

**FIDDLEHEADS NATURAL FOODS COOPERATIVE, INC.**  
**BYLAWS**  
**Last Modified on May 31, 2007**

**ARTICLE I - ORGANIZATION**

**Section 1.1 Name**

The name of this Cooperative shall be the *Fiddleheads Natural Foods Cooperative, Inc.*, hereafter referred to as "the Co-op," organized under the laws of State of Connecticut.

**Section 1.2 Mission and Purpose**

The mission of this Co-op is to inspire the community through a member-owned business providing natural foods and alternatives for a healthy lifestyle and to foster environmental awareness as well as nurture our local economy. The Co-op shall operate on a cooperative, not-for-profit basis, and shall be empowered to operate for any and all lawful purposes and activities for which cooperatives may be organized under the laws of the State of Connecticut and to transact any and all such business incidental thereto, primarily for the benefit of its Members.

**Section 1.3 Business Office**

The Co-op may have offices or other facilities within or outside the State of Connecticut as may be deemed by the Board of Directors to be necessary or convenient to the transaction of business and service of Members.

**ARTICLE II - MEMBERSHIP**

**Section 2.1 Eligibility**

Membership is open and voluntary without gender, social, racial, political or religious discrimination. Any natural person or legal entity, who declares himself/ herself/ itself to be interested in the Co-op's objectives and purpose and the promotion of the same, who agrees to be a patron of the Co-op and to abide fully by its articles of incorporation, bylaws, rules and regulations, who executes a Membership Agreement, remits the required Membership Fee, and who meets such other qualifications as may be prescribed by the Board of Directors, is eligible to become a Member of the Co-op.

**Section 2.2 Membership**

Membership is established by acceptance of an application for Membership by the Board or its delegate, payment of the Membership Fee, and compliance with any other requirements contained in policies established by the Board of Directors. A Member shall purchase one share of Class A Member Voting Stock.

Only Members may hold a Membership Certificate/Card, hold Class A Member Voting Stock and be entitled to vote. As used in these bylaws, "Member" shall refer collectively to all those in the Membership household who are duly accepted for "Membership."

### **Section 2.3 Household Membership**

Each Membership is considered a household Membership. The Membership household shall consist of at least one (1), but no more than four (4), adults sharing the same household and responsibility for household purchases. Membership entitles all adult individuals designated in the Membership household to be considered Members, to purchase goods and services at Member prices, and to participate in the Co-op's programs and events as Members.

### **Section 2.4 Representative of Membership**

Each Membership household shall appoint a Representative of Membership, who shall designate the individuals covered by the Membership household for that Membership, and who shall apprise the Co-op's Secretary in writing of any changes in Membership household. Only the Representative of Membership is authorized to transact all official Membership business with the Co-op, and shall be named as the Member-owner on stock certificates, patronage refund checks, or any other payments based on or made to Members. Only the Representative of Membership shall be entitled to vote on all matters submitted to a vote of the Members.

It is the duty of the Representative of Membership to account to all other Members of the Membership household for any monies or other benefits received from the Co-op according to a whatever mutually-agreed plan for dividing any such payments or benefits the Members of each Membership household may establish. The Co-op is not responsible for seeing to it that individuals in any Membership household receive money or other distributions to which they may be entitled under the household's mutually-agreed plan.

### **Section 2.5 Rights and Responsibilities**

Members shall have the right to purchase goods and services at Member prices; to participate in the Co-op's programs and events as Members and to otherwise enjoy the benefits provided to Members from time to time. Members have the right to receive copies of the bylaws. To maintain Membership in good standing, Members will keep current in payments, including payment required by reason of an increase in the capital needs of the Co-op. Members shall agree to patronize the Co-op on, at least, an occasional basis and to inform the Co-op of changes in name or address.

### **Section 2.6 Membership Fee**

All applicants for Membership shall pay at the time of application a one-time Membership Fee of \$175 as an initial capital contribution to the Co-op. Applicants may join the co-op with payment of the \$25 stock fee and minimum payments of \$30, being paid each year after for a maximum of five years, due no later than ninety days after the anniversary of the start of the membership. If the fee is not paid, the membership discount will be withheld until the balance is paid. The Membership Fee may be refunded following the termination or resignation of a Member pursuant to Article VIII, but only at the sole discretion of the Co-op Board, which shall consider the best financial interests of the Co-op in making such a decision. No terminated or resigned Member shall have any legal right to demand or otherwise be entitled to a refund of their Membership Fee except

as provided in these bylaws. From time to time, the Members may, on the recommendation of the Board and by majority vote at a regular or special meeting of Members, adjust the amount of the Membership Fee as is deemed appropriate for the benefit of the Co-op.

### **Section 2.7 Annual Member Dues**

From time to time the Members may, upon the recommendation of the Board and after approval by a majority vote at a regular or special meeting of Members, assess Annual Member Dues in an amount deemed appropriate for the benefit of the Co-op. Members shall be obligated to pay Annual Member Dues promptly when due.

### **Section 2.8 Membership Certificate/Card**

Upon approval of his/her application for Membership, each Member shall be issued a correct number of Membership Certificates/ Cards for the Membership household as evidence of Membership. In the alternative, Membership Certificates/Cards may be issued in book-entry form, at the discretion of the board of directors. Each Membership Certificate/Card shall be in such form as may be prescribed by the Board from time to time, and shall recite on its face that the Membership shall be entitled to only one vote. Membership Certificates/Cards are not transferable and shall be issued and retired only by the Co-op. Membership Certificates/Cards shall be held only by designated Members of the Membership household, and shall not be transferred except by action of the Co-op. The books and records of the Co-op shall be the sole and exclusive record for determining Membership status in the Co-op, designation of Membership in any Membership household, or the ownership of any Membership Certificate/Card or stock in the Co-op. The Co-op shall maintain an ongoing list of those entitled to hold Membership Certificates/Cards.

### **Section 2.9 Transfer of Membership Prohibited**

Membership in the Co-op is non-transferable. Any attempt by a Member to transfer, sell or assign Membership or a Membership Certificate/ Card shall be void.

### **Section 2.10 Suspension or Termination of Member**

If the board of directors shall find, after notice and an opportunity for the Member to be heard, that a Membership Certificate/Card has come into the possession or control of any individual or entity other than the individual or entity to whom it was issued, or that the holder has ceased to be an eligible Member or has otherwise violated the articles of incorporation, bylaws, rules, regulations, or that the ownership or voting control of any entity Member business has been sold or otherwise transferred to any non-Member, whether operating under the same name and structure or not, without the prior written consent of the Co-op, or that a Member has violated the Membership Agreement or other agreement(s) made with the Co-op or for other good cause, then the board of directors may either suspend such holder's rights as a Member or terminate Membership status.

A terminated Member shall immediately return to the Co-op all previously issued Membership Certificates/Cards. If a terminated Member fails to deliver such certificates, the Co-op may cancel such certificate on its books and records, and the certificate will be

deemed null and void. Termination or suspension shall not relieve that Member of the obligation to pay any dues, assessments, or other charges accrued and due or past-due but unpaid.

A suspended or terminated Member shall have no rights or privileges resulting from any previous Membership held except as may be provided in these bylaws, nor shall a suspended or terminated Member be entitled to vote or to otherwise have a voice in the management or affairs of the Co-op.

### **Section 2.11 Resignation of Member**

Any Member may resign Membership by filing a written resignation with the Secretary of the Co-op, subject to acceptance by the board of directors or its delegate. Resignation shall not relieve the resigning Member of the obligation to pay any dues, assessments, or other charges accrued and due or past due but unpaid.

## **ARTICLE III MEMBERSHIP MEETINGS**

### **Section 3.1 Annual Meeting**

The annual meeting of Members shall be held each year at such a time and place as the Board of Directors may prescribe, and shall be announced no less than 4 weeks before the date of the meeting. Notice of the annual meeting shall be posted conspicuously in the Co-op's store, and shall be delivered by mail and/or electronic mail to every Member. The purpose of the meeting shall be to hear reports on operations and finances, to review any important policy issues or other matters that vitally affect the operation of the Coop, to elect directors and conduct such other business as may properly come before the meeting. The annual meeting shall be held within 5 calendar months of the close of the Coop's fiscal year.

### **Section 3.2 Special Membership meetings**

Special meetings of Members may be called by the President for any time and place as the President may designate. Special meetings may be called by the Secretary for any time and place upon the written request of a majority of the Board of Directors holding office at the time of the request or upon written request of at least twenty-five (25) Members, which must be delivered certified mail to the Secretary of the Board of Directors. Special meetings of the membership shall be held within sixty (60) days of said request. Notice of any Special Membership Meeting shall be posted conspicuously in the Co-op's store, and shall be delivered to each Member by mail or electronic mail not less than two weeks nor more than four weeks prior to the date of the meeting.

### **Section 3.3 Quorum**

At all Membership meetings the presence in person or by authorized mail ballot of three percent (3%) of the number of Members of the Co-op as shown on the books of the Co-op, but not less than twenty five (25) persons, shall be necessary to constitute a quorum. In the event that a quorum shall not be present, a meeting cannot be called to order and shall reconvene at some future time not less than ten (10) and not more than thirty (30) days later.

### **Section 3.4 Voting**

Only the Representative of Membership of a Member to whom one share of Class A Member Voting Stock has been validly issued may vote at any meeting of Members. Each Member shall be entitled to one vote on any issue. Voting shall be in person only, or by mail or electronic mail ballot when authorized by the Board of Directors. The Co-op's list of Members and Representatives of Membership shall determine who is entitled to vote at any meeting. Voting may be by "viva voce," except that any Member may demand a vote by ballot. In voting for directors, each Member may cast as many votes as there are positions to be filled, but no more than one (1) vote may be cast for any one candidate. If the election is uncontested, voting by a slate format is acceptable.

## **ARTICLE IV BOARD OF DIRECTORS**

### **Section 4.1 Powers and Duties**

The activities and affairs, the real estate and other property of this Co-op shall be under the exclusive control of the Board of Directors. The powers of the Board of Directors shall include, but not be limited to, engaging management, overseeing the operations of the Co-op, establishing operating procedures, budgets and fiscal controls, and assuring that the purposes, mission and principles of the Co-op are properly carried

### **Section 4.2 Qualification and Number of Board Members**

No person other than a Representative of Membership shall be eligible to serve as a Board member. No person shall be eligible for directorship or remain as a director if that person is in competition with, or is affiliated with any enterprise that is in competition with the Coop. The Board shall consist of not more than fifteen (15) and not less than seven (7) directors, to be elected from the Members at large.

### **Section 4.3 Election and Term**

Directors are elected by a plurality of votes cast at the annual Membership meeting. The Coop will establish a Board with staggered initial terms as follows:

- Up to five (5) directors will be elected for an initial term of three (3) years.
- Up to five (5) directors will be elected for an initial term of two (2) years.
- Up to five (5) directors will be elected for an initial term of one (1) year.

Initial terms for the periods described above will divide as evenly as possible between the candidates. Following the completion of each director's initial term, successor directors shall be elected by the voting Members to serve a term of three (3) years.

Except as otherwise noted above, directors shall be elected for three (3) year terms and shall serve until election of their successors. Directors may serve no more than three (3) consecutive full terms, but may be subsequently re-elected after a period of two years. A Board member may resign at any time by submitting a written resignation to the Secretary, which shall take effect immediately without acceptance.

#### **Section 4.4 Board Meetings**

The Board of Directors shall meet at least 4 times a year. Meetings of the Board may be called by the President at any other time or upon the written request of two directors, which must be delivered to the President, to be convened within 7 days of receipt of such written request. The notice of these other meetings shall state in general terms the purpose or purposes for which it is called and the place and time of such meeting. Notice of all Board meetings shall be posted in a conspicuous place in the Co-op store. Any director may waive notice of the meeting in writing, and his/her appearance at that meeting, as evidenced by the minutes of the meeting, shall automatically constitute a waiver of notice.

Board meetings and committee meetings may be conducted by telephone conference call provided that a reasonable attempt has been made to reach all directors, a quorum is present, and technical arrangements permit all persons participating to hear one another at the same time. Such participation shall constitute presence in person at a meeting.

Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all Members of the Board or committee consent thereto in writing, and such writing is filed with the minutes of the proceedings of such Board or committee.

#### **Section 4.5 Nominations**

Candidates for director shall be nominated by the Nominating Committee appointed by the Board under the bylaws, Section 5.6 or by petition signed by at least 10 members and delivered to the Secretary of the Board of Directors by certified mail at least 3 weeks prior to the annual meeting.

#### **Section 4.6 Quorum**

At all meetings of the Board of Directors the presence of fifty one percent (51%) of the number of Board members shall be necessary to constitute a quorum for the transaction of any business.

#### **Section 4.7 Voting**

At all meetings of the Board of Directors each director shall be entitled to one (1) vote. Each matter submitted to a vote shall be determined by a majority of the votes cast by the directors present either in person or in communication via telephone or videoconference, unless a greater number of votes are otherwise required by these bylaws or by applicable law.

#### **Section 4.8 Vacancy**

Whenever a vacancy occurs on the Board of Directors, other than from the expiration of a term of office, the remaining directors shall appoint a qualified individual to fill the vacancy until the next regular annual meeting of the Members, at which time an election shall be held. The term of any director, elected by the Members for the purpose of replacing a vacating director, will be for the same year or years that were remaining in the vacating director's term. The seat of a director who is the Representative of

Membership for a Member may not be filled by revoking that director's Representative of Membership designation and authorizing another to be the Representative of Membership, unless that newly authorized Representative of Membership is also duly elected or appointed under this Section.

#### **Section 4.9 Removal of Directors**

Whenever any director fails to meet the qualifications as described in Section 1 of this Article, fails to satisfactorily perform his / her duties, fails to attend three (3) consecutive Board meetings, either regular or special, without just and reasonable cause, or for other just cause when removal is deemed by a majority of the Board (without counting the director under consideration for removal) to be in the best interests of the Cooperative, and provided that notice and an opportunity for the director to be heard has been given in accordance with these bylaws, then it shall be the duty of the Board to remove said director by a majority vote of the Board and to fill the vacancy in accord with Section 4.8 of this Article.

Members, through a petition noting the charges and signed by at least fifty (50) percent of the number of Members, may request the removal of any member of the Board. Such director shall be notified in writing of the charges and be given an opportunity to be heard at a meeting of the Members. Removal of a director by Member petition shall require an affirmative vote of sixty (60) percent of the number of Members voting at a meeting called for this purpose.

#### **Section 4.10 Founder's Role**

The 2006-2007 Board of Directors have established a permanent title and role of Founder, granted to Colleen O'Reilly. The Founder will be invited to attend Board meetings, with the exception of closed Board meetings. Her role is to provide vision to the Coop. While the Founder will not have the voting rights of other directors, she may serve as a committee chair and representative of the co-op.

### **ARTICLE V DUTIES OF DIRECTORS**

#### **Section 5.1 General Powers and Management of Business**

The Board of Directors shall: have general supervision and control of the business and the affairs of the Co-op, hire, supervise and evaluate a general manager, keep itself informed of and periodically review the operations of the Co-op, provide for the payment of the reasonable and necessary expenses of the Co-op, establish the future direction of the Co-op through strategic planning, approve an annual budget and capital plan and annually report on this to Members, and make all rules, policies, and regulations not inconsistent with applicable laws, the articles of incorporation or these bylaws for the management of the business, mutual benefit of Patrons and guidance of Members, officers, employees and agents of the Co-op.

#### **Section 5.2 Employment of Manager**

The Board of Directors shall have power to employ, define duties, fix compensation, supervise, evaluate and dismiss the General Manager. The Board may authorize the

employment of such other agents and counsel, as it deems necessary or advisable from time to time in the best interests of the Co-op. The General Manager shall have charge of the ordinary and usual business of the Co-op, under the supervision of the Board of Directors, and shall perform such other duties and exercise such authority as the Board may vest in the General Manager from time to time.

### **Section 5.3 Insurance**

The Board of Directors shall provide for adequate insurance of Co-op property, or property in the possession of or stored by the Co-op and not otherwise adequately insured, and, in addition, adequate insurance covering general liability, liability for injury and accidents to employees and the public, director and officer liability insurance and such other insurance as the Board shall deem necessary and prudent.

### **Section 5.4 Accounting System and Audits**

The Board of Directors shall cause to be installed an accounting and records system which shall be adequate to meet the requirements of the business and shall require proper records to be kept of all business transactions.

The Board of Directors shall cause an audit of the Co-op's books and records to be performed annually, or at such other time interval as the Board may establish, by such person(s) as the Board shall vest with this responsibility. The audit may be conducted by outside professional auditor, an audit committee of the Board, or by other qualified persons, as the Board may determine from time to time. All audit findings shall be reported to the Board, which shall ensure that any required corrective actions are promptly taken. A summary of these audit findings and any corrective actions taken shall be reported to the Members

### **Section 5.5 Depository**

The Board of Directors shall: select one or more banks to act as depositories for the funds of the Co-op, determine the manner of receiving, depositing, and disbursing the funds of the Co-op, establish the form of checks, and authorize the person(s) by whom they shall be signed. The Board shall reserve the power to change at will such banks and the person(s) signing checks, and shall ensure that appropriate security procedures are established to safeguard access to depository funds.

### **Section 5.6 Executive Council; Other Committees**

As soon as possible, but no later than twenty-eight (28) days following each annual meeting, the Board shall appoint from its own number an Executive Council consisting of the Co-op's President, Vice President, Secretary, and Treasurer, and shall determine their tenure of office, powers and duties. The Board may delegate to the Executive Council all or any stated portion of the functions and powers of the Board, subject to the general direction, approval, and control of the Board. Copies of the minutes of any Executive Council meeting shall be mailed or otherwise delivered to all directors within seven (7) days following such meeting.



The Board may, at its discretion, establish such other committees or special task forces and vest them with such powers and duties, as the Board deems appropriate. Co-op members may be appointed to committee or task forces, but may not serve on the Executive Council, Finance or Human Resources / Employment Committees or any other committee entrusted with sensitive or confidential information unless agreed upon by the Board.

The Board shall establish a Nominating Committee consisting of at least three (3) members, at least one of who shall be a Board member who will chair the committee. The Nominating Committee shall present a slate of qualified candidates for Board positions to be filled by election at the annual meeting of Members. The General Manager may serve on the Nominating Committee when appointed by the Board.

### **Section 5.7 Signatory Authority**

Unless otherwise stated in these bylaws, the President shall have all general signatory power and authority to execute all instruments and writings of whatever kind on behalf of the Co-op, including but not limited to all: checks and drafts, negotiable instruments, contracts and agreements, deeds and leases, tax returns, applications for loan or grant and all related documentation, loan agreements, promissory notes and mortgages and other documents granting security therefore.

In addition, the Board of Directors may authorize in writing any officer(s), the manager, employees, agents or others to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Co-op, and such authority may be general or confined to specific business.

### **Section 5.8 Loans**

No loans shall be contracted on behalf of the Co-op and no evidence of indebtedness or pledge or mortgage of Co-op property shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

## **ARTICLE VI OFFICERS**

### **Section 6.1 Designation**

The officers of this Co-op shall be:

- A. President
- B. Vice-President
- C. Treasurer
- D. Secretary
- E. Chairperson

The offices of Treasurer and Secretary may be held by the same person. All officers shall be directors.

## **Section 6.2 Election and Term**

Officers of the Co-op shall be elected annually by the Board at its first meeting following the annual meeting of Members. Officers shall serve from year to year at the pleasure of the Board or until election of their successors. Officers may be removed at any time with or without cause by the Board.

## **Section 6.3 Duties**

The duties and powers of the respective officers shall be as follows:

### **A. President**

The President shall preside at all meetings of the Board of Directors. The President shall enforce these bylaws and perform all the duties incident to the office of President and which are required by law. The President shall call annual and special meetings of Members and meetings of the Board of Directors in accordance with these bylaws.

The President shall supervise, administer, and direct the Co-op's affairs and activities and shall cause an annual report to be made to the Membership at the annual Membership meeting.

The President shall negotiate and execute all contracts and agreements in the name of the Co-op, except that the Board of Directors may by resolution designate some other officer to negotiate or execute said contracts or agreements.

### **B. Vice President**

The Vice President shall perform the duties of the President during the President's absence or inability to perform the presidential duties. The Vice President shall also assume the responsibilities of the President as the President may direct.

### **C. Treasurer**

The Treasurer shall have the overall responsibility for all funds and securities of this Co-op. The Treasurer shall ensure that all funds and securities are properly deposited in the name of the Co-op in such bank or banks, trust company or trust companies or safe deposit vaults as the Board may designate. The Treasurer shall ensure that correct books and accounts for all assets and transactions are maintained, and that such other books or financial records are maintained as may be required by law, prudent business practice or the Board. The Treasurer shall exhibit such books and accounts to the President or any director upon request or to any other Member of the Co-op at the annual meeting or at any reasonable time upon application to the President or Board of Directors. The Treasurer shall provide a statement of the condition of the Co-op at each annual meeting of the Members and at such other times as the Treasurer may be directed by the President or the Board of Directors.

#### **D. Secretary**

The Secretary shall oversee the maintenance of Membership records and the issuance of required notices and keep minutes at all Board and Members meetings and shall, as authorized by the Board, sign or attest to formal documents on behalf of the Co-op.

#### **E. Chairperson**

The chairperson is empowered to chair board meetings, with all the commonly accepted power of that position (e.g. ruling, recognizing). The job result of the chairperson is that the board behaves consistently with its own values and standards and those required from outside the cooperative. The authority of the chairperson consists in making decisions that fall within topics covered by board policies on Governance Process and Board-General Manager Linkage, except where the board specifically delegates portions of this authority to others. The chairperson is authorized to use any reasonable interpretation of the provisions in these policies. The chair will ensure orientation and training of the board.

### **ARTICLE VII OPERATION AT COST AND MEMBERS CAPITAL**

#### **Section 7.1 Operation at Cost**

The Co-op shall at all times be operated on a cooperative, service-at-cost basis for the mutual benefit of its Members and patrons. The Co-op may accumulate only such capital, reserves and other financial assets as are determined by the Board to be necessary and prudent to the ongoing operation of the Co-op's business, to include the requirements of the Co-op's Annual Operating Budget, and Strategic and Capital Plans.

Within a reasonable time after the end of each fiscal year, the Board shall determine the net earnings (net margin) of the Cooperative for said fiscal year, which determination shall be made in accord with generally accepted business principles and practices, or otherwise as the Board may direct upon the advice of the Cooperative's accountant or other professional advisor. No distribution of net earnings to members shall be declared or paid until a sum equal to ten percent of the net profits is appropriated for a contingent or sinking fund and until there has been thereby accumulated a sum equal to twenty percent of the capital stock.

The net earnings of the Co-op for said year from all the business of the Co-op other than business done with or for Members may be retained by the Co-op as unallocated reserves or surplus. In setting aside funds for reasonable reserves for necessary purposes of the Co-op, the Board must first set aside such net earnings.

If there are no net earnings on such business, or if such net earnings are insufficient to provide for reasonable reserves for necessary purposes of the Co-op, as determined by the Board, then reasonable reserves may be set aside by the Board from the net earnings on business done with or for Members or patrons.

### **Section 7.2 Capital Plan and Annual Operating Budget**

The Board shall adopt a Capital Plan, which shall be reviewed at least annually thereafter, to establish and provide for the capital needs of the Cooperative, including the financial requirements of the Annual Operating Budget and the Strategic Plan. The Capital Plan shall establish a base amount of Capital, and the method and amount of equitable contribution(s) of capital required of Members. If capital is accumulated in excess of the amount provided for in the Capital Plan, such excess shall be returned to Members on an equitable basis as provided for in Article X.

The Board shall approve each year an Annual Operating Budget, proposed or developed in consultation with the General Manager, to provide for the payment of the operating expenses of the Co-op.

### **Section 7.3 Patronage Refunds**

If available, patronage refunds (patronage dividends) shall be declared and paid from net earnings (net margin) at the end of each fiscal year, as required in these bylaws. Each year, the Co-op shall be obligated to account for and pay on a patronage basis to all Members all of the Co-op's net earnings (net margin) over and above the cost of providing services to Members, after paying all costs and making reasonable additions to capital and reserves and redeeming capital credits.

All Members shall be treated equitably, and patronage refunds shall be paid in proportion to and based on the volume or value of products and services purchased by each Member from the Co-op during the year in question or based on such other equitable method as is established by the Board. Patronage refunds to Members shall be paid in cash or the equivalent or by an appropriate credit to a Member's capital account or in both forms of distribution, as may be determined by the Board from time to time.

### **Section 7.4 Declaration and Notice of Patronage**

The Co-op shall, within eight and one-half (8 ½) months after the close of each fiscal year, declare and pay any available patronage refund as required by these bylaws and shall notify each Member thereof.

The patronage notice shall be in the form of a written notice of allocation or a per-unit retains certificate (as those terms are used in Subchapter T of the Internal Revenue Code) or other appropriate document. The Board shall have full discretion to issue such notices and certificates in either "qualified" or "nonqualified" form, as permitted by the Internal Revenue Code and other applicable law.

### **Section 7.5 Capital Contributions**

Each Member of the Co-op shall provide capital in such amount(s) as shall be established by the Board of Directors from time to time according to the Capital Plan adopted by the Board. Capital requirements of Members shall be determined equitably and based on the volume or value of units of products and services purchased from the Co-op or based on such other equitable method as is established in the Capital Plan. Such amounts shall be allocated to the Member's capital account. Patronage refunds may be credited to

Members' capital accounts, when the Board so directs. The Membership Fee, as defined in Section 2.6, paid by each Member shall be treated as a capital contribution under this section.

### **Section 7.6 Dividends**

No dividends or interest shall be paid on Co-op stock or Member Capital Accounts, except as provided in these bylaws. Dividends shall not exceed eight percent (8%) per year based on the book value of the shares or the Member Capital Account.

### **Section 7.7 Fiscal Year**

The fiscal year of this Co-op shall commence on the first day of January and end on the last day of December.

## **ARTICLE VIII MEMBER EQUITY**

### **Section 8.1 Class A Member Voting Stock**

Members who meet Membership requirements shall purchase one (1) share of Class A Member Voting Stock, having a par value of twenty-five dollars (\$25). The Board of Directors shall establish the number of Class A shares authorized to be outstanding at any one time. The record owner of Class A Voting Stock shall be the Member or Representative of Membership as appears on the books and records of the Co-op, and such record owner shall be entitled to one vote on any matter before shareholders for a vote. Ownership of Class A Voting Stock is restricted to Members of the Co-op, and such shares may not be assigned, sold or otherwise transferred by the record owner, whether voluntarily or involuntarily or by operation of law or otherwise, except by action of the Co-op, which shall act as the transfer agent for all transfers of shares. Upon the termination or withdrawal from Membership of the record owner, his/her Class A Voting Stock shall be retired immediately at par value by the Co-op's Board of Directors. No dividends shall be paid on shares of Class A Voting Stock. All Class A Voting Shares shall be valued equally and shall have equal benefits and rights. Although arrangements for the gradual payment of the Membership Fee may be arranged by policy of the Board of Directors, only fully paid Memberships shall be issued stock and have voting rights. All Class A shares will be offered for sale and sold in accord with applicable laws.

### **Section 8.2 Class B Non-voting Preferred Stock**

The Co-op may issue Class B Non-voting Preferred Investment stock, under a plan to be adopted by the Board of Directors, which plan shall include; (a) determining a suitable book value and share price prior to issuance, and (b) compliance with applicable laws in the method of offering and selling such shares. Class B Non-voting stock may be owned by any Member or non-Member wishing to provide capital to the Co-op. The Board of Directors shall establish the number of shares of Class B stock authorized to be outstanding at any one time. The record owner of Class B Non-voting Stock shall be as it appears on the books and records of the Co-op, and such record owner shall not be entitled to vote on any matter before shareholders for a vote. Ownership of Class B Non-voting Stock is restricted to record owners as it appears on the books and records of the Co-op, and such shares may not be assigned, sold or otherwise transferred by the record

owner, whether voluntarily or involuntarily or by operation of law or otherwise, except by action of the Co-op, which shall act as the transfer agent for all transfers of shares. Class B Non-voting Stock may be retired upon request of the record holder at the discretion of Co-op's Board of Directors, provided that the Board determines that such retirement shall not have a material adverse financial affect on the fiscal soundness of the Co-op. Dividends paid on shares of Class B Non-voting Stock shall be non-cumulative, and may be declared solely at the discretion of the Board. Dividends shall be paid in accordance with the terms by which the shares were issued, and the amount of such dividends shall not exceed eight percent (8%) per year based on the book value of the shares. All Class B shares will be offered for sale and sold in accord with applicable laws.

### **Section 8.3 Stock Issue**

The amount of all capital stock issued by this Cooperative shall not exceed five million dollars, and no shares may be issued at less than their par value. No share shall be issued until the full price thereof has been paid in cash. No shareholder shall receive less than the par value of any share when disposing of the same to the Cooperative. No person shall become a shareholder of the association except by consent of the Board of Directors.

### **Section 8.4 Member Capital Accounts**

The Co-op shall establish a Member Capital Account for each Member, and shall record each capital contribution by each Member to such account. The Co-op may credit other payments and sums due to the Member to this account, as provided for in these bylaws. No dividends or interest shall be paid on Member Capital Accounts.

### **Section 8.5 Regular Redemption/Redemption of Membership Fee**

If at any time the Board of Directors determines that the sound financial condition and prudent operation of the Cooperative and the Capital Plan will not be impaired thereby, the capital credited to Members' capital accounts, including any paid Membership Fee for a terminated or resigned Member, may be redeemed in whole or in part and may be paid to Members in any manner allowed by law. Any redemption of equity to Members is the sole and exclusive prerogative of the Board. A Member whose membership is terminated or resigned, whether voluntarily or involuntarily, shall not be entitled to or have any legal claim for any special redemption of equity, including the redemption of any paid Membership Fee, beyond any regular redemption of equity that may be determined by the Board from time to time.

### **Section 8.6 Discretionary Special Redemptions**

Notwithstanding any other provision of these bylaws, the Board, in its sole and absolute discretion, shall have the power to retire any capital credited to Members' capital accounts, including any paid Membership Fee for a terminated or resigned Member, on such terms and conditions as may be agreed upon by the parties in any instance, provided that the best interests of the Cooperative and its Members are deemed to be furthered thereby and funds are determined by the Board to be available for such purposes.

### **Section 8.7 Non-Patronage Income**

Non-patronage income is income coming from non-Member Patrons or other sources. The non-patronage income of the Cooperative shall be its gross receipts derived from all sources which under law do not qualify as patronage income, less all expenses properly attributable to the production of such non-patronage sourced income and all income taxes payable on such receipts by the Cooperative. Non-patronage income shall be used on behalf of the Cooperative and its Members in accord with such lawful purposes as may be determined by the board of directors from time to time.

## **ARTICLE IX. LOSSES**

### **Section 9.1 Patronage Losses**

If the Cooperative suffers a loss during any year on business conducted with or for Members (“patronage loss”), such loss may be apportioned among the Members during the year of loss so that such loss will, to the extent practicable, be borne by those who are Members in the loss year on an equitable basis.

The Board shall have full authority to prescribe the basis on which capital furnished by Members may be reduced, or how such patronage loss will otherwise be equitably apportioned among the Members. In the event of a patronage loss in one or more departments or divisions of operation of this Cooperative, but not so much as to cause an overall loss for the fiscal year, such loss or losses may be prorated against each of the remaining profitable departments or divisions on the basis of their respective percentage of the net earnings (net margin) during the fiscal year.

### **Section 9.2 Non-patronage Losses**

If in any fiscal year the Cooperative shall incur a loss other than on patronage operations (“non-patronage loss”), such loss shall be charged first against any reserve accumulated from non-patronage earnings in prior years.

### **Section 9.3 No Member Liability or Assessment**

No Member or Patron of this Cooperative shall be liable for any debt or loss of the Cooperative. The board of directors shall have no authority to make assessments against Members for operating money or to cover losses incurred by the Cooperative. This section shall not be construed to deprive the Cooperative of the right to carry backward or forward losses from any source whatsoever in accordance with the Internal Revenue Code, state tax statutes or other applicable laws.

## **ARTICLE X DISSOLUTION AND PROPERTY INTEREST OF MEMBERS**

### **Section 10.1 Dissolution**

A two-thirds vote of the number of Members of the Cooperative shall be required to dissolve the Cooperative. In the event of the liquidation, dissolution or winding up of the affairs of the Cooperative, whether voluntary or involuntary, after paying or providing for the payment of all debts as provided by law and the retirement of all Class B Non-voting Preferred Stock, the holders of written notices of allocation will be entitled to receive an

amount in cash equal to the stated amount of such written notices of allocation. The holders of written notices of allocation shall not be entitled to receive any further distributions with respect to such interests.

Thereafter, each Member will be entitled to receive an amount in cash equal to each of the following in this order: a) the payment of any unpaid sums due to them in their capital account; b) the return of their Membership Fee and any other capital contributions actually made; and c) the return of the amount paid for their Class A Member Voting Stock, not to include any Annual Membership Dues or other fees.

### **Section 10.2 Remaining Balance of Assets**

All of the remaining balance of the assets of the Cooperative will be distributed among Members on an equitable basis based on the value of business done with the Cooperative during the ten fiscal years immediately preceding dissolution, as shown by the books and records of the Cooperative, or by such other equitable method as the Board may determine at that time.

## **ARTICLE XI INDEMNIFICATION**

### **Section 11.1.A Indemnification**

The Co-op shall indemnify to the fullest extent possible permitted by applicable law any director, officer, employee, or agent who was or is a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she was a director, officer, employee, or agent of this Co-op. Indemnification shall be for expenses (including attorney fees), judgments, fines, penalties and amounts paid in settlement of suits or claims that are actually and reasonably incurred by him or her in connection with such action, suit or proceeding, PROVIDED THAT he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Co-op, and with respect to any criminal action, had no reasonable cause to believe his or her conduct was unlawful.

### **Section 11.1.B Liability**

No member or member organization of Fiddleheads Natural Foods Cooperative shall be liable for any indebtedness or obligation of Fiddleheads Natural Foods Cooperative in an amount exceeding such member's unpaid current dues, personal accounts payable, and any duly authorized levy or special assessment.

### **Section 11.2 Advance for Expenses**

Upon a finding by the Board that there is a reasonable likelihood of indemnification, the Board may advance to a person to be indemnified the amount of his or her reasonable expenses incurred in defending any then pending action, suit or proceeding, PROVIDED THAT such person to be indemnified submits a written application for the advance of expenses which certifies therein, including the factual basis for such certification, that their conduct is reasonably likely to be indemnifiable hereunder and agrees to repay such sums advanced if their conduct is not indemnifiable hereunder, and PROVIDED



FURTHER that legal counsel for the Co-op concurs in the Board's finding of a reasonable likelihood of indemnification for such person.

**Section 11.3 Non-exclusive**

This indemnification bylaw shall not be deemed to exclude any other rights to indemnification to which those seeking indemnification may be entitled under any applicable law, insurance or other agreement.

**Section 11.4 Insurance**

The Co-op shall purchase indemnification insurance coverage consistent with this bylaw, except to the extent that the cost thereof may be deemed by the Board to be fiscally prohibitive.

**ARTICLE XII AMENDMENTS**

**Section 12.1 Bylaw Amendment**

If notice and the text of the bylaw change has been given in the notice of meeting, these bylaws may be altered, amended, repealed or new bylaws adopted at any regular meeting of the Board of Directors by the affirmative vote of the absolute majority of the Board members present. Notice of any such changes in the Bylaws made in the course of the year shall be given to the Members at the annual meeting.

We, the undersigned, being all of the Incorporators of the Fiddleheads Natural Foods Co-op, do hereby assent to the foregoing bylaws and do adopt the same as the bylaws of said Co-op; and in witness whereof, we have hereunto subscribed our names this day of, 2004.

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