

By-Laws



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By-Laws of Allied Grape Growers

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Article I - General Provisions

Section 1.01. Definitions.

"Association" means this corporation.

"Board" means the Board of Directors of Association.

"Cooperative Act" means the provisions of Division 20 of the Food and Agricultural Code of the State of California, and all subsequent amendments to such divisions and substitutions for them.

"Products" includes grapes.

"Pool Year" means the calendar year in which the grapes making up a given pool are delivered to Association.

The masculine pronoun includes the other genders.

Section 1.02. Applicable Laws.

Association is functioning as a nonprofit cooperative membership association under the Cooperative Act.

Section 1.03. Organization.

Association has members but no capital stock. All members are of the same class. All voting power is in the members. Only members vote. When one ceases to be a member his right to vote or participate in the affairs of Association terminates. A non-member may not vote, although he may hold equity in the association. Association members elect Directors and the affairs and business of Association are directed and controlled by the Board, all as more fully set forth in the Association's Articles of Incorporation or elsewhere in these by-laws.

Section 1.04. Purpose.

The purpose of the Association shall be to render service to its members at cost in connection with the members' agricultural pursuits within the limitations of the Cooperative Act, as more fully set forth in the Association's Articles of Incorporation.

Section 1.05. Membership Capital.

Funds for carrying on the business of the Association shall be obtained by assessment or by withholding such part of the proceeds of grapes handled by the Association as shall be determined by the Board. Amounts so withheld or assessed constitute membership capital and shall be credited to such fund or funds hereinafter provided for, all as provided in Article IV hereof.

Article II - Membership

Section 2.01. Qualifications for Membership.

Any person engaged in the production of grapes shall be eligible for membership in Association; provided that such person is engaged in the production of agricultural products within the meaning of the Capper-Volstead Act of 1922 and the Cooperative Act. The word "person" as used in this Article includes individuals, firms, partnerships, corporations and associations; and also, lessees and tenants of lands used for or in the production of grapes, and any lessor or landlord who receives, as rent, all or part of the grapes raised on leased premises. A cooperative association organized under and operating within the limitations of the Cooperative Act shall be eligible for membership in the Association. The Association shall be eligible to be a member of another cooperative association organized under the provisions of the Cooperative Act of California, or under the laws of any other state.

Section 2.02. Application for Membership.

Any person eligible for and desiring admission to membership shall file a written application for admission in such form and containing such information as the Board shall prescribe; provided, the making or filing of such application may be waived by the Board or by any officer or officers to whom the Board has delegated power to accept applications and admit members.

Section 2.03. Acceptance of Application.

The Board shall consider and act upon applications for membership, and, by a majority vote, deny or accept the same for reasons satisfactory to it in its sole discretion. The Board may delegate to any officer or officers power to act upon and accept applications and to admit members and issue membership certificates. In accepting an application for membership Association confers a privilege; in no event shall acceptance of an applicant as a member be deemed to be recognition of a right to membership.

Section 2.04. [Reserved.]

Section 2.05. Certificate of Membership.

The Board shall adopt a form of membership certificate, which form may be changed from time to time and may be incorporated in, and made part of, the membership agreement. Such certificate shall contain appropriate legends referring to restrictions on the transfer thereof, which restrictions are set out elsewhere in these by-laws.

Section 2.06. How Certificates Signed.

Certificates of membership shall be signed by such officer or officers as the Board shall designate, and in the absence of any designation by the President, Chairman, or a Vice-Chairman, and by the Secretary or an Assistant Secretary. No membership certificate shall be invalidated for any omission or irregularity in respect of the application, or its issuance.

Section 2.07. Member to File Agreement.

As a condition precedent to membership each member shall execute and file with Association an agreement to abide by the Articles of Incorporation, By-Laws, rules and regulations of Association, as the same now exist and may be amended from time to time and containing such other provisions and being in such form as the Board shall prescribe; provided that in each instance such agreement shall set forth the varieties of products which the member agrees to deliver to Association.

Such agreement may be combined with and incorporated in the application for membership, and, in such case acceptance of the application shall be deemed approval and execution of the agreement by Association and shall make the agreement immediately effective and binding upon the applicant (member) and Association.

Such agreement, with the membership certificate (regardless of actual issuance), shall be deemed to constitute and evidence, and shall constitute and evidence (in addition to membership in Association and the rights and obligations arising therefrom) a contract between Association and member with respect to his patronage of the Association, of which contract the Articles of Incorporation, By-Laws and rules and regulations of Association are a part, and which contract is subject to modification from time to time upon or with modification or amendment of said Articles, By-Laws, rules or regulations, and also subject to termination in the manner provided in such agreement and these

by-laws. In no event shall any such contract or agreement with a member obligate or permit the Association to operate otherwise than as a nonprofit cooperative association.

Section 2.08. Joint Owners.

Whenever an unincorporated agricultural enterprise is owned by more than one, whether as co-tenants, joint tenants, partners, an unincorporated association, or otherwise, all those owning such right may collectively be admitted to membership, and a membership certificate may issue in the names of all of them, or in such name, fictitious or otherwise, as they may have adopted or desire for the transaction of their business or as their collective name; and all of them collectively, shall be deemed a single member, and to possess and enjoy the rights of one member; and in such instance such membership may be represented and the right of voting and assenting exercised by and the Association may make delivery of all payments, documents, and notices for the benefit of such enterprise and its owners to those thereto authorized in a writing signed by all such persons and filed with Association.

Section 2.09. Membership Incapable of Transfer.

Unless otherwise provided in these by-laws, no certificate of membership or membership rights or property rights of a member in Association can or shall be assigned, transferred, alienated or encumbered in any manner or by any means whatsoever. Any purported or attempted assignment, transfer, alienation or encumbrance of either the certificate of membership or of the membership, or membership or property rights shall be wholly void and confer no rights upon the purported assignee, transferee or claimant. Nothing in this Section 2.09 shall be deemed to prohibit the transfer of allocated equity or credits in other similar funds hereinafter provided for, subject to the provisions of Article IV relating to assignment and transfer of such credits. The assignment or transfer of any other right to receive payment from the Association shall be subject to the same restriction applicable to assignment or transfer of allocated equity referred to in the previous sentence.

Article III - Termination of Membership

Section 3.01. When Membership Terminates.

A membership shall terminate upon the happening of any of the following, to wit:

- (a) The loss of qualifications for membership as provided in Section 2.01 of these by-laws.

(b) The death of a member. If title to the grapes has passed to the Association under Section 6.01, no termination under this subsection shall become effective until the completion of the crop year (April 1 to March 31).

(c) The termination of the member's right to dispose of the grapes from the member's lands described or referred to in the membership agreement, resulting from a bona fide sale, alienation or termination of the member's interest in said lands or discontinuance of producing grapes on said lands; provided, the foregoing provisions shall not be deemed applicable to transfers from one spouse to the other, or to a parent, child, brother, sister, or other relative, or to a transfer in trust, unless any such transfer between the relatives herein mentioned, or in trust, as aforesaid, be made for a full, valuable and adequate monetary or property consideration; provided, further that no termination under this subsection shall become effective if title to the grapes has passed to the Association under Section 6.01 until the completion of the crop year (April 1 to March 31) in which such sale or transfer occurs, and, in no event shall such termination be effective until member shall have given the Association actual written notice of the sale, alienation or termination including third-party documentation of the transaction (for example: deeds, escrow closing or settlement statement(s), or other related documentation) that the Board, in its sole discretion, deems necessary.

(d) The resignation of the member, effected in the manner herein provided. Any member shall have the right to resign from the Association and terminate his membership and marketing obligation by filing with the Secretary of the Association, at the time specified in Section 12.10 of these by-laws, a written resignation (called "notice of withdrawal"), which resignation shall become and be effective at the time specified in said Section 12.10 without any action on the part of the Association; and at the time fixed for said notice to be effective, said membership shall automatically terminate and end, and the certificate of membership shall be deemed canceled.

(e) The expulsion of the member by the Board, after due notice and opportunity to be heard has been given, upon a determination by the Board that the continuation of the membership is undesirable from the standpoint of the Association as a whole. Any member may be expelled for failure to comply with the By-Laws or the rules and regulations of the Association, for the failure of any member to deliver in accordance with the terms of his membership agreement or these by-laws, for failure to maintain member's vineyard in accordance with generally accepted standards of area viticulture (as determined by the Board) or for any cause or reason which the Board, in its unlimited discretion, shall deem sufficient. Such expulsion shall be effective immedi-

ately or at such time after the adoption of the resolution of expulsion, as the Board shall fix. All rights of the expelled member shall cease except the right to be paid any sums that may be or become owing from the Association, which payment shall be due and made at the same time or times that payment would have become due and made had the membership continued, subject to any amounts owing as a result of charges defined in Section 6.04 or otherwise.

Section 3.02. Rights on Termination of Membership.

In the event of termination of membership, regardless of how terminated, the Association shall not become or be liable for the payment of any amount whatsoever as or for the value of the property interest in the Association of the member whose membership is terminated, and each member is received into membership upon the express agreement on the part of such member, and upon the condition that the value of the property interest of such member in the Association (prior to dissolution, merger or consolidation of the Association) is nothing, and that in the event of termination of membership, for any reason whatsoever prior to the dissolution, merger or consolidation of the Association, such member shall not be entitled to be paid anything as or for the value of the property interest of such member.

The foregoing provisions are not for the purpose of penalizing any person whose membership shall be terminated for any reason, but rather because no membership will have any real, intrinsic value, it being intended that the Association shall conduct its business (aside from service charges made at cost) with moneys withheld for such funds as the Board may establish, and said withheld moneys shall be repayable in accordance with the provisions hereof, regardless of the termination of membership.

Section 3.03. Effect of Lease by Member.

A lease by a member of that member's lands described or referenced in the membership agreement, or any portion of such lands, shall not cause a termination of membership. In the event of any such lease, membership shall remain in the name of the member, and the member shall remain responsible to the Association for the delivery of the grapes grown on the leased lands.

Article IV - Association Capital Fund

Section 4.01. Capital Requirements.

The Association may maintain one or more funds for the purpose of providing permanent capital required to operate

the business of Association through capital contributions by members and patrons in proportion to their respective use of the facilities and services furnished by Association and/or to the value of their products handled by the Association. The amount of capital so required shall be determined from time to time by the Board.

Section 4.02. [Reserved.]

Section 4.03. Members' Capital Obligation.

The proportionate share of such capital requirements to be provided by each member or patron shall be based on a formula to be prescribed by the Board, taking into account the volume and/or value of all grapes marketed for such member or patron, provided, however, that the Board may prescribe a minimum capital requirement for all members or patrons. Such formula may be modified or amended by the Board from time to time, before, during, or within eight and one-half months after any fiscal year to which such change is applicable.

Section 4.04. [Reserved.]

Section 4.05. Nature of Allocated Equity.

Said allocated equity shall be deemed to evidence capital contributions to the Association by the respective members and patrons to whom credited, as aforesaid, to be paid solely and exclusively upon the conditions and at the time or times herein provided. No interest or dividends shall be paid on or in respect of allocated equity. Such allocated equity shall be subordinate to all indebtedness of Association as provided in Section 4.11 hereof.

Section 4.06. Capital Fund Statements.

As soon as convenient after conclusion of each season and the making of adjustments to the Association's equity pursuant to Sections 4.03 and 4.04, the Board shall cause to be mailed or delivered to each member and patron a statement showing the dollar amount of Association equity standing on the books of Association in the name of such member or patron, being in such form and containing such other information as the Board shall prescribe.

Section 4.07. Evidence of Assignment.

No assignment or transfer of any equity standing on the books of Association in the name of a member or patron, whether voluntary or involuntary, shall be of any effect, as against the As-

sociation, or entitle the assignees or transferees to be paid or to receive moneys from the Association unless and until evidence, satisfactory to the Association, of such assignment or transfer be submitted to the Association.

Section 4.08. No Assignment While Indebted to Association.

No assignment or transfer of any allocated equity, whether voluntary or involuntary, by act of law or otherwise, can be made, or will any purported assignment or transfer be of any effect against the Association, so long as the party, whose interest is to be assigned or transferred, is indebted to the Association in any manner or for anything, whether such indebtedness is liquidated or unliquidated, due or not due, and the Association may withhold consent to, and refuse to recognize or be bound by, any assignment or transfer, whether voluntary or involuntary, so long as any indebtedness or liability subsists, whether due or not due, liquidated or unliquidated, and the Association shall have, and is given, a prior lien upon and against the allocated equity of any member or person to secure any indebtedness or liability to the Association from such member or person, with the right to offset the same against any moneys becoming payable in respect of said credits.

Section 4.09. Association Relies Upon Own Records.

In making payment of the amount represented by any allocated equity, the Association may rely absolutely upon its own records, and it shall not be liable to any person, other than the person appearing by its records to be the owner thereof or entitled to payment.

Section 4.10. Dissolution.

In the event of dissolution or winding up of the affairs of the Association, the total amount represented by the equity standing on the books of Association in the name of a member or patron shall be deemed payable in available assets, but shall not be paid in any part until all indebtedness of the Association has been paid, or its payment adequately provided for. Thereafter, said equity shall be paid, to the extent of available funds, without regard to the time, or fiscal year retained.

Section 4.11. No Segregation of Funds.

The moneys representing equity standing on the books of Association in the name of a member or patron may be commingled with and used for corporate purposes, as other moneys belonging to or coming to the Association. Nothing herein contained

shall be deemed to require that any specific moneys or funds be physically segregated, or designated, or marked, or set apart, or held for such allocated equity, nor shall such money or funds be deemed a trust fund held for the owner of the allocated equity. The rights of the holders of allocated equity shall at all times be junior and subordinate to the rights of the Association's creditors.

Section 4.12. Other Funds.

The Board, by appropriate resolution, may establish any fund for such specific use or purpose as the Board may determine, through advances, contributions, deductions from marketing returns, the imposition of additional Association charge, direct assessment of the members, retention or withholding from moneys otherwise payable to members, or through any other source that may be made available and specified by resolution of the Board. No member of the Association, merely as an incident of membership, shall have any property right or interest in any such fund created.

Section 4.13. [Reserved.]

Section 4.14. Compromising and Discounting Credits.

Notwithstanding any provision elsewhere herein contained, the Board shall have power, from time to time or at any time, to pay off or secure a release or satisfaction of allocated equity in either instance as follows:

- (a) To compromise or settle or obtain a discharge of any claim of or against the Association or any dispute in respect to the credit; or
- (b) To obtain for the Association a discount for prior payment that the Board deems substantial.

The amount paid in such instances shall be deemed to have been paid from and shall be charged to the fund from which such credit would have been payable eventually.

Article V - Revolving Fund or Capital Fund Agreements with Others

The Board is authorized, for and in the name of the Association, to make and enter into, with any other cooperative, or other corporations or associations formed in this or any other state, for the cooperative and more economical carrying on of the business of the Association, or some part thereof, and cause to be performed, all such revolving fund or capital fund and other

agreements as the Board shall deem for the best interests of the Association or the members or in aid of the grape industry; and there shall be withheld from the proceeds of the grapes, in addition to other charges and retains, whatever amounts are required or authorized to be withheld or paid under the provisions of such other revolving fund or capital fund agreements, and such amounts so withheld or paid may, in the discretion of the Board, in any instance, be charged, treated and considered in one of the following ways, to wit:

(a) As an expense of operation, to be paid and charged as other expenses, and when and if returned to the Association, to constitute general receipts of the Association, and applied toward reduction of the operating expenses.

(b) As special retains or assessments, and for which the members and patrons shall receive special credits, respectively on the Books of the Association, and which shall be repaid to the members and patrons when and as returned to the Association.

All credits, shares of stock or other property interest in or with another organization acquired under or pursuant to the provisions of any revolving fund or other fund agreement or plan between the Association and such other organization, shall be the absolute property of the Association and held in the same manner as other property purchased or acquired by the Association with its funds.

All of the provisions of Article IV shall be applicable to any amounts credited to members under the provisions of this Article, and in the event the members and patrons receive credit as provided for in paragraph (b) hereof, the Board shall determine the conditions and the terms of payment of such credits.

Article VI - Members to Deliver and Association to Handle Grapes

Section 6.01. Passage of Title/Risk of Loss.

The Association shall use its best efforts to sell all of the grapes delivered by the member of the varieties and tonnages designated on and produced from the lands described in the Membership Agreement between the member and the Association. Title to such grapes shall pass to the Association at the time they come into existence and risk of loss shall pass from the member to the Association when possession of the grapes is transferred to the Association or its designee at the time and place of delivery designated by the Association.

Section 6.02. Member to Deliver Grapes.

Each member shall sell and deliver annually to the Association, or its designee, at such place as the Association shall desig-

nate, the number of tons of grapes designated in such member's Membership Agreement and grown on the lands described in such agreement. To the extent that a member discontinues production of grapes on such land, his duty to sell and deliver such grapes shall be reduced proportionately.

Section 6.03. Duty of the Association.

Subject to the provision of these by-laws and the rules and regulations adopted by the Board of Directors, the Association will use its best efforts to market all grapes produced by its members (and listed on the Membership Agreement) in such a manner as to maximize the net returns to the members of the Association. The Board of Directors of the Association shall have complete discretion to determine when and in what manner to market such grapes, and whether they are to be made into wine, brandy, other grape products or sold as fresh grapes, and it shall dispose of such grapes or grape products at such times, in such markets, and for such amounts as the Association deems best. The foregoing duties, purposes, powers, authority and functions of the Association may be carried out and performed by and through any agent or agencies that the Association may select or provide.

Section 6.04. Charges Retained from Proceeds.

The Association may retain from the proceeds of said products all costs and charges of the Association as provided in Section 6.07, and also any and all sums to be withheld on account of or for any funds created pursuant to Section 4.12, and any and all sums owing to the Association from the member for advances, or for any other thing whatsoever, whether due, or otherwise. The Association shall have, and it is hereby granted a security interest in and a first lien upon any and all products of any member subject to the provisions hereof, whether harvested or growing, and the proceeds therefrom when sold, and upon the equity and credits in other funds of such member as security for the repayment to the Association of any and all sums owing to the Association at any time from such member for any reason whatsoever, including without limitation charges of the Association and damages for breach of contract to deliver or market any grapes.

Section 6.05. Pooling of Grapes.

In carrying on its business of crushing, handling, processing and marketing grapes and grape products, and in determining the net proceeds therefrom for return to the members furnishing the grapes, the Association may pool the grapes (and the products therefrom) in one or more pools (including but not limited to pools with single-member participants for the purpose of marketing members' grapes and/or the wine produced from those grapes as member-specific) pursuant to such rules and regulations as the Board may from time to time prescribe.

Such pools shall open and close at such times, as the Board may decide; and the Board may, at any time, for reasons by it deemed sufficient, close any pool, or extend the time for closing any pool. Any unsold inventory of a pool of products may be transferred to the next succeeding pool under such terms and conditions as the Board shall prescribe. The Board shall have complete discretion as to the marketing of members' grapes, including complete discretion as to pooling, and no member shall have the right to participate in any pool other than the one in which his grapes are placed by the Board.

Subject to the right of the Association to retain and deduct its charges, retains, assessments and such other amounts as permitted hereunder or under the membership agreement, the net proceeds received by the Association for the products in any pool shall be returned and paid at such time or times, and from time to time, as the Board shall determine, to the members furnishing grapes for that pool, and in such manner that the net proceeds from each class of grapes in the pool are pro-rated among the members supplying that class and in the proportion furnished by each. The various classes in a pool shall be as established by the Board.

Section 6.06. Delivery of Grapes and Schedule of Value Thereof.

Pursuant to such rules and regulations, as the Board may from time to time prescribe, delivery of grapes to such place or places designated by the Association may be pro-rated to take into account capacity and so as to avoid congestion at the time of delivery necessitating unreasonable delays before unloading can be accomplished. Any such proration shall be made on a fair and equitable basis to all members and patrons, and on the basis that each variety of grapes will be scheduled for delivery to the extent possible when and as mature and ready for delivery, subject however, to the right of the Association to determine and fix delivery priorities between two or more varieties maturing at the same, or about the same time, or to accept delivery of one or more varieties in advance of other varieties, regardless of state of maturity, if any such variety or varieties are needed for special products or other particular purposes and requirements of the Association.

All grapes delivered by its members hereunder shall be conveyed in clean sanitary containers and vehicles and shall at the time delivery, be whole, sound and ripe grapes free from commercial defects such as excessive mold, mildew, rot, insect and other infestation, material other than grapes and pesticide and other artificial residues. Each member represents and warrants that all grapes delivered for the account of the Association by such member will not be at the time of delivery adulterated or misbranded within the meaning of the provisions of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C.

§§ 301, et seq.) and all subsequent amendments and substitutions for such provisions while in effect (the "Act"), nor will any of such grapes be articles which may not, under the provisions of Section 404 or 505 of the Act (21 U.S.C. §§ 344, 355), be introduced into interstate commerce. Each member further warrants and represents that such grapes will not be adulterated, misbranded or falsely advertised within the meaning of the provisions of the Sherman Food, Drug and Cosmetic Law as amended (Ca. Health and Safety Code §§ 26000 et seq.) and all subsequent amendments and substitutions for such provisions while in effect (the "Sherman Food Law"); and will not be articles which may not be sold or offered for sale in California pursuant to the Sherman Food Law.

Member shall indemnify and hold Association harmless from and against damages to grape crushing equipment caused by litter or foreign material (including MOG) present in the grapes delivered by Member to (or for the account of) Association. In the event of such damage to grape crushing equipment, the cost of repairing such damage may be deducted and withheld from any payment due to Member.

Each member further warrants that such grapes will not contain pesticide residue prohibited or in excess of tolerances established by applicable law, regulation or other action by regulatory authorities as they now or hereafter exist ("Applicable Law"); and that such grapes will meet all other standards of Applicable Law. The foregoing is expressly intended to include, without limitation, the Act and the Sherman Food Law and the regulations and other actions of the California Department of Public Health.

As soon as practicable, the Board shall determine and fix a schedule of value or factor value, for each kind and variety of grapes delivered to the Association by its member and patrons for and during such season. Such schedule of value, or factor value, shall be established on an equitable basis to all members and patrons taking into account the net proceeds derived from any pool established by the Board; and in the determination thereof, the Board may take into account, among other things, the sugar content of the grapes delivered, and of each variety for wine making and/or brandy purposes as well as the current market value thereof. As soon as said schedule of value, or factor value, has been determined and fixed as aforesaid, one statement thereof shall be posted in the Association's office, and one statement thereof shall be mailed to each member at his last known address. The determination of the Board, in good faith, of the value or factor value of any variety of grapes shall be final and conclusive on the members and not subject to review or challenge.

Section 6.07. How Expenses Determined.

The Board shall determine the charges to be made for various services rendered by the Association, including, without

limitation, for receiving, handling, processing, storing, selling and other matters, which charges shall be, as nearly as can be determined, sufficient to cover the expenses of the Association, including, without limitation, depreciation on property, losses (unless the Board shall otherwise determine as provided in Article X of these by-laws), salaries and wages of officers and employees, insurance, taxes, cost of supplies, and expenses of handling, storing, processing, shipping, advertising, promotion, selling, disposing and otherwise marketing of the grapes and grape products, the collection of the proceeds therefrom, and interest on moneys owing from the Association.

The determination of the Board as to what shall constitute expenses to be included in the Association charges and the amount of any such charges shall be conclusive upon the members.

Section 6.08. Net Proceeds to Members.

The Association shall not conduct or carry on its business for profit and, from time to time as the Board shall determine, shall return, to the members furnishing grapes for marketing, all of the proceeds derived from the sale of said grapes and the products therefrom, after deducting its charges referred to in the foregoing Section 6.07, subject however, to the right to retain an amount for any fund or obligation owing from the member to the Association as provided in these by-laws. Amounts retained during the existence of any pool of products shall be tentative pending final determination of all amounts to be charged to such member and all other amounts owing by such member to the Association, and excessive amounts retained during operation of such pool shall be deemed payable to the members from whom retained on or within a reasonable time after the closing of such pool.

The obligation of the Association with respect to payment to the members of net proceeds of products, after deducting operating expenses of the Association and amounts for any fund established by the Board pursuant to these Bylaws, is such that amounts withheld for any such fund shall be contributions of capital to the Association by the members. Any amounts credited to any such fund out of the proceeds of grapes and grape products as provided in these by-laws shall have the same status as though they had been paid to the members in cash in pursuance of a legal obligation to do so and the members had then furnished corresponding amounts for capital for the Association.

Section 6.09. Association's Independence of Control.

(a) All matters pertaining to the handling and marketing of grapes or grape products shall be transacted solely in the name of the Association or in the name of any agent to or through

whom such grapes or grape products may be consigned or shipped for handling. The Association may sell and market such grapes or grape products and transfer title to them, and collect and receive the proceeds in its own name exclusively, or in the name of any subagent. No member, by virtue of having furnished any grapes, shall exercise any control over the Association in regard to either the handling or marketing of these products, or other conduct of the business of the Association. In all of these matters the Association may, in good faith, use its own discretion and judgment, free from any direction from the member furnishing the grapes. The member shall not be directly liable under any rules of agency on account of any contract, or contracts, made by the Association in carrying on its business. The Association shall be liable to members only for proceeds actually received by the Association.

(b) Any and all claims pertaining to the handling or marketing of grapes or grape products, including but not limited to any dispute arising under a contract of sale with a third party for the purchase of the grapes produced by a member, or otherwise arising from the conduct of the business of the Association, shall be prosecuted, defended, settled, and collected solely in the name of the Association or of any agent through whom such products may be shipped or sold. The Association may, in its discretion, charge and retain out of moneys recovered on the claim, or out of other funds held by the Association on behalf of the member whose grapes are the subject of the claim, the cost (including attorney's fees and other legal expenses) incurred in connection with the claim. No member, by virtue of having furnished any grapes, shall exercise any control over the Association in regard to the claim, and the Association may, in good faith, use its own discretion and judgment, free from any direction from the member furnishing the grapes, concerning the prosecution, defense, settlement, or collection of the claim. The Association shall have no liability to member for any decision made by the Association in connection with the claim, or because of the outcome of the claim, and in case of any disagreement or dissatisfaction the member's sole recourse is to withdrawal from membership in accordance with these By-laws.

Section 6.10. Damages for Member's Breach.

In the event that any member shall fail, neglect, refuse or otherwise omit to deliver grapes to the Association in accordance with such member's membership obligation or as set forth elsewhere in these by-laws, such act or omission will injure the Association to an amount that is, and will be, impracticable and extremely difficult to determine and fix, and that is, therefore, fixed in the amount provided in Section 12.09 hereof for all grapes that member omits to deliver pursuant to the provisions of these by-laws, and which amount the member so violating the By-Laws agrees to pay, and shall pay, to the Association as liquidated damages, and in default of payment thereof to

the Association upon demand, the same may be recovered by action in any court of competent jurisdiction in the name of the Association. In case any action is brought against a member by the Association to recover from the member the damages above provided for, the prevailing party shall be entitled to all costs, premium for bonds, expenses and fees in such action, including reasonable attorney's fees.

Neither the failure to enforce any member's obligation to deliver and market grapes, nor the Association's release of any member from such obligation, shall have any effect whatsoever upon such obligation of any other member of the Association.

Section 6.11. Specified Performance Injunction.

In the event that any member fails to deliver grapes to the Association in accordance with the terms of these by-laws or his membership agreement, the ability of the Association to perform its contracts of sale with its customers will be jeopardized and the Association and its members will be exposed to the risk of substantial injury which would be impracticable and extremely difficult to determine. It is, therefore, agreed by the member that if he fails to deliver, the Association may apply for, and the Court may order, a temporary restraining order and a preliminary injunction against such member and a decree of specific performance, as contemplated by Sections 54263 and 54265 of the California Food & Agriculture Code (or any successor statute), to the entry of which orders member hereby consents, in order to prevent impairment of the Association's obligations to its customers and the interests of the other members in the cooperative.

Article VII - Members' Meetings

Section 7.01. Annual Meeting.

A meeting of the members, to be known as the annual meeting, shall be held each year for the purpose of electing Directors to serve the Association from said Election Districts. Such meeting shall be held in Election Districts 1, 2 or 3 at the time provided in Article XII of these by-laws, unless such time be changed as provided in Section 11.13 of Article XI hereof.

The annual meeting of the members of this Association shall be adjourned to meet in Election District 4 (as said Districts are defined in Section 8.01, Article VIII of these by-laws) for the purpose of electing Directors to serve the Association from said Election District when the term of office of any Director in said Election Districts shall expire, and for the purpose of transacting any and all other business of the Association. Such adjourned annual meeting shall be held at the time and place designated by the Board, from time to time, provided that such meeting shall be held within thirty days from and after the date of the

next preceding annual meeting of the members. Notice of such adjourned annual meeting shall be given to all members in the same manner as provided in these by-laws for annual meetings, and such notice may be given concurrently with the notice of and for any such annual meeting.

Section 7.02. Special Meetings.

Special meetings of the members, for any purpose or purposes whatsoever, may be held upon call made by the President, or by the Board or by a majority of all the acting Directors, or by the holders of not less than 10% of the voting power of the Association, and at a time appointed therefor by those calling the meeting.

Section 7.03. Place of Meetings.

Unless the Board shall appoint some other place in any instance or instances, meetings of members, both annual and special, shall be held at the principal office of the Association.

Authority is hereby conferred upon the Board to fix or designate (and from time to time change) the place for any members' meeting or meetings, one or more, or all, whether annual or special, and in such instance such meeting or meetings shall be held at the place so fixed or designated.

Section 7.04. Notice of Meetings.

Written notice of each meeting of members, whether annual or special, shall be given to each member entitled to notice, not more than sixty (60) days nor less than ten (10) days, before the meeting, (provided, however, that when a special meeting is called by a person entitled to call such a meeting other than the Board, then the procedure in Corporation Code Section 601(c) shall apply), in any of the following ways:

First: By delivering such notice personally; or

Second: By mailing such notice, first class, charges prepaid, addressed to each member at his address appearing on the books of the Association. If no address appears on the books of the Association, then notice shall be addressed to the member at the place where the principal office of the Association is situated; or

Whenever a member shall, in writing, give the Association an address for the purpose of notice, the same shall be deemed the member's "address appearing on the books of the Association," as such term is herein used; and in addressing a notice to a member "where the principal office of the Association is situated," as such term is herein used, the address to be set forth shall be the post office name of the city or community and

the State in which said principal office is situated, and no street or other specific address in said city or community shall or need be stated.

Section 7.05. Form of Notice and Statement of Purpose.

Notice of any meeting shall specify the place, the day and the hour of the meeting. In the case of special meetings, the general nature of the business to be transacted shall be stated in the notice, but in the case of the annual meeting, need not be stated; provided, however, the provision of Section 601 of the Corporations Code requiring notice of special proposals to be submitted at a meeting, whether annual or special, shall always be observed.

Section 7.06. Members Entitled to Notice.

All notices of any meeting shall be mailed on the same day and at the same time. Where notice of any members' meeting is to be mailed, notice shall be given only to those who appear from the records as members at 5:00 PM on the day immediately preceding the day of mailing. Five o'clock PM on the day immediately preceding the day of mailing is the record date and time for the determination of members entitled to notice of the meeting.

Section 7.07. No Proxy Voting.

Proxy voting is hereby prohibited, and no member who is entitled to vote or execute consents or assents shall have the right to do so except in person; provided, however, in the case of a member other than an individual, such member may be represented by a duly authorized agent or representative for the purpose of voting or executing consents or assents.

Section 7.08. Quorum.

Members holding twenty percent (20%) of the voting power of the Association at any members' meeting shall constitute a quorum for the transaction of business at such meeting including the election of Director, if Directors are to be elected at such meeting.

Section 7.09. Business to be Transacted.

At the annual meeting, Directors, other than Directors-at-Large, to the number whose terms then expire shall be elected, reports of the affairs of the Association shall be considered, and any other business may be transacted which is within the powers of the members, including the amendment, repeal and adoption of By-Laws, the approval and ratification of amendments to the Articles of Incorporation, and action upon or with respect to any or all questions or matters requiring the vote, consent or

approval of the members, or with respect to which the members are permitted to act, subject, however, to the provisions of Section 601 of the Corporations Code of California, requiring notice of special proposals. At a special meeting, any business may be transacted of the general nature specified in the notice thereof, but not otherwise.

Section 7.10. Manner of Voting At Members' Meetings.

All questions, other than on election of Directors, or except as otherwise expressly provided by statute or by these by-laws, shall be determined by a majority of the votes represented at the meeting. All voting, other than on election of Directors, shall be via voice unless the holders of a majority of the votes represented shall demand a vote by written ballot.

Section 7.11. Election of Directors.

Directors, other than Directors-at-Large, shall be elected by districts in accordance with the provisions of Section 8.01 of Article VIII of these by-laws, upon a separate ballot of each of said districts. Such ballots may be cast by mail prior to the annual meeting of members (pursuant to such rules and procedures as the Board may adopt) or cast in person at the annual meeting of the members. A member may vote only for the Director or Directors to be elected for the district or districts in which the grapes contracted by such member for delivery to the Association are grown and produced. A member may, in accordance with the voting rights and privileges provided in the Articles of Incorporation of the Association, vote for one or more Directors (not exceeding the number to be elected) but may not cumulate his votes, and cumulative voting in an election for Directors shall not be permitted. If a member is entitled to vote for Directors in more than one district, he may cast the one vote to which he is entitled by reason of his membership in the Association in any district in which his contracted grapes are grown and produced, but must divide the votes to which he is entitled on account of dollar value (as prescribed in Section 12.13) between the districts in which his contracted tonnage is grown and produced in the proportion that the value of the grapes grown in one district bears to the total value of all grapes produced by the members.

A plurality of votes shall be sufficient to elect, and those receiving the highest number of votes, to the number to be selected as Directors, shall be held elected. In case of failure to elect the full number of Directors for any district because of a tie, those receiving a plurality of votes upon the first ballot shall be deemed elected, and there shall then be elected from among those receiving the tie vote, a sufficient number to give each district the total number of Directors to be elected therefrom.

Section 7.12. Rule for Elections and Voting.

The Board may make and, from time to time, change rules and regulations for the conduct of elections, or any election, and for voting upon, or with respect to, any question or matter submitted to the members for vote, consent or assent.

The Board may, by rule or resolution, prescribe the form of ballot for elections, or any election, or to be used for any vote, and may provide ballots for use of the members at elections, or any election, or in taking any vote; and may in the case of ballots to be used in an election of Directors, provide for printing thereon the name, or names of candidates or nominees.

Such rules may, in addition to any other matters, provide for the time, or times, and the method of casting ballots and the tabulation and certification of votes. All such rules and regulations shall operate impartially, fairly and equally.

Whenever, in an election of Directors, the polls are to open or close at a specified time, notice of such limitation respecting opening or closing (or both) shall be stated in the notice of such meeting.

Section 7.13. Nominating of Directors.

If the Board so elects, in the exercise of its sole and absolute discretion, within one hundred twenty (120) days prior to each annual meeting of the members of this Association, a meeting of the members shall be held in and for every district, for which one or more Directors are to be elected at the annual membership meeting of this Association thereafter, for the purpose of nominating Directors for each such district. In its sole and absolute discretion, the Board may also solicit nominations by mail from members of each such district and may hold more than one meeting in an election district in the interest of limiting the meeting sizes. The Board shall designate a time and place for each such district membership meeting, and notice thereof shall be given in the manner prescribed by Sections 7.04 and 7.05 of Article VII of these by-laws. If the Board elects to solicit nominations by mail, the forms for nomination shall be included with the notice of time and place of the District Meeting. The right to vote and otherwise participate in each such district membership meeting shall be limited to members who grow and produce grapes in the district in which such district meeting is held and which said grapes are contracted for delivery to the Association. At such district meetings, qualified members may place in nomination as many qualified persons for the office of Director as desired and only the nominees selected at such district meeting or nominated by mail shall be voted upon at the annual membership meeting thereafter at which one or more Directors for the district are to be elected in accordance with the provisions of Section 7.11 of Article VII and the provisions of Section 8.01 of Article VIII of these By-Laws.

Article - VIII Directors

Section 8.01. Number of Directors.

Number of Directors of the Corporation shall be not less than 5 and not more than 9, the exact number of which shall be fixed by a resolution duly adopted by the Board or by the members. The number of Directors so fixed by such resolution shall constitute the authorized number of the Board of Directors.

For the purpose of electing Directors, there are hereby fixed and established four (4) Election Districts, designated and described as follows:

Election District No. 1:

To comprise all of pricing districts 13 and 14 made up of Madera, Fresno, Kings, Tulare, and Kern Counties.

Election District No. 2:

To comprise all of state pricing districts 9 & 12 including, but not limited to, Merced, Stanislaus, Glenn and San Joaquin Counties.

Election District No. 3:

To comprise all of state pricing districts 6, 10, 11 and 17 including, but not limited to, Contra Costa, Alameda, Yolo, Sacramento and San Joaquin Counties.

Election District No. 4:

To comprise all of state pricing districts 1 through 5 including Mendocino, Lake, Sonoma, Napa and Solano Counties.

All Directors to be elected from Election Districts 1 through 3 shall be elected at the Annual Meeting of the membership of the Association, and the Director from Election District 4 shall be elected at the Adjourned Annual Meeting of the membership of the Association.

Within sixty (60) days prior to the annual meeting each year the Board shall review the districts as described above and ascertain whether they and the number of Directors allocated to each constitute fair and equitable district representation based on the value or quantity of product delivered to the Association during the preceding fiscal year. If the Board, by a vote of two-thirds of its members, finds that any district or the number of Directors from any district, fails to reflect fair and equitable district representation, the Board shall by an affirmative vote of two-thirds of its members, reapportion the Directors or redistrict the districts.

Section 8.02. Qualifications and Terms of Directors.

A Director, other than a Director-at-Large, shall be a member of the Association; provided that if a member is a firm or corpora-

tion, it may designate and appoint one of its officers, or if an Association it may designate and appoint one of its officers or members, to represent it at members' meetings and such representative shall be deemed a member of the Association for the purpose of qualifying for and serving upon the Board and shall be eligible for election and service as a Director. Any member engaged in the business of buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale of grapes from growers for resale shall not be eligible to be a Director of the Association.

The term of office for each Director, other than a Director-at-Large, shall be three (3) years and until the election and qualification of his successor, and at each annual meeting of the members of the Association, such Directors shall be elected for the term of three (3) years in the case of all Directors whose terms of office then expire; provided, however, that the Board may elect, in its sole and absolute discretion, to stagger the terms of the Directors, if and when necessary, to equalize, to the extent practicable, the number of Directors elected each year.

Section 8.03. Directors-at-Large.

At the organization meeting the Directors, excluding Directors-at-Large, by a majority vote of its members may elect up to two Directors-at-Large. Any person, whether or not a member, shall be eligible for election as a Director-at-Large. Any such Director-at-Large shall have the same powers, rights, liabilities, and duties as all other Directors, except the power or right to elect Directors-at-Large. Directors-at-Large shall hold office for a term of one year.

Section 8.04. Organization Meeting.

A meeting of the Board to be known as the organization meeting shall be held the day of or after the adjourned annual meeting of the membership of the Association, or at a time and place to which such organization meeting may be adjourned, for the purpose of organizing, electing and appointing officers. Any other business may also be transacted at such meeting. No notice of such organization meeting need be given. If not held at the time appointed, or if organization be not effected or completed at such meeting, the business of organization shall be transacted or completed at the first regular or special meeting held thereafter, and if not then completed, then at any meeting, regardless of when held.

With the consent of all the Directors, such organization meeting may be held immediately succeeding adjournment of the members' meeting at which Directors are elected, or at any other time. Attendance at and participation in the proceedings of the meeting shall be deemed such consent. The consent of

any Director not present or participating shall be written and filed with the Secretary and made a part of the minutes, either before or after the holding of the meeting.

Section 8.05. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors, in its discretion, shall designate. It shall not be necessary to give notice of such regular meetings, nor of the business to be transacted; provided if the time for holding any regular meeting be changed from the time previously fixed by the Board of Directors, written notice of that fact shall be given to those Directors who were absent at the time of the adoption of the resolution effecting the change.

Section 8.06. Special Meetings.

Special meetings of the Board may be held from time to time upon call by the Chairman of the Board, if any, or the President, or if they are absent or are unable or refuse to act, by any Vice-Chairman, and it shall be the duty of the President or Chairman, or if they are absent or are unable or refuse to act, then of any Vice-Chairman, to call a special meeting of Directors upon the written request of three Directors, specifying the purpose, and in the event neither the Chairman, President nor Vice-Chairman shall call such meeting upon said request, then the same may be called by said three Directors. The time for such special meeting shall be appointed by the person calling it, and the call, in any instance, shall be delivered to the Secretary or person whose duty it is to give notice.

Section 8.07. Notice of Special Meetings.

Notice of special meetings of the Board, specifying the time and place of the meeting, shall be given each Director not later than four (4) days, if notice is given by mail, or not later than forty-eight (48) hours if notice is served in writing personally or via electronic media or by telephone before the meeting, in any one of the following ways, to wit:

First: By personal delivery of written notice of the meetings; or

Second: By sending written notice of the meeting by mail, provided said written notice shall be mailed or sent in sufficient time to permit the receipt thereof the day next before the meeting, in the ordinary course of transmission; or

Third: By leaving written notice of the meeting at the residence or place of business of the Director to be served, with some person residing or regularly employed there, or via electronic media or by telephone.

Section 8.08. Place of Directors' Meetings.

Meetings of the Board, whether regular or special, shall be held at such place within the State of California as has been designated, from time to time, by resolution of the Board, or by written consent of all members of the Board; and, in the absence of such designation, shall be held at the principal office of the Association.

Section 8.09. Waiver of Notice and Consent to Meetings.

Directors may waive any and all provisions of law or of these by-laws in respect of call, notice and place of meeting, or any of them, and may consent to the holding of any meeting, without call and notice, or either of them, and without regard to the place where held; and any Director may waive call, notice and place of meeting, or any of them, in respect of himself, and may consent to the holding of any meeting without call and notice, or either of them, and without regard to the place where held.

Any regular or special meeting of Directors, held with or upon the prior unanimous consent or approval of all the members of the Board (and attended by not less than a quorum) shall be duly called, and the Directors' actual notice of the time and place of such meeting prior thereto shall constitute due notice thereof.

Attendance and participation in the proceedings of any meeting (attended and participated in by not less than a quorum), without objection to the regularity or sufficiency of, or lack of, call and notice, or either, or the place where held, shall constitute and be a waiver in respect of such matters and an irrevocable consent to the holding of such meeting on the part of and by each Director so attending and participating without objection.

Such herein authorized or referred to waiver and consent, or either, of any Director (not present at such meeting) may be given either before, during or after the meeting, and may be made and evidenced in any of the following ways, to wit:

- (a) In writing, filed with the Secretary either before, during or after the meeting;
- (b) Subscribing at the foot of the minutes of such meeting an approval of such minutes;
- (c) Approval, without objection, of the minutes of such meeting at a subsequent meeting of the Board, attended by the Director who was absent from the first-mentioned meeting.

Section 8.10. Vacancies.

Any vacancy in the office of Director-at-Large, however created or arising, may be filled by a majority of the remaining Directors

(excluding Directors-at-Large) although less than a quorum. Any vacancy in the office of any Director, may be filled by the appointment of a Director from the district in which the vacancy occurs or the Board may call a special meeting of the members in that district to fill the vacancy.

Section 8.11. Quorum.

A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business; and unless otherwise required by law or these by-laws, every act or decision done or made by not less than a majority of the authorized number of Directors present at any meeting shall be regarded as the act of the Board.

Section 8.12. Business to be Transacted.

It shall not be necessary to state in any notice, whether of a regular or special meeting, the nature of the business to be transacted thereat, and any business that the Board may have transacted at a regular meeting may be transacted with like effect at a special meeting, unless otherwise provided by law.

Section 8.13. Compensation of Directors.

Directors shall receive no stated salary for their services as Directors, but each Director shall be paid for each regular and special meeting attended by him including meetings of a committee authorized by the Chairman, such sum as may be fixed by the Board from time to time, at any meeting thereof. A Director shall also be allowed his reasonable expenses when actually engaged in the business of the Association, to be audited, allowed and paid as other claims against the Association.

Article IX - Notices

Section 9.01. Applies to all Notices.

Except as in conflict with law, or any provisions of these by-laws, the provisions of this Article are intended to, and shall apply to, all notices required or permitted to be given, including notices of members' meetings and of Directors' meetings.

Section 9.02. By Whom Given, Method of Making and Signing.

Notices shall be given by the Secretary, or by an Assistant Secretary, if such assistance be so directed by the Secretary, the President, or the Directors. If the person whose duty it is to give any notice shall fail or refuse to do so, then it shall be given by any person thereto directed by the Chairman, President or the Directors; or in the event of a called meeting, it may be given (in the event of such refusal) by the one Director to do so by the person or persons calling the meeting. Where service of

any written notice is to be made or may be made by personal delivery, or by sending by mail, or by leaving at the residence or place of business, of the person to be served, the delivery, mailing or leaving may be done by any messenger, employee or other person thereto authorized or directed by the one whose duty it is to give, and who is giving, the notice.

Whenever a written notice is required to be given, or is given under these by-laws, or pursuant to any provision of law, it may be made by any method appropriate for such purpose, including by letter, electronic media, fax or otherwise.

No notice need be actually signed or subscribed by the hand of the person giving it, and in lieu of actual signing, the name of such person may be made by the method used in making any other portion of the notice, or by any method by which any portion of the notice might be made, as hereinbefore provided.

Section 9.03. Where Notice To Be Mailed.

When resort is had to giving any notice by mail, such notice shall be deposited in the United States Post Office in the city or community in which the principal office of the Association is situated or in a United States Post Office within not more than 250 miles from said principal office, with postage thereon prepaid, and directed to the person to be served at the address of such person, if such address appears on the records of the Association; and if the same does not appear on such records, then addressed to such person at the Post Office at or from which delivery of mail is made at the principal office of the Association. The notice shall be deemed to have been deposited in said Post Office if delivered to a letter carrier making mail deliveries from said Post Office, or when deposited in a letterbox or other mail receptacle from which mail is regularly collected for said Post Office.

Section 9.04. [Reserved.]

Section 9.05. Notice to Person Giving the Same.

Where the person giving any notice shall belong to the class entitled to notice, it shall be conclusively presumed that he has actual notice of such meeting and such notice shall constitute due notice hereunder.

Section 9.06. Actual Receipt of Notice.

Whenever any person (whether member, Director or other) shall be entitled to any notice, actual receipt by such person of any writing intended as a special or specific notice to such person, or of any written or printed notice used or intended for use generally, as and for notice to the class of which the person is a member, shall constitute and be notice of the contents of such

writing, and due and sufficient service of such notice, regardless of how or in what manner served, or how, or in what manner, or by whom delivery was made, or how, or in what manner, or from whom it was received; and no other or further notice need be given or service made, and such person shall be deemed to have waived any irregularity or omission in respect of such notice and service, unless written protest specifying the grounds of insufficiency or the nature of the omission be immediately filed with the Association.

Article X - Officers and Committees

Section 10.01. Number of Officers.

The officers of the Association (herein called "regular officers") shall be elected by the Directors, and shall be a President, a Chairman of the Board if the Board should so determine, one or more Vice-Chairman, a Secretary and a Treasurer. The Board may also appoint one or more Assistant Secretaries, and one or more Assistant Treasurers, a Manager, and such other officers, as they deem desirable for the transaction of the business of the Association. The Chairman, if any, shall be a member of the Board and if he shall cease to be a Director at any time, he shall, ipso facto, cease to be such Chairman. No other of said officers need be a member of the Board. Any two or more of said offices may be held by the same person. Regular officers shall be elected annually at the organization meeting of the Board, or whenever the Board shall determine; provided they may always be elected whenever a vacancy exists.

Other officers may be elected at any meeting of the Board. Unless sooner removed by the Board, or unless they resign or become or be disqualified, all of the officers shall hold office until their successors are chosen and qualified. Any officer, whether elected or appointed by the Board, may be removed at any time by the affirmative vote of a majority of the whole Board, and each officer shall take and hold office subject to the right of removal by the Board.

Section 10.02. The Chairman.

The Board of Directors shall elect one of its members to be Chairman of the Board. The Chairman shall have the power, and it shall be his duty:

(a) To preside at all meetings, regular and special, of the Members and of the Board of Directors.

(b) Subject to the advice of Directors, to direct and control the affairs of the Association.

(c) To call, or provide for the calling of, special meetings of the Members, and also the Board of Directors, to be held at such

time or times as he shall call such meetings when so requested, as herein after provided.

(d) To subscribe the name of the Association to all deeds, conveyances, mortgages, leases, promissory notes, contracts, obligations, certificates and other papers and instruments in writing that may require his signature, when required or authorized to do so.

(e) To discharge such other duties as may be required of him or authorized by these by-laws, or by the Board of Directors.

Section 10.03. The President.

The President shall be the Chief Executive Officer of the Association and shall have the power, and it shall be his duty:

(a) Subject to the advice of the Directors, to direct and control the affairs of the Association.

(b) To subscribe the name of the Association to all deeds, conveyances, mortgages, leases, promissory notes, contracts, obligations, certificates and other papers and instruments in writing that may require his signature, when required or authorized to do so.

(c) To discharge such duties as may be required of him or authorized by these by-laws, or the Board of Directors.

Section 10.04. The Vice-Chairman.

The Vice-Chairman, or if more than one, then order of priority shall in the absence or disability of the President or Chairman, if any, (or a senior Vice-Chairman), perform the duties and exercise the powers of the President or Chairman, and shall perform such other duties as the Board shall prescribe.

Section 10.05. The Secretary.

The Secretary shall:

(a) Attend all sessions of the Board, and all meetings of the members, and record all votes and minutes of all proceedings in a book to be kept for that purpose, and perform like duties for the standing committees when required;

(b) Keep the corporate seal of the Association, and the books of blank certificates of membership, fill up and countersign all certificates issued, and affix the corporate seal to all papers requiring a seal;

(c) Keep proper account books and such records and books pertaining to the issuance of membership certificates as may be required by law, or these by-laws, or as the Board shall

prescribe, and discharge such other duties as pertain to his office, or which may be required by law, or by these by-laws, or by the Board.

Section 10.06. The Treasurer.

The Treasurer shall:

(a) Have the custody of the Association's fund and securities and keep full and accurate accounts of receipts and disbursements in books belonging to the Association and deposit all moneys and other valuable effects in the name and to the credit of the Association, in such depositories as may be designated by the Board.

(b) Disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements, and render to the Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association; provided, the Board may prescribe the manner in which funds shall be withdrawn from and paid out by any depository.

(c) Give the Association a bond if required by the Board in a sum, and with one or more sureties satisfactory of his office, and for the faithful performance of the duties of his office, and for the restoration to the Association, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association.

Section 10.07. The Assistant Secretary/Treasurer.

The Assistant Secretary/Treasurer, if such office is appointed by the Board, shall act as an assistant to the Secretary and Treasurer to the Board of Directors, and in the absence or disability of the Secretary or Treasurer to the Board of Directors, shall perform the duties of either of them. The Assistant Secretary/Treasurer shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors or by these by-laws.

Section 10.08. Duties of Officers May Be Delegated.

In case of the absence of any officer of the Association, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, the power or duties, or any of them, of such officer to any other officer or to any Director provided a majority of the entire Board concur therein.

Section 10.09. Executive Committee and Other Committees.

The Board may appoint an executive committee to consist of four Directors, to serve at the pleasure of the Board and the Board may delegate to such executive committee any of the general powers and authority of the Board in the management of the business and affairs of the Association, except (a) the power to adopt, amend or repeal By-Laws, (b) the filling of vacancies on the Board or in any committee, (c) the fixing of compensation of the Directors for serving on the Board or on any committee, (d) the appointment of other committees of the Board or the members thereof, (e) the amendment or repeal of any resolution of the Board which by its express terms is not amendable or repealable, or (f) any other action prohibited by law.

Article XI - Powers of Board of Directors

The Board, subject to restrictions of law, the Articles of Incorporation and these by-laws, shall exercise all of the powers of the Association, and without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board shall have, and they are hereby given, full power and authority, in their unlimited discretion (to be exercised by resolution) in respect of the matters, and as hereinafter set forth, to wit:

Section 11.01. Seal.

To adopt, use and at will alter, a corporate seal of form and device approved by the Board, provided, there shall be set forth on said seal, the name of the Association and the state and date of incorporation. Said seal shall be affixed to the membership certificate and such other instruments, as the Board shall direct.

Section 11.02. Membership Register.

To prescribe the form of and provide for keeping a membership register and records pertaining to the issuance and registration of membership certificates.

Section 11.03. Financial Reports.

To cause to be sent to the members of the Association, not later than 90 days after the close of the fiscal year, an annual report of the operations of the Association, in accordance with the provisions of Section 54204 of the Food and Agriculture Code. Such annual report shall include a balance sheet as of such closing date. Such financial statements shall be prepared from the books, and shall be in accordance therewith, and shall be prepared in a form sanctioned by Generally Accepted Accounting Principles.

Section 11.04. Rules and Regulations.

To adopt, repeal, modify, from time to time change, and enforce, all rules and regulations not inconsistent with the laws of the State of California, or with the Articles of Incorporation, or with these by-laws, by them deemed essential or desirable for the management or conduct of the Association's business and affairs, or the exercise of their powers.

Section 11.05. Borrowing Money.

To borrow money, and to make and issue notes, bonds and other negotiable and transferable instruments, mortgages, deeds of trust, and trust agreements, and to do every act and thing necessary to effectuate the same.

Section 11.06. Guarantee Obligations of Members.

To guarantee or assume payment of the purchase price of any supplies or material purchased by the members, in connection with the production of grapes to be marketed by the Association and to guarantee payment of the notes or other obligations of the members for or in respect of moneys borrowed for the purpose of financing their ordinary viticultural operations.

Section 11.07. Hypothecate Property.

To mortgage, pledge, assign, hypothecate or otherwise alienate, as security for any Association indebtedness, grapes and grape products, warehouse receipts, bills of lading, or other evidence of ownership or right of possession of any grapes or grape products held by the Association for marketing, and also the proceeds and money owing to the Association from the sale of the same, or otherwise, and also any credits, shares of stock or certificates under any revolving fund agreement or agreements between the Association and other cooperatives, or marketing or by-product or supply companies.

Section 11.08. Commingling Moneys.

To commingle with its own funds, and use, all proceeds from the sale of grapes and grape products, and no member shall be entitled to claim or be paid the specific proceeds from the sale of any specific property under any trust doctrine, or otherwise, but the members shall become general creditors of the Association for any amounts payable to them.

Section 11.09. Appoint Agents.

To appoint, remove or suspend such subordinate officers, agents or factors as they may deem necessary, and to determine their duties, and to fix, and from time to time change, their salaries or remuneration, and to require security as and when they deem fit.

Section 11.10. Purchase Property.

To purchase, or otherwise acquire, for the Association, and to dispose of, any property, rights or privileges that the Association is authorized to acquire, and to pay for any property purchased for the Association, either wholly or partly in money, bonds, notes, certificates, debentures or other securities of the Association, and to secure payment of any indebtedness or liability of the Association by a pledge, mortgage or deed of trust of any or all property of the Association.

Section 11.11. Fiscal Year.

To fix and from time to time change, the fiscal year and the "season" of the Association.

Section 11.12. Advances to Members.

To make advances to members against the grapes to be marketed by the Association, or its proceeds; and the provisions of Section 315 of the Corporations Code of California shall not be applicable to the Association, or its business; and loans and advances may be made to members (whether Directors, officers or others) and obligations guaranteed without any officer or Director incurring any liability on account thereof; and members subscribing or assenting to these by-laws shall be deemed to have given their continuing assent to such loans and guarantees; provided that the powers granted hereunder may not be delegated by the Board but may be exercised by the Board only at a regular or special meeting duly noticed.

Section 11.13. Changing Time of Annual Meeting.

To advance or postpone (and thereby change) the time of any annual meeting (as fixed elsewhere in these By-Laws) by not more than ninety (90) days, whenever it shall appear to the Board that such change is necessary or desirable. Such change shall be effected by resolution duly adopted by majority vote of the Board prior to giving notice of the meeting; and thereupon the time for that annual meeting shall be that so fixed by the Board, and notice of the meeting shall be given accordingly.

Section 11.14. Waiver Release or Subordination of Producer's Lien.

To waive, release, subordinate to the claims of other creditors, any producer's lien which may be created by law or by contract in favor of the Association or any of its members with respect to any grapes subject to the terms of the Membership Agreement between the member and the Association.

Article XII - Miscellaneous

Section 12.01. Amendments.

Except as otherwise provided by law, these by-laws may be amended or repealed or new By-Laws adopted in any of the following ways, to wit:

(a) By members holding the majority voting power of the Association at a meeting thereof, whether annual or special.

(b) By written assent of members holding the majority voting power of the Association filed with the Secretary.

(c) By the Board (except any change in the number of Directors except as otherwise permitted under Article VIII).

Section 12.02. No Liability to Creditors.

There shall be, and is, no personal liability on the part of the members to creditors of the Association, or to the Association for the payment of assessments except for retention from proceeds of grapes for funds as are provided elsewhere in these by-laws.

Section 12.03. Losses.

In the event of a substantial loss to the Association from any cause whatsoever, the Board may, in its discretion, charge all or any part of such loss to current operating expenses, and any part of such loss not charged to current operating expenses (up to the whole thereof) may be charged ratably and proportionately against allocated equity for the season during which the loss occurred; or at the discretion of the Board, may be charged ratably and proportionately against all allocated equity (for all seasons), regardless of how arising.

In the event any loss be charged against allocated equity, each credit shall be reduced by its proportionate part of the loss; and the record pertaining to the applicable fund shall be changed accordingly; and irrespective of anything to the contrary contained in these by-laws, there shall be payable in respect to any credit against which a loss has been charged only the difference between the amount of the credit as originally entered and the portion of the loss charged thereto.

The Board shall have power to determine when a substantial loss has occurred, and its determination shall be conclusive; and in making such determination may consider, among other things, losses from bank suspensions, uncollected accounts, fire, explosions, accident or other calamity, and excessive or high operating or overhead costs due to crop failure or small yield.

Section 12.04. Pro-rate Agreements and Codes.

The Association is expressly authorized to enter into, observe and comply with provisions of any pro-rate agreement, stabilization plan, law or code, relating or pertaining to the conduct of the grape industry or the marketing of grapes or grape products to which it may become or be a party, or which has been approved by the Association, or which may appear to be binding upon it; and the provisions of any such agreement, plan, law or code, shall be deemed a part of any contract between the Association and its members relating to the marketing of grapes, and each member shall be bound by such provisions and shall not be released from any obligations under these by-laws on account of such agreement, plan, law or code, or its effect upon the members, or any of them.

Section 12.05. Fiscal Year.

Unless and until changed by the Board, the fiscal year shall begin on the first day of July and extend until and including the following thirtieth day of June.

Section 12.06. Number of Directors.

The authorized number of Directors of the Association shall be as set forth at Section 8.01. Such section is intended to and shall control over any provision in the Articles of Incorporation fixing or stating a different number unless such provision (in the Articles) was adopted subsequent to the time of adoption of such section.

Section 12.07. Time of Annual Meeting.

Unless changed, as provided in Section 11.13 of Article XI, the annual meeting of members shall be held at 10:30 AM on the second Thursday of July of each year.

Section 12.08. [Reserved.]

Section 12.09. Amount of Liquidated Damages.

The liquidated damages payable under provisions of Section 6.10 of Article VI of these by-laws for failure to deliver grapes in accordance with the provision of these by-laws shall be an amount equal to the greater of (a) twenty-five percent (25%) of the market value of the undelivered grapes as determined on the basis of the market value which existed during the year preceding the failure to deliver or (b) the amount of liquidated damages charged under the provisions of the grape purchase agreement related to the sale of the undelivered grapes.

Section 12.10. Time to File Withdrawal Notice.

(a) Except for any specific acreage and/or tonnage as to which a member has waived the right to withdraw from membership

for the purpose of performing on an active multi-year grape purchase agreement, the notice of withdrawal provided for in Section 3.01(d) of Article III may be filed by any member only as follows:

(1) Initially, a member may file a notice of withdrawal only during January of the third consecutive bearing season of such member's membership in the Association, any such notice to become effective on the next following December 31, pursuant to subparagraph (c) below. A "bearing season" means a year in which the member delivers grapes to the Association under member's then current membership agreement (the first bearing season will be the first year in which member so delivers grapes to the Association); and

(2) After making deliveries to the Association for three consecutive bearing seasons, a member may file a notice of withdrawal only during January of the following third consecutive year and, thereafter, on the same three-year cycle, any such notice to become effective on the next following December 31, pursuant to subparagraph (c) below.

By way of illustration, a member who joined the Association in November 2012 and delivered grapes in 2013 and 2014 could initially file a notice of withdrawal in January 2015, with such notice to become effective on December 31, 2015. After delivering in 2013, 2014 and 2015, if this member wished to withdraw, he or she could next file a notice of withdrawal in January 2018, with any such notice to become effective on December 31, 2018. If the member did not file a notice of withdrawal in January 2018, the next withdrawal window would be three years later, in January 2021, with any such notice to become effective on December 31, 2021. This three-year cycle would continue.

All other membership benefits and obligations, including the right to vote, shall become effective upon execution of a membership agreement and shall not be subject to the requirement of delivery.

(b) Where a member has waived the right to withdraw from membership during the term of an active multi-year grape purchase agreement, such member shall be eligible to give notice of withdrawal in the month of January of the calendar year in which the underlying grape purchase agreement expires. If member fails to give such notice during January of the last year of the underlying grape purchase agreement, then the proper year to file a withdrawal notice will revert back to the schedule set forth in subparagraph (a) above.

(c) Any withdrawal or resignation under subparagraphs (a) or (b) above shall become effective on the thirty-first of December next following the month of January in which such notice is filed.

Section 12.11. Audits.

At least once in each year the Board shall obtain the services of a competent and disinterested certified public accountant, who shall make a careful audit (or, in the discretion of the Board, a review) of the books and accounts of the Association and render a report in writing thereon, which report shall be submitted to the members of the Association at their annual meeting. This report shall include at least (1) a balance sheet showing the true assets and liabilities of the Association; (2) an operating statement for the fiscal period under review, which shall show the cost of, and income from, sales and the gross income or loss from each of the commodities handled during the period; (3) an itemized statement of all expenses for the period under review.

Section 12.12. Redetermination of Net Worth.

The expression "net worth" as used in this Article means the excess of assets over and above liabilities, excluding from liabilities any fund or funds established pursuant to Section 4.12 of Article IV of these by-laws.

As far as practicable, the net worth of the Association shall be the same in amount as the equity allocated to any fund or funds established pursuant to Section 4.12 of Article IV of these by-laws, and there shall be no book surplus or book deficit, unless temporarily.

As far as practicable, the books and balance sheet of the Association shall show and reflect the actual condition of the Association; and the net worth of the Association, as shown by the books, shall be the actual net worth of the Association.

Subject to the provisions hereinafter set forth, whenever the Board shall believe the books do not or may not correctly reflect the true net worth of the Association, it may investigate and redetermine such net worth by appraisals, audits, or such means as it deems proper for such purpose, and may increase or decrease on the Association's books the value of one or more or all assets, or the amount of one or more or all liabilities, to such amount as the Board shall determine is established by the evidence; provided, such redetermination shall not be made more frequently than once every 5 years, it being intended that recognized losses will ordinarily be charged in the manner provided in Section 12.03 of this Article of these by-laws, and that such redetermination of net worth shall be used ordinarily to correct one or more or all of inadequate or excessive depreciation allowances changing standards of value, erroneous values previously set up, or other things that during the passage of time have caused the books to reflect other than the true net worth of the Association.

Surpluses or deficits resulting from redetermination of the net worth of the Association may be ratably added to or assessed

against and deduced from the equity or credits in other fund or funds, as the case may require, in the manner hereinafter provided, so that the outstanding equity or credits in other fund or funds shall equal approximately the net worth of the Association, as redetermined; and there may be assessed ratably against the equity or credits in other funds an amount of equal to any deficit found to exist upon a redetermination of the net worth of the Association, and there may be deducted from any fund or funds established pursuant to Section 4.12 of Article IV of these by-laws the amount so assessed against it.

Allocated equity or credits in other fund or funds may be increased or decreased, as hereinbefore provided, only upon adoption by the Board of a resolution providing therefor, by affirmative vote of not less than two-thirds of the authorized number of Directors, and the subsequent approval or ratification of such resolution of increase or decrease by vote or written assent of members entitled to exercise a majority of the voting power of the Association. When allocated equity or credits in other fund or funds have been increased or decreased, in the manner aforesaid, there shall be payable in respect thereof, the amount to which increased or decreased, an no more or less.

Section 12.13. Voting Power.

The voting power of the members is unequal, and shall be determined as follows:

- (a) Each Member of the Association by reason of his membership shall have one vote;
- (b) In addition, each member shall have one or more additional votes based on the dollar value of that member's grape deliveries made during the prior crop year, calculated on the basis of total grower revenues by Association district, under rules and regulations to be determined by the Board.

Section 12.14. Property Interest.

The property rights and interest of the members shall be unequal. The property rights and interest of any member at any time shall be such part of the entire property rights and interest as the amount of the undistributed equity standing upon the books of the Association in the name of such member at that time bears to the aggregate of the undistributed equity standing upon the books of the Association in the names of all the members at such time; all as more fully set forth in the Association's Articles of Incorporation.

Section 12.15. Fiscal Policy.

All advances or loans to members, or liability incurred in procuring or furnishing supplies for or to members shall be solely

for the purpose of facilitating the production of crops to be marketed by the Association; and the aggregate of the same at any time to or for any member shall always be less than the estimated amount payable, or to become payable, to such member within not more than 6 months thereafter, whether as the proceeds from grapes or grape products, moneys revolved out from funds established by the Board, or otherwise, to the end that all of the same may be repaid out of moneys presently payable to the member and secured thereby, and that all indebtedness a member to the Association shall be fully paid and discharged within not more than 6 months from the time incurred.

Section 12.16. Dissolution and Liquidation.

In the event of dissolution of the Association and winding up of its affairs, all moneys and properties of the Association shall be deemed general assets to be distributed and applied as follows:

First: In payment of all debts, liabilities and obligations other than any indebtedness, liability or obligation represented by allocated equity or credits of any kind (including Capital Fund Credits or Base units) in any fund or funds established pursuant to Section 4.12 of Article IV of these by-laws.

Second: Any residue thereafter remaining shall be used in payment or retirement of all outstanding Base Units held by members and former members.

Third: Any residue thereafter remaining shall be used in payment of credits in the Capital Fund or other allocated equity or credits of any kind in any other fund or funds established pursuant to Section 4.12 of Article IV of these by-laws, such credits to be payable without regard to priority or any special funds.

Fourth: In the event there remains any residue after payment in full of credits in the Capital Fund or other fund or funds, such residue shall be distributed among those who were members or patrons of the Association over the three years immediately preceding dissolution in proportion to their aggregate patronage over such three-year period

Section 12.17. Non-member Business.

All of the provisions of these by-laws with respect to the handling of grapes and grape products, payments of proceeds thereof, deductions from such proceeds, and creation and liquidation of credits in funds, shall govern the relationship between the Association and any non-member producer whose products are handled by the Association except as may otherwise be agreed, by contract, by and between the Association and any non-member.

Section 12.18. Tax Treatment.

Each person who hereafter applies for or is accepted to membership in the Association and each member of the Association on the effective date of this Section 12.18 of Article XII of the Association's By-Laws who continues as a member after such date shall, by such act alone:

(a) Consent that the amount of any distribution of patronage dividends (as defined in 26 U.S.C. 1388(a)) and the amount of any distribution of the kind referred to in 26 U.S.C. 1382 (c)(2) (A) which relate to such person's patronage occurring after said date, which distributions are made in written notices of allocation (as defined in 26 U.S.C. 1388(b)) and which are received by such person from the Association, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which such written notices of allocation are received by such person; and

(b) Agree that the amount of any per-unit retain certificate (as defined in 26 U.S.C. 1388(g)) received by such person from the Association, with respect to grapes delivered after said date will be taken into account by such person at its stated dollar amount in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which such per-unit retain certificate is received by him.

Section 12.19. Income from Sources other than Patronage.

In the event that the Association should have earnings derived from sources other than patronage (referred to in 26 U.S.C. 1382 (c)(2)(A)) during such time as the Association is exempt from taxation under 26 U.S.C. 521, such earnings shall be distributed on a patronage basis in conformity with said Section 1382(c)(2)(A) and regulations issued thereunder.

In event that the Association is not exempt from taxation under said Section 521, any such earnings, if distributed, shall be distributed among those who are members in the fiscal year in which such earnings are realized in proportion to such members' holdings of allocated equity.

Section 12.20. Duty to Indemnify Directors, Officers and Agents.

The Association shall indemnify all Directors, officers and agents of the Association from and against all expenses, judgments, fines, settlements and other amounts (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense of a proceeding to which the person is a party or is threatened to be made a party to the maximum extent allowed by law.

Amendments

Amendments

Amendments