cooperative upon its liquidation shall be first be distributed in payment of liabilities and expenses of liquidation; then to redeem any retained patronage rebates; then to repay investment funds provided by owners; then to be distributed in a manner which would best serve to further the purpose of the Cooperative.

Article XV

Interpretation and Amendment of Bylaws

Section 15.1 - **Severability.** In the event that any provision of these Bylaws is determined to be invalid or unenforceable under any statute or rule of law, then such provision shall be deemed inoperative to such extent and shall be deemed modified to conform with such statute or rule of law without affecting the validity or enforceability of any other provision of these Bylaws.

Section 15.2 - **Amendment.** These Bylaws may be amended or replaced only at an annual or special meeting of owners, provided that the proposed amendments are stated or fully described in the notice of the meeting at which the amendments are to be adopted.