

# Appendix G: RAD Cooperative Bylaws, 2021

**BYLAWS  
OF  
RURAL ACCESS DISTRIBUTION CO-OP**

**ARTICLE I  
MEMBERS MEETINGS**

**Section 1. Annual Meeting.** A regular annual meeting of the members of this cooperative shall be held annually at the principal office of this cooperative, or at such other place conveniently located within the area served by it, and at such date and hour, as may be determined by the Board of Directors, and within six (6) months after the close of the fiscal year at the call of the President or Board of Directors.

**Section 2. Special Meeting.** A special meeting of the members may be called at any time by the President, or the Board of Directors, or the members having one-fifth of the votes entitled to be cast at such meeting; and such meeting shall be held at the principal office or at such other place conveniently located within the area served by this cooperative, and at such date and hour, as may be designated in the call of the meeting.

**Section 3. Notice of Meetings.** Written notice of meetings, both regular and special, shall be either given personally, via electronic mail at the address provided by the member, or mailed to each member at the member's address as it appears on the records of this cooperative not less than ten (10) nor more than thirty (30) days before the meeting at the direction of the person calling the meeting. Such notice shall state the place, day and hour, and in case of a special member meeting the purpose for which the meeting is called.

**Section 4. Signed Votes.** Any member who is absent from any meeting of the members may vote upon any motion or resolution which the Board of Directors may in its discretion submit to the members for signed votes. Each such vote shall be in the form prescribed by the Board of Directors and shall contain the exact text of the motion or resolution to be voted upon at such meeting and the date of the meeting and spaces in which such member may indicate his/her affirmative or negative vote thereon. Such member shall express his/her choice by marking the appropriate space and signing the form. When received by the Secretary, such signed vote shall be accepted and counted as the vote of such absent member at such meeting.

**Section 5. Quorum.** A quorum at any meeting of the members shall be at least eighty percent (80%) of all outstanding voting members; provided, that a quorum shall never be more than 50 members; and provided, further, that members represented by signed votes may be counted in computing a quorum only on those questions as to which the signed vote is taken.

**ARTICLE II  
BOARD OF DIRECTORS**

**Section 1. Election of Directors.** The Board of Directors shall be comprised of not less than five (5) directors who shall be elected for terms of one (1) year each and until their respective successors shall have been elected and qualified. Annually, as many directors shall be elected to serve a one (1) year term as there are regular vacancies in the number of directors. There shall be no term limit.

**Section 2. Vacancy.** Each vacancy occurring on the Board of Directors other than by the removal of a director by the members or by the expiration of a term, may be filled until the next annual meeting of the members by a vote of the remaining directors.

**Section 3. Meetings.** The Board of Directors shall meet regularly at such time and places as the board may determine, however, in no event shall the Board of Directors meet less frequently than once per quarter. Special meetings may be called by the President or a majority of the directors. All meetings shall be held on such notice, if any, as the board may prescribe; but any business may be transacted at any meeting without mention of such business in the notice, if any, of the meeting.

**Section 4. Quorum.** A quorum shall consist of a majority of the directors. A majority vote of the directors present shall decide all questions, except where a greater vote is expressly required by law or these Bylaws.

**Section 5. Compensation.** The compensation, if any, of the directors and officers may be fixed at each annual meeting of the members, of this cooperative; but upon any failure of the members to do so, the Board of Directors may do so.

**Section 6. Bonds.** The Board of Directors may require each officer, agent and employee having control or custody of any of this cooperative's funds or property to furnish a surety bond satisfactory to said board and the cost thereof shall be paid by this cooperative.

**Section 7. Financial Statements.** The Board of Directors shall have the financial statements (i.e., balance sheet and statement of operations) of this cooperative examined by a public accountant as the Board of Directors may designate, who shall perform a financial examination at least once every third fiscal year; and the report of such financial examination shall be made at the next annual meeting of the members. In all other years, the Board of Directors shall have financial statements prepared and shall ensure that adequate internal checks and balances are in place to reduce the risk of errors or abuse of the bookkeeping and financial reporting process.

**Section 8. Borrowings.** The Board of Directors shall have power which may be exercised only by a vote of a majority of all of the directors, to authorize and approve the borrowing of money and the pledging and mortgaging of any or all of the assets of this cooperative as security for the sums so borrowed.

**Section 9. Corporate Seal.** The Board of Directors may adopt, alter or abandon the use of a corporate seal.

**Section 10. Executive Committee.** The Board of Directors may appoint an Executive Committee of not less than three (3) directors, one of whom shall be the President. Such committee shall not have any power with respect to either (i) powers reserved by the board to itself, or (ii) apportionment or distribution of proceeds, or (iii) election of officers, or (iv) filling vacancies in the board or the Executive Committee, or (v) amendments to the Bylaws, or (vi) the employment, resignation or discharge of any Manager for this cooperative, or (vii) calling any meeting of the members, or (viii) meeting or acting at any time when either the Board of Directors or the members are holding a meeting; but said committee shall have all other powers of the Board of Directors.

**Section 11. Indemnification.** This cooperative shall, to the extent and under the circumstances permitted under the North Dakota Cooperative Association Act, as amended, indemnify each person who is or has been a director, officer or agent of this cooperative against expenses, including attorney fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in defense of any proceedings in which he/she is a party because he/she is or was such director, officer or agent. This cooperative may purchase and maintain insurance on behalf of this cooperative or any such person who may be indemnified as hereinafter provided.

**Section 12. Removal.** The board of directors or any individual director may be removed from office, for Cause, as stated below, by a unanimous vote of the remaining members of the Board of Directors not subject to removal, or by a unanimous vote of all the voting members present at any annual or special meeting called for such purpose. If any one or more directors be so removed, successor directors may be elected at the same meeting. The director or officer shall be informed in writing of his/her removal, and shall be given an opportunity to be heard by the Board of Directors prior to removal.

For the purposes of this Article II, Section 12, the term “Cause” shall mean: (i) the director having missed three (3) consecutive meetings of the Board of Directors, (ii) conduct on the director’s part intended or likely to injure the cooperative’s business or reputation, monetarily or otherwise; (iii) dishonesty on behalf of the director that is harmful to the cooperative, monetarily or otherwise; or (iv) the director is convicted of or enters a plea of guilty or nolo contendere to (A) a felony of any degree, (B) a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, regardless of degree, or (C) any crime involving the business of the cooperative, regardless of degree. All determinations and other decisions relating to Cause as defined herein shall be within the sole discretion of the Board and shall be final, conclusive and binding. In the event that allegations are made against a director that could result in the termination of the director’s position for Cause, the Board reserves the right, but is not obligated, to investigate said allegations independently, and place the director on unpaid administrative leave during the pendency of said investigation. The director’s leave under this Article II, Section 12 shall be treated as a vacancy on the Board of Directors, which the Board of Directors may fill in accordance with Article II, Section 2.

### **ARTICLE III** **OFFICERS**

**Section 1. Election of Officers.** Promptly following each annual meeting of the members of this cooperative, the Board of Directors may elect a Chief Executive Officer (“CEO”), President and a Vice-President, and shall at the same time elect a Secretary and a Treasurer who may, but need not be directors. The Board of Directors may appoint such additional officers with such titles, powers, and duties, and for such terms as said board may determine.

**Section 2. President.** The President shall:

- a. Preside over all meetings of the members and of the Board of Directors and of the Executive Committee; and
- b. Have all authority ordinarily held by the president of a corporation, but he/she shall not be obligated either to devote his/her full time to the business of this cooperative or to actively supervise all of its ordinary business.

**Section 3. Vice President.** The Vice-President, in the absence or disability of the President, shall perform the duties of the President.

**Section 4. Secretary.** The Secretary shall:

- a. Take or supervise the taking of complete minutes of all meetings of the members and of the Board of Directors and of the Executive Committee; and
- b. Have custody of this cooperative's minute book and of its corporate seal, if any; and
- c. Give, or cause to be given, all notices as required by law or by these Bylaws; and

- d. Perform such additional duties as may be required of him/her by the Board of Directors or the Executive Committee.

**Section 5. Treasurer.** The Treasurer shall:

- a. Supervise the safekeeping of all funds and property of this cooperative; and
- b. Supervise the keeping of complete books and records of all financial transactions of this cooperative; and
- c. Perform such additional duties as may be required by him/her by the Board of Directors or the Executive Committee.

**Section 6. Chief Executive Officer (“CEO”).** The Board of Directors may employ a Chief Executive Officer and fix his/her compensation and all other terms of his/her employment. The Chief Executive Officer shall actively supervise all of the ordinary business of this cooperative, and shall employ and discharge all other employees of this cooperative, and shall perform such additional duties and shall have such additional powers as the Board of Directors or the Executive Committee may require of or may delegate to him/her.

Particularly, the Chief Executive Officer shall be responsible for leading the development and execution of the cooperative’s long term strategy in creating value for patron members, acting as liaison between management and the Board of Directors, communicating with patron members, employees, governmental authorities and other entities on behalf of the cooperative, ensuring compliance with various budgets set by the Board of Directors and management, assessing and managing internal and external business risks of the cooperative, ensuring effective internal controls are in place, facilitating the provision of information to the Board of Directors regarding affairs of the cooperative, and performing such additional duties and having such additional powers as the Board of Directors or the Executive Committee may require of or may delegate to him.

**Section 7. Indemnification.** This association shall indemnify each director, officer, manager, employee, or agent of this association and any person serving at the request of this association as a director, officer, manager, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys’ fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her to the fullest extent to which such officers, directors and employees of a cooperative association may be indemnified under the law of this State of North Dakota, or any amendments thereto or substitution therefor.

**Section 8. Insurance.** This association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, manager, employee, or agent of this association, or is or was serving at the request of this association as a director, officer, manager, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity.

## **ARTICLE IV** **MEMBERS**

**Section 1. Classes.** The members shall constitute one class.

**Section 2. Non-stock Capital.** This cooperative shall have no capital stock; and there shall be no membership stock. It may establish and maintain such non-stock Membership Capital,

or Equity Capital, or Capital Reserve, or Revolving Capital (or any combination thereof) as may be provided herein.

**Section 3. Members and Eligibility.** There shall be only one class of members. Memberships may be issued and held by only (i) individuals or entities which have demonstrated a desire for the services provided by the cooperative, (ii) who reside in the territory served by this cooperative, (iii) who utilize the services of the cooperative on an annual basis, and (iv) who have been approved by the Board of Directors.

**Section 4. Withdrawal.** Any member may withdraw from this cooperative and terminate the member's membership upon (i) delivery to the Secretary of a written notice of the member's withdrawal and (ii) either acceptance of the member's withdrawal by the Board of Directors or the expiration of one year from said notice of withdrawal.

**Section 5. Voting.** Each Member shall be entitled and restricted to only one vote in the affairs of this cooperative; provided, that if any membership be held by two or more persons and evidenced by a single membership, any one or more of said persons may cast the vote unless one or more of said holders object in which event said vote may be cast only by the person first named in said membership certificate. Any member who is absent from a meeting may submit a signed vote as provided in the Bylaws; but there shall be no voting by proxy.

**Section 6. Lien.** This cooperative shall have a first lien on each membership, patronage credit, interests in revolving capital, equity capital or other interest on the books of the cooperative of a patron for all indebtedness of the holder thereof to this cooperative, as well as the costs of collection of said indebtedness. The Board of Directors, in its sole discretion, may elect to set off any such indebtedness against the holder's patronage credits, revolving capital, equity capital, or other interests on the books of the cooperative upon giving notice to the holder thereof. In no event shall this paragraph be construed so as to entitle the indebted patron to such setoff.

**Section 7. Membership Fee.** Each member shall pay a membership fee of One Hundred dollars (\$100.00) prior to being approved for membership in the cooperative. The Board of Directors is authorized to adjust the membership fee in an upward or downward fashion annually.

**Section 8. Membership Certificates.** Membership Certificates will not be issued.

**Section 9. Reserves.** The records of this association may show the interest of the patrons in the reserves; but no member, as such, shall have any right, title or interest of any kind in or to any equity capital, or any reserve capital, or any revolving capital, either upon liquidation or otherwise.

**Section 10. No Dividend.** No dividend, interest, income, financial gain, or profit shall be declared or paid or otherwise result to any member by reason of membership in this association.

**Section 11. No Transfer.** No membership in the association shall be transferable under any circumstances, nor may any membership be converted, transferred, or conveyed to any member and/or other persons as joint tenants with rights of survivorship. Upon the death of any member, or the appointment of any guardian, receiver or trustee of the estate of any member, or any event which would in the absence of this Article IV, Section 11, result in a transfer of such member's membership by operation of law, said membership shall then and thereby be automatically terminated.

**Section 12. Expulsion.** A member may, upon the unanimous consent of the remaining members not subject to removal, be expelled and removed as a member, and therein all voting rights of said member terminated, for Cause. In the event of expulsion, the member shall be

notified in writing of the reasons for his/her/its expulsion, and be provided an opportunity to be heard by the Board of Directors and membership prior to expulsion.

For the purposes of this Article II, Section 12, the term "Cause" shall mean: (i) the member having intentionally or repeatedly violated any Bylaw or the Articles of Association, or (ii) the member having remained indebted to the cooperative for more than ninety (90) days after such indebtedness became payable, or (iii) the member breaching a contract between the member and the cooperative, or (iv) the member having willfully obstructed any lawful purpose or proper activity of the cooperative, or (v) the member having failed to utilize the services of the cooperative on an annual basis, or (vi) the member having acted in a manner intended or likely to injure the cooperative's business or reputation, monetarily or otherwise, or (vii) dishonesty on behalf of the director that is harmful to the cooperative, monetarily or otherwise, or (viii) the member having been convicted of or enters a plea of guilty or nolo contendere to (A) a felony of any degree, (B) a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, regardless of degree, or (C) any crime involving the business of the cooperative, regardless of degree. All determinations and other decisions relating to Cause as defined in this Article II, Section 12 shall be within the sole discretion of the remaining members not subject to removal, and shall be final, conclusive and binding. In the event that allegations are made against a member that could result in the termination of the member's membership for Cause, the members reserve the right, but are not obligated, to investigate said allegations independently.

## **ARTICLE V**

### **PATRONS AND PATRONS' NET PROCEEDS**

**Section 1. Patrons.** Each person or entity who identifies themselves by name and address and who is a member of the cooperative as qualified under these Bylaws, shall be a "patron;" provided, however, that neither the United States nor any of its agencies nor any state nor any political subdivision thereof shall be a "patron" and no such transaction with the United States or any of its agencies or any state or political subdivision thereof shall be a "patronage transaction." Only (a) those patrons whose patronage would otherwise entitle them to a share of Patrons' Net Proceeds of less than Twenty-Five Dollars (\$25.00), and (b) those patrons who, in a writing delivered to this association have disclaimed all rights to any share of the Patrons' Net Proceeds, shall be "non-participating patrons," and all other patrons shall be "participating patrons." Each patronage transaction between this cooperative and each patron shall be subject to, and shall include as a part of its terms, each provision of this Article V, whether it be expressly referred to in said transaction or not; and no person shall have any authority to transact any business for this cooperative with any patron on any terms inconsistent with this Article V. Upon utilizing the services of this cooperative or contracting to do so, each participating patron with or without then executing any writing or any other act thereby:

- (a) Shall, as further consideration owed to the patron by this cooperative on account of such transaction, become entitled to have paid to the patron (and this cooperative thereby shall promise to pay) an amount of money equal to the patron's proportionate share of the Patrons' Net Proceeds, all as more particularly hereinafter defined and provided; and
- (b) Shall, in consideration of similar subscriptions by others in the same fiscal year, irrevocably subscribe and agree to pay to this cooperative an amount of money equal to the amount of the patron's share of the Patrons' Net Proceeds for credits in the Revolving Capital having a principal value equal to said amount of money; and the patron's said subscriptions shall become payable by the patron in cash without any notice or call for payment upon acceptance of all or any part of the patron's said subscriptions by the Board of Directors at any time during the next succeeding fiscal year.



**Section 2. Computation of Patrons' Net Proceeds.** The Patrons' Net Proceeds, computed upon the accrual basis for each fiscal year, shall be computed as follows:

- a. Total Proceeds. All proceeds received or receivable from sales of products marketed for patrons, plus all sums received or receivable for supplies or equipment, or services procured for patrons, plus all income received or receivable from all other sources, shall be deemed to be the "Total Proceeds."
- b. Net Proceeds. This cooperative shall deduct from said Total Proceeds the sum of the following six items:
  - (i) All operating expenses and costs; and
  - (ii) The cost of supplies, equipment and other property or services procured by the cooperative; and
  - (iii) The cost of services performed by the cooperative; and
  - (iv) All taxes (except income and related taxes) and all other expenses; and
  - (v) Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices;

provided, that the amount of each deduction pursuant to clauses (i) to (v) of this subsection shall be limited to such an amount as is deductible or excludable from this cooperative's gross income for the purpose of determining the amount of any income or related taxes payable by this cooperative; and

- (vi) All other or additional costs and expenses and other charges which are lawfully excludable or deductible from this cooperative's gross income for the purpose of determining the amount of any income or related taxes payable by this cooperative, except (1) the amount of the items deducted from Total Proceeds pursuant to clauses (i) to (v), inclusive, of this subsection "b," and except (2) the amount of the Patrons' Net Proceeds as defined in subsection "d," and except (3) any amount which may be both deductible from the Net Proceeds pursuant to subsection "c" and also excludable or deductible from this cooperative's gross income for the aforesaid tax purpose; and with respect to any costs or expenses or other charges only part of which is excludable or deductible for the aforesaid tax purpose, the amount thereof in excess of said part.

The balance of said Total Proceeds which remains after the foregoing deductions shall be deemed to be the "Net Proceeds"; but if the sum of said deductions shall exceed said Total Proceeds, said excess shall be charged to the Capital Reserve.

- c. Association's Net Proceeds. This cooperative shall deduct from said Net Proceeds the sum of the following items:
  - (i) such an amount, if any, as the Board of Directors may determine to provide a reasonable reserve for losses or other necessary purposes; and the amount deducted pursuant to this clause (i) shall be transferred to the Capital Reserve; and provided, that no amount shall be deducted from said Net



Proceeds pursuant to this clause (i) in any fiscal year when this cooperative is not entitled to a net operating loss deduction for the purpose of determining the amount of any federal income or related taxes payable by this cooperative for said year; and

- (ii) an amount equal to (and comprised of) the excess, if any, of (I) of all this cooperative's non-patronage net income over (II) the sum of the amounts deducted from the Net Proceeds pursuant to the foregoing clauses of this subsection "c"; and so much of said amount deducted pursuant to this clause (ii) as the person who examines the financial statements of this cooperative for said fiscal year may deem to be necessary for the payment of income or related taxes for said fiscal year payable by this cooperative shall be set aside for the payment of said taxes, and the balance (if any) of said amount shall be transferred to the Capital Reserve; and
- (iii) an amount equal to the excess, if any, of (I) the amount of income or related taxes payable by this cooperative over (II) the amount (if any) deducted from the Net Proceeds pursuant to the foregoing clause (ii).

To the extent that the non-patronage net income is sufficient, all amounts deducted from the Net Proceeds pursuant to foregoing clauses of this subsection "c" shall be comprised of and deducted from the non-patronage net income rather than from so much of the Net Proceeds as resulted from patronage transactions with participating patrons; but the amounts deducted from the Net Proceeds pursuant to clauses (i) and (ii) of this subsection "c" shall be comprised of and deducted from the non-patronage net income and from the Net Proceeds which resulted from patronage transactions with participating patrons, respectively, as each is in proportion to the Net Proceeds. ("Non patronage net income" means and includes so much of the Net Proceeds as resulted from the Total Proceeds other than all sums received or receivable from sales of products marketed for participating patrons plus all sums received or receivable for supplies and equipment and services procured for participating patrons.) The sum of the foregoing deductions from the Net Proceeds, less such amounts (if any), as shall be paid to the participating patrons as a part of the Patrons' Net Proceeds, shall be deemed to be the "Association's Net Proceeds."

- d. Patrons' Net Proceeds. The balance of said Net Proceeds which remains after the deduction of the Association's Net Proceeds shall be deemed to be the "Patrons' Net Proceeds." All of the Patrons' Net Proceeds shall, as received by this cooperative, belong to and be held by it for its respective participating patrons and shall be apportioned between and paid to them as hereinafter provided.

**Section 3. Apportionment of Patrons' Net Proceeds.** The Patrons' Net Proceeds shall be apportioned between the several participating patrons equally, in a manner determined by the Board of Directors, in its sole discretion.

**Section 4. Payment of Patrons' Net Proceeds.** Each participating patron's share of the Patrons' Net Proceeds shall be payable to each patron in cash, qualified notices of allocation, non-qualified notices of allocation, credits, promissory notes, equity capital, revolving fund credits, or any certificate or security of the cooperative or other associations or cooperatives, in other property, or in any combination thereof, in the sole discretion of the Board of Directors, at the close of each fiscal year.

**Section 5. Authority to Compute and Apportion.** Neither this cooperative nor its Board of Directors nor its members nor anyone else acting for this cooperative shall have any discretion

to determine either how much or what proportion of either the Total Proceeds or Net Proceeds or both shall constitute the Patron's Net Proceeds or in what form or manner or at what time the Patrons' Net Proceeds shall be paid to the patrons; and neither this cooperative's Articles of Incorporation nor its Bylaws nor any other agreement of this cooperative shall be construed as conferring any such discretion on this cooperative or anyone acting for it. All determinations as to how much or what proportion of either the Total Proceeds or Net Proceeds or both shall constitute the Patrons' Net Proceeds as well as all determinations involving the proper basis of apportioning the Patrons' Net Proceeds as between the several patrons shall be determined solely by the person who examines the financial statements of this cooperative for the fiscal year for which such determinations are made; and his/her determination, when made in good faith and according to what he/she considers to be proper construction of the provisions of this article and this cooperative's corporate purposes, and generally accepted accounting principles which are not inconsistent with said provisions, shall be conclusive upon both this cooperative and each and all of its patrons.

**Section 6. Consent.** Membership in this cooperative constitutes the consent of the member to include in member's gross income, as now or hereafter provided in the federal income tax laws, the stated dollar amount of each written notice of allocation which the member receives from this cooperative with respect to the member's patronage of it as a participating patron after the adoption of this section and the member's receipt of notice of its adoption and significance and the member's subsequent retention or acceptance of membership.

#### **ARTICLE VI CAPITAL RESERVE**

This cooperative shall establish and maintain a Capital Reserve for the purpose of providing a reserve against which this cooperative may charge losses and other charges which properly could be charged against the surplus of a business corporation for profit.

#### **ARTICLE VII REVOLVING CAPITAL**

**Section 1. Purpose.** This cooperative shall establish and maintain Revolving Capital for the purpose of acquiring and maintaining non-stock capital, to supplement its Equity Capital and Capital Reserve, adequate to finance its properties and business. The account which therefore was designated as patrons' equity reserve shall, after the adoption of this Article, thenceforth be designated as the revolving capital; and holder of credits in said account shall thenceforth have like credits in the revolving capital subject to the provisions of this Article; provided, that said credits shall be deemed to represent contributions to the revolving capital as of the dates when the amount for which said credits were issued were transferred to said account.

**Section 2. Contributions.** This cooperative may accept contributions to its Revolving Capital from any person approved by the Board of Directors; and this cooperative shall issue to such person a Revolving Capital credit in a principal amount equal to the amount of the person's contribution. Proper entries shall be made on the books and records of this cooperative so that the principal amount and the book value (if less than the principal amount) of the credit issued to each contributor for this contribution to the Revolving Capital in each fiscal year can be ascertained at any time. This cooperative may issue Revolving Capital certificates to evidence Revolving Capital Credits and such certificates may be in such form and contain such terms and conditions not inconsistent with this article as the Board of Directors may prescribe.

**Section 3. Operation.** Contributions to the Revolving Capital need not be segregated from, but on the contrary may be invested in or commingled with, any other assets of this cooperative. No dividend, interest, or any other income shall be declared or paid on account of

any credits in the Revolving Capital. This cooperative shall have a first lien on each Revolving Capital credit for all indebtedness of the holder thereof to this cooperative. If and when there shall be a deficit balance in the Capital Reserve as a result of sustaining an operating loss in any prior fiscal year or years, the Board of Directors may charge against the Revolving Capital an amount not exceeding so much of said deficit balance as is equal to the excess of said loss or losses over the sum of all amounts credited to the Capital Reserve pursuant to Section 2(c) of Article V subsequent to said loss or losses; provided, that the Board of Directors may take such action at such time as the cooperative is not entitled to a net operating loss deduction (resulting from said loss or losses) for the purpose of determining federal income or related taxes payable by the cooperative; provided, however, that in the event that the Board of Directors determines that the net worth of this cooperative has been adversely affected by such loss or losses or by any extraordinary event and the Board of Directors, in its discretion, determines it is not in the best interests of this cooperative to claim a net operating loss deduction for tax purposes then the Board of Directors, in its sole discretion, may charge against the Revolving Capital an amount equal to the reduction in the net worth of this cooperative, all as may be more particularly provided by said Board of Directors. If and when the Revolving Capital shall have been impaired (that is to say, whenever the sum of the principal amounts of all Revolving Capital credits then issued and outstanding shall exceed the balance in the Revolving Capital), then the Board of Directors may reduce the principal amount of any or all such Revolving Capital credits as said board, in its discretion, may designate so that the sum of the principal amounts of all Revolving Capital credits shall be not less than the balance then in the Revolving Capital, all as may be more particularly provided by said board.

**Section 4. Transfers of Revolving Capital Credits.** Transfers of Revolving Capital credits shall be made only on the books of this cooperative, either by the record holder in person or by the record holder's attorney-in-fact, and only with the consent of the Board of Directors; provided, that said credits shall remain subject to this cooperative's lien thereon.

**Section 5. Retirement.** Retirements of Revolving Capital credits shall be made in the sole discretion of the Board of Directors, as profits allow. Whenever this cooperative shall have received any cash from any other cooperative association in payment of any patronage refunds, credits, or securities issued by such other cooperative association, then the Board of Directors may apply all or any part of such cash to the retirement, in full or pro rata, of any or all such credits in the Revolving Capital as said board, in its discretion may designate. Revolving Capital credits may be retired, as above required or authorized, by (i) motion or resolution of the Board of Directors and (ii) payment or tender to the record holder of said credits of the book value of said credits as of the close of this cooperative's fiscal year next preceding the adoption of such motion or resolution conclusively determined by the person who examined the financial statements of this cooperative for said fiscal year, and such tender may be made to any such holder either in person or by mailing this cooperative's check to such holder at his address according to the records of this cooperative.

## **ARTICLE VIII** **EQUITY CAPITAL**

**Section 1. Purpose.** This association may establish and maintain equity capital for the purpose of acquiring and maintaining non-stock capital, to supplement its membership capital, to finance its properties and business.

**Section 2. Contributions.** This association may accept contributions to its equity capital from any person approved by the Board of Directors; and this association shall issue to such person an equity capital credit to the amount of his contribution. This association may issue equity capital certificates to evidence such credits and such certificates shall be in such form and contain such terms and conditions not inconsistent with this Article as the Board of Directors may prescribe.

Contributions to the equity capital need not be segregated from, but on the contrary may be invested in or commingled with, any other assets of the association.

**Section 3. Lien and Setoff.** This association shall have a first lien on each equity capital credit for all indebtedness of the holder thereof to this association. The Board of Directors, in its sole discretion, may elect to set off any such indebtedness against the holder's patronage credits, revolving capital, equity capital, or other interests on the books of the cooperative upon giving notice to the holder thereof. In no event shall this paragraph be construed so as to entitle the indebted holder to such setoff.

**Section 4. Dividends.** Dividends may be declared and paid on equity capital credits at such times and amounts as the Board of Directors may determine; provided, that such dividends (1) shall not exceed eight percent (8%) annually on the principal amount of such credits, and (2) may be paid only from the association's net proceeds or reserve capital, and (3) shall not be cumulative.

**Section 5. No Vote.** Credits in the equity capital shall not entitle the holder to any vote in any affairs of this association.

**Section 6. Transfers of Equity Capital Credits.** Transfers of equity capital credits shall be made only on the books of this association, either by the record holder in person or by the holder's attorney-in-fact upon surrender of the outstanding certificate (if any) properly endorsed, and only with the consent of the Board of Directors; provided, that said credits shall remain subject to this association's lien thereon; and provided, further, that this association shall have the first privilege of purchasing any credits in the equity capital if and when the same are offered for sale by the record holder thereof, and no such credit shall be transferrable until after they first shall have been offered for sale to this association. Upon receiving any such offer in writing, this association shall have ninety (90) days thereafter in which to purchase credits offered. If this association, within said period, shall pay or tender to the holder the price for which said credits are so offered for sale the holder shall endorse and deliver to his association the holder's certificate (if any) for said credits, and said credits may be held as treasury credits or retired. If this association shall refuse said offer or fail to pay or tender said price within said period, the holder thereupon and for a period of one year thereafter shall be free to sell said credits to others at a price not less than the price at which said credits were offered to this association.

**Section 7. Retirement.** Any or all such equity capital credits as the Board of Directors, in its sole discretion, may select and designate may be called either for repurchase or for retirement, as the Board of Directors may determine, at any time upon (1) call by the Board of Directors, and (2) thirty (30) days written notice mailed to the record holder thereof at his address as it appears on the records of this association, and (3) payment or tender of the principal amount of said credits to said record holder; and such tender may be made to any such holder either in person or by mailing this association's check to such holder at the holder's said address.

## **ARTICLE IX** **FISCAL YEAR**

The fiscal year of this cooperative shall commence on the first day of January in each year and shall end on the last day of December in the same year.

## **ARTICLE X** **AMENDMENTS**

Any Bylaw may be adopted, amended or repealed by a majority of a quorum of the members present at any regular or special meeting of the members.

**RESOLVED, FURTHER,** that the President and Secretary are hereby authorized and directed to sign, seal, file and record such instruments and to do and perform any and all other additional acts which may be necessary or proper to make the foregoing Bylaws effective as provided by North Dakota law.

Adopted at a meeting of the Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

RURAL ACCESS DISTRIBUTION CO-OP

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Secretary