

**AMENDED AND RESTATED  
BYLAWS of  
WHOLE FOODS COMMUNITY CO-OP, INC.  
Duluth, Minnesota**

**Article I – Membership**

Section 1. Qualifications.

- (a) Natural Persons. Any natural person aged eighteen (18) years or older may apply for and, upon compliance with the membership requirements set forth in Section 2 below, hold a membership in this cooperative on terms established by the Board. Such membership may be held jointly in the names of not more than two persons, in which the first named on the Class A stock certificate or subscription agreement shall have the right to cast the vote for that Membership, unless such right has been given in writing by the person so first named to the other person listed on that Class A stock certificate or subscription agreement.
- (b) Purchase of Stock Required. Upon compliance with membership requirements by a natural person, the prospective Member shall purchase four (4) shares at \$5.00/each (total \$20.00) of Class A stock in the cooperative, and sixteen (16) shares at \$5.00 each/ (total \$80.00) of Class B stock on terms set by the Board. The Board shall adopt and implement a method or methods, including but not limited to such mechanisms as scholarships, sponsorships, and matching funds, to encourage the participation of persons of restricted income as Members of the cooperative to the greatest extent possible.
- (c) Non-discrimination. This cooperative shall not discriminate on social or political grounds or on the basis of race, creed, income, age, sex, handicap, sexual preference or marital status.

Section 2. Application.

Application for membership shall be made in writing on a subscription agreement form approved by the Board. The subscription agreement shall state that the applicant subscribes to and agrees to comply with the requirements of the cooperative's Articles of Incorporation and Bylaws, agrees to notify the cooperative of any change of address, and wishes to peacefully and democratically participate in the cooperative.

Section 3. Definition.

Only a Class A stockholder is and may be referred to as a Member of the cooperative. Only Class A stockholders have voting power, and each such stockholder is entitled to only one vote, regardless of the number of shares owned.

Section 4. Approval.

Each application for membership shall be acted on by the Board within sixty (60) days after the cooperative's receipt of the application. The Board shall have full authority to approve, reject or limit the benefits of a membership application based on policies established and approved by the Board.

Section 5. Information.

Each new Member shall be provided a copy of the cooperative's current Articles of Incorporation and Bylaws.

**Section 6. Current Address.**

Each Member agrees to provide to the cooperative his or her current address and to keep the cooperative informed of any changes in address. This obligation shall continue even after a membership has been terminated as long as the Member has any interest in the cooperative.

**Section 7. Termination.**

Membership may be terminated voluntarily by a Member upon notice to the cooperative. The Board may elect to terminate a membership if a Member dies or fails to comply with the requirements of these Bylaws and of the membership policies of the Board. When a membership is terminated, the cooperative shall either:

- a) Purchase the Class A stock of the Member by tendering to the Member, or his or her heir or successor, the par value or the book value, whichever is less, together with any cash portion of a patronage dividend due or unpaid, less any indebtedness due the cooperative; or
- b) Purchase the Class A stock of the Member by tendering to the Member, or his or her heir or successor, Class B stock, together with any cash portion of a patronage dividend due or unpaid, less any indebtedness due the cooperative.

Regardless of the reason for termination, repurchase of the cooperative's stock, including Class B and Class C stock, by the cooperative shall be subject to the same terms and limitations governing all stock repurchases, including availability of replacement capital and the discretion of the Board to determine terms of repurchase. In any case, the Class A stock of the Member shall be cancelled and he or she shall no longer have voting rights in the cooperative.

**Section 8. Restriction on Withdrawal and Transfer of Membership.**

Upon joining this cooperative, every Member agrees that, in case the Member shall desire to withdraw his or her membership in the cooperative, his or her stock can only be transferred to the cooperative and only upon approval by the Board. The stock of this cooperative is not transferable in any other event.

**Section 9. Donation of Interest.**

Any Member or ex-Member who fails to comply with the provisions of Section 6 above (regarding supplying current address), by failing to inform the cooperative of his or her current address, and fails to respond to general notification of extinguishment of interest published in the cooperative's newspaper or on its website, makes a donation to the cooperative of any interest the Member or ex-Member may have in the cooperative whether that interest is represented by Class A, Class B, or Class C stock or any other capital contributions or equity in the cooperative.

**Article II – Member Meetings/Voting**

**Section 1. Annual Meeting.**

The annual meeting of Members shall be held in the territory served by this cooperative within four (4) months after the close of the cooperative's fiscal year, at such time and place as determined by the Board.

**Section 2. Special Meetings.**

The president of the cooperative shall call a special meeting of the Members upon either:

- (a) A majority vote of the directors, or
- (b) The written petition of at least twenty percent (20%) of the Members.

Notice of the meeting shall be given by the president as provided in Section 3 of this Article II below, and shall state the time, place and purpose of the special meeting. If the meeting is called pursuant to a Member petition, then the notice shall be issued within ten (10) days from receipt of the petition by the president, and the special meeting shall be held within thirty (30) days from receipt of the petition by the president. No business shall be considered at a special meeting except that mentioned in the meeting notice.

### Section 3. Notice of Meetings.

The secretary of the cooperative shall give notice of all meetings of the Members:

- (a) By publication in a legal newspaper published in the county of the principal place of business of the cooperative at least two (2) weeks before the date of the meeting, or
- (b) By publication in a magazine, periodical or house organ regularly published by or on behalf of the cooperative and circulated generally among its Members at least two (2) weeks before the date of the meeting, or
- (c) By mailing notice thereof to each Member at such Member's last known address, not less than fifteen (15) days before the date of the meeting. The secretary shall document compliance with this provision by preparing a copy of the notice given to Members with proof of mailing or publication attached. The failure of any Member to receive any such notice shall not invalidate any action that may be taken by the Members at such regular or special meeting.

### Section 4. Presiding Officer.

The president of the cooperative, or his or her designee, shall preside at all meetings of the Members and the Board.

### Section 5. Quorum.

At any meeting of the Members, a quorum necessary for the transaction of business shall be:

- (a) Ten percent (10%) of the total number of Members in the cooperative, when the number of Members does not exceed 500; or
- (b) When the cooperative has more than 500 Members, one hundred (100) Members present;  
or
- (c) Such other number as may be and if required by law.

Only Members in actual attendance at the meeting shall count towards a quorum, except for matters submitted to the membership by mail or other means approved by the Board, in which case the ballots cast shall be counted toward fulfillment of the quorum requirement.

### Section 6. Order of Business.

The order of business at the annual and, so far as practicable, at all other meetings of the Members shall be:

- (a) Calling of roll or registering of Members
- (b) Proof of notice of meeting
- (c) Determination of a quorum and right to vote by Members
- (d) Reading and approval or waiver of Minutes of last meeting
- (e) Reports of officers and committees

- (f) Unfinished business
- (g) New business
- (h) Remarks for the good and welfare of the cooperative
- (i) Adjournment

Section 7. Reports.

Reports covering the cooperative's business for the previous fiscal year shall be submitted to the Members within four (4) months after the close of the fiscal year.

Section 8. Voting.

No Member shall have more than one vote, regardless of the number of shares owned. Members who jointly own shares shall vote as prescribed in Section 1(a), Article I of these Bylaws. No Member shall be allowed to vote by proxy. Voting by mail or by other means as approved by the Board shall be allowed on all matters upon which Members are entitled to vote. The Board may prescribe a form of ballot to be used which ballot shall comply with requirements of the laws governing cooperatives. If a ballot is received on or before the due date, it shall be accepted and counted.

**Article III – Board of Directors**

Section 1. Number and Election of Directors.

There will be seven (7) directors of the cooperative. A director must be a Member of the cooperative. Only the first individual named on the membership application shall be eligible to be elected to the Board. The Members shall elect the directors by ballot and directors shall hold office until their successors are elected subject to any earlier resignation or removal of a director. No more than two (2) of the total number of directors shall be employees of the cooperative.

Section 2. Terms of Directors.

Directors shall be elected to staggered terms of three (3) years. If any director shall cease to be a member, his or her office shall be automatically vacated. No director may serve more than three (3) consecutive three-year elected terms, plus any partial term served to fill a vacancy. Upon the expiration of such terms, a Member shall not be eligible for election to the Board until the next annual meeting.

The transition from two-year terms shall be handled as follows:

- 1) In fall 2008, the three candidates with the highest number of votes in the 2008 election shall be elected to three-year terms.
- 2) In 2009, the four candidates with the highest number of votes shall be elected to three-year terms.
- 3) All subsequent elections will be for three-year terms.

When filling vacancies caused by resignation, the position(s) will be filled for the remainder of the original term(s). Candidates with the highest vote totals shall get three-year terms, and the candidate(s) with the next-highest vote total(s) shall fill the vacated seat(s) for the remainder of the term(s).

Section 3. Vacancies.

Any vacancy in the Board may be filled by Board appointment of another Member until the next regularly scheduled Board election.

**Section 4. Removal.**

No more than three (3) directors of the cooperative may, for cause related to the duties of the director, at an annual or special meeting of the Members, be removed from office by a majority vote of the Members voting at any annual or special meeting called for that purpose. The Members may fill the vacancy caused by the removal of the director. A quorum of Members shall be present at any such meeting.

Failure of a director to attend two consecutive Board meetings or one-third of the Board meetings during a year, except for cause as determined by a majority vote of the remainder of the Board, shall result in automatic removal from office.

No director shall be removed from office at either an annual or special meeting unless he or she has been informed of the meeting at which the matter is to be considered at least ten (10) days before such meeting. Such notice shall be by certified mail addressed to him or her at his or her last known address, and he or she shall be entitled to be heard at such meeting.

**Section 5. Board Meetings and Quorum.**

Regular meetings of the Board shall be held at such time and place as the Board shall from time to time determine. A majority of the directors shall constitute a quorum at all meetings of the Board, and a majority vote of the members present shall decide all questions. Board meetings may be held by telephone conference call, if so approved by all directors, providing all persons participating can hear each other at the same time. The Board shall have at least ten (10) regular meetings during each fiscal year.

**Section 6. Special Meetings of the Board.**

Special meetings of the Board may be called by the president or by a majority of the Board. Each member of the Board shall be duly notified of all such meetings.

**Section 7. Action without a Meeting.**

Decisions of the Board may be made without a meeting if a consent in writing, stating the action to be taken, is signed by all directors or transmitted electronically by each director and filed with the Minutes.

**Section 8. Compensation.**

Compensation for directors shall be determined by resolution of the Board. Compensation and/or expense reimbursement to directors shall not constitute payments to them as employees.

**Section 9. Indemnification of Directors.**

To the fullest extent of a director's right to indemnification under Minnesota law, the cooperative shall indemnify each person who is serving or who has served at the request of this cooperative as a director or officer, including his or her heirs, executors or administrators, against: expenses, including but not limited to reasonable attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such director or officer in connection with any suit, action or process arising out of, resulting from or connected to such office or directorship, and whether or not such suit, action or process arises out of the conduct of such director or officer.

**Article IV – Duties and Powers of the Board**

**Section 1. Management of Business.**

The Board shall govern the business and affairs of the cooperative and make all necessary rules and regulations not inconsistent with law or with these Bylaws. The Board shall have the power to employ and dismiss a general manager, and/or a managing agent and to determine their duties and fix their compensation.

**Section 2. Employee Bonds.**

The Board may require the general manager, chief executive officer, and/or all other officials, agents and employees charged by the cooperative or its managing agent with responsibility for the custody of any of its funds or property to provide a fidelity bond in such sum as the Board shall determine. Such bond shall be furnished by a responsible bonding company or other surety satisfactory to the directors, and cost therefor shall be paid by the cooperative.

**Section 3. Audits.**

The Board shall examine all financial statements prepared for the cooperative at their regular meetings at least four (4) times a year. In addition, they may have the books audited or reviewed at least once a year by a certified public accountant. Such audit or review shall preferably be made between the date of the close of the fiscal year and the date of the annual meeting. Annually, a report of audit or review findings, containing at least a balance sheet showing the financial condition of the cooperative at the close of the fiscal year and a summarized statement of income and expenses for the year, shall be submitted to the members at their annual meeting or, if not available at the annual meeting, mailed to the members.

**Section 4. General Manager.**

The Board shall employ and supervise the general manager of the cooperative. The general manager shall have general charge of the ordinary and usual business operations of the cooperative subject to the direction and approval of the Board. The general manager shall be required to maintain all business records and accounts in such a manner that the accurate condition of the business may be determined whenever practical. He or she shall provide annual and periodic reports in a form and manner prescribed by the Board. The general manager shall employ and discharge employees subject to direction and guidelines approved by the Board. The general manager shall, in the manner and form prescribed by the Board, handle and account for all monies belonging to the cooperative that come into his or her possession.

**Article V – Duties and Powers of Officers of the Board**

**Section 1. Election of Officers.**

The Board shall meet within thirty (30) days after the annual election of directors by the Members and shall elect by and from their number a president, one or more vice presidents, a secretary, and a treasurer. The offices of secretary and treasurer may be combined and, when so combined, shall be termed the secretary-treasurer. Officers shall hold office until their successors shall have been elected and qualified.

Any officer may be removed from an office by the Board by a simple majority vote of the entire Board whenever in the judgment of the other directors such a removal is in the best interest of the cooperative. Such a removal from office shall not be a removal from the position of director.

**Section 2. President.**

The president shall:

- (a) Preside over all meetings of the Members and of the Board or shall designate another member of the Board to so preside.
- (b) Sign as president, with the secretary, all notes, deeds and conveyances of real estate, contracts and, as applicable, certificates of stock of the cooperative.

Section 3. Vice President.

In the absence or disability of the president, the vice-president shall perform the president's duties.

Section 4. Secretary.

The secretary shall:

- (a) Ensure that a complete record of the meetings of the cooperative and of the Board is kept.
- (b) Sign as secretary, with the president, all notes, deeds and other conveyances of real estate and, as applicable, all certificates of stock of the cooperative.
- (c) Ensure that a complete and detailed report of the most recently ended fiscal year is prepared and submitted to the members by mail and/or at the annual meeting; the report shall contain a statement of assets and liabilities, a statement of income and expenses, and such other statements and statistical memoranda as the Board shall require.
- (d) Serve or cause to be served and attest to all notices required by law.
- (e) Perform such other duties as may be required by the cooperative or its Board.

Section 5. Treasurer.

The treasurer shall:

- (a) Oversee the receipt and disbursement of all funds of the cooperative.
- (b) Ensure that complete records of all financial transactions of the cooperative are kept and perform such other duties pertaining to this office as may be required by the Board.
- (c) The Board may delegate the duties enumerated in this section to an agent or employee of the cooperative provided, however, that the treasurer shall retain the responsibility to review and supervise the execution of such duties by such agent or employee on a regular basis.

Section 6. Secretary-Treasurer.

If the offices of the secretary and treasurer are combined, the duties shall be a combination of the duties of both such officers. The office shall be known as secretary-treasurer.

## **Article VI – Capital Stock**

Section 1. Certificates or Proof of Membership.

Membership cards shall be issued, in lieu of certificates for Class A stock, when the initial required stock is fully paid for and the membership application has been approved and for payment of all required Class B equity stock. Class B stock received as patronage dividends shall be evidenced by written notice of allocation mailed to the Members. Purchase of Class C stock shall be evidenced by written notice of allocation mailed to the Member. The cooperative retains the right to terminate all memberships as provided in the Bylaws and to purchase or recall all stock. Redemption of capital stock by the cooperative is subject to any indebtedness owing the cooperative by the stockholder.

Section 2. Non-transferability.

Shares of stock shall be transferable only to the cooperative with the consent and approval of the Board. Shares of stock may not be transferred in any other manner.

**Section 3. Refund or Repurchase by the Cooperative.**

The cooperative shall repurchase all shares of stock of terminating Members, whether for cause or for voluntary or involuntary reasons, on the condition that the cooperative has received replacement capital from new or continuing Members. The Board may establish additional conditions and terms for repurchase of Members' shares of stock, provided such conditions and terms apply to all Members.

**Section 4. Retirement or Cancellation of Surrendered Stock.**

Any stock required to be surrendered back to the cooperative according to Section 9 Z, Article I of these Bylaws shall be retired and cancelled by the Board. Any other stock acquired by the Board from a stockholder of any class may be held as treasury stock or may be retired and cancelled.

**Section 5. Classes and Issue.**

Whenever the cooperative determines that all of its funds are not necessary for the proper financing of the operations of the cooperative, the Board may choose to retire Class B or Class C stock, liquidate equity or capital reserves or any other media previously issued.

**Section 6. Order of Payment Upon Dissolution or Liquidation.**

Upon dissolution or liquidation of the cooperative, the debts and liabilities of the association shall first be paid according to their respective priorities. Stockholders or other holders of equity, capital reserve credits, or other media issued by the Board shall then be paid the par value of their shares or credits with payment made in the order of preference stated in the Articles of Incorporation. Any additional property remaining after stockholders and other equity holders have been paid shall be distributed to another cooperative doing business on a cooperative basis or to a non-profit organization under Section 501c of the Internal Revenue Code, as shall be determined by the Board.

**Section 7. Revolving Fund.**

Funds and credits arising from the issuance of stock or other media may be used for creating a revolving fund for the purpose of building working capital, revolving such capital, and investing in other cooperatives as the Board may from time to time deem necessary.

If the Board determines that some of its funds from whatever sources are not necessary for the proper financing of the operations of the cooperative, it shall first redeem Class B stock that was tendered for Class A stock and then Class B stock which represents an ex-Member's initial capital contribution to the cooperative. This is done provided that the ex-Member has requested the redemption of this stock.

If additional funds remain available to redeem equity after all requests to redeem Class B stock representing the capital contributions of ex-Members have been honored, then the Board may redeem other Class B stock, Class C stock, and other capital interest media. The timing and method of all redemptions shall be at the Board's sole discretion and shall be fair and equitable.

**Section 8. Books and Records.**

The books and records of the cooperative shall be kept on a fiscal year basis, and in such a manner that the interests of Members and ex-Members may be determined at any time.

**Article VII – Patronage Dividends/Reserve Funds**

**Section 1. Annual Net Income.**



- (a) Gross Receipts. Gross receipts shall be all proceeds from the sale of goods and services to Members and non-Members and all other sums received (including patronage dividends and all non-patronage income).
- (b) Deductions from Gross Receipts. The cooperative shall deduct from “gross receipts” all expenses incurred in generating the “gross receipts” including, but not limited to, marketing expense, costs of goods or services sold, taxes, depreciation, reserves for doubtful accounts, and all other necessary expenses.
- (c) Total Annual Net Income. The amount remaining after reducing the “gross receipts” by the deductions contained in Section 1(b) of this Article VII shall constitute the total annual net income (net earnings) of the cooperative.

Section 2. Member Patronage Income.

- (a) Member Patronage. Total annual net income shall be separated into:
  - (1) Annual net income from Member patronage and patronage dividends and
  - (2) Annual net income from non-Member patronage and non-patronage sources.
- (b) Annual net income from Member patronage shall be determined by:
  - (1) Taking the percentage of gross receipts attributable to business done with or for Members (including patronage dividends, etc.) and
  - (2) Multiplying that percentage by total annual net income. The amount resulting shall be annual net income from Member patronage, which shall be distributed to the Members of this cooperative in proportion to the amount of business done by them with the cooperative over the last year, subject only to the deductions and exceptions provided in Section 4 of this article.
- (c) Non-Member Patronage and Non-Patronage Income. The difference between total annual net income and net income from Member patronage shall be annual net income from non-Member patronage and non-patronage sources.

Section 3. Education Reserve.

The Board may set aside a sum from the annual net income from non-Member patronage and non-patronage sources as an education fund to promote and encourage cooperatives.

Section 4. Capital Reserve.

- (a) The Board shall annually set aside the annual net income from non-Member patronage and non-patronage sources, less any deductions for the education reserve, as a capital reserve.
- (b) In addition, the Board may also place into the capital reserve fund:
  - (1) All annual net income from Member patronage attributable to Members who have not provided current addresses to the cooperative;
  - (2) All annual net income from Member patronage attributable to Members that results in a distribution of less than the minimum amount of Five Dollars (\$5.00) to any Member.
  - (3) These amounts so set aside shall not be allocated to the Members of the cooperative and shall be kept in the general reserve fund.
- (c) Amounts which have been placed in any reserve and which have been allocated to a specific Member prior to the effective date of this Article shall remain so allocated on the books of the cooperative unless and until retired or disbursed.

- (d) The Board may, by resolution duly adopted prior to the beginning of the fiscal year, set aside up to fifty percent (50%) of the total annual net income or other reasonable amount as a capital reserve.

Section 5. Patronage Dividend Distribution.

- (a) The annual net income from Member patronage, less any deductions or exceptions as determined by Section 4 of this Article, shall be distributed annually to the Member-patrons of the cooperative and said Member-patrons shall be notified thereof.
- (b) Patronage dividends shall be distributed in cash or in equity (usually Class B stock) or by any combination thereof designated by the Board. Equity distributions (Class B stock) may be paid or redeemed in whole or in part at such time, in such manner and in such order as shall be determined by the Board in its sole discretion. No transfer or assignment of such retained patronage equity (Class B stock) shall be allowed without the approval of the Board.

Section 6. Allocation of Losses.

If this cooperative has sustained an annual net loss in net income from Member-patron business, the Board shall have the power and authority to allocate such losses in the following manner:

- (a) To the Member-patrons in such year on a patronage basis and apply such losses against the retained patronage equity of said Member-patrons, or
- (b) To carry forward or to carry back such loss.

**Article VIII – Tax Consent by Members**

Each Member of this cooperative shall, by becoming a Member, consent that the amount of any distribution with respect to his or her patronage occurring in any fiscal year which are made by qualified written notices of allocation (as defined in 26 U.S.C. 1388) received by him or her from the cooperative shall be included in his or her income in the manner provided in 26 U.S.C. 1385 during the taxable year in which the qualified written notices of allocation are received. It is the intent of this provision to provide a consent binding on all Members who retain or obtain membership in this cooperative and who receive a written notification and copy of this Bylaw, for the purpose of making such distributions “qualified” within the meaning of the Internal Revenue Code.

**Article IX – Miscellaneous Provisions**

Section 1. Fiscal Year.

The fiscal year of this cooperative shall begin on the first day of July and close on the last day of June of each year.

Section 2. Amendments.

These Bylaws may be amended, repealed or altered, in whole or in part, by a majority vote of a quorum (Article II, Section 5) of the Members provided that all Members are notified by mail of the proposed changes to the Bylaws.

Section 3. 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.