

**FIRST AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**OF**  
**MINNESOTA SOYBEAN PROCESSORS**

**A COOPERATIVE ORGANIZED UNDER**  
**MINNESOTA STATUTES, CHAPTER 308A**

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**ARTICLE I**

**NAME AND PRINCIPAL PLACE OF BUSINESS**

The name of this cooperative is Minnesota Soybean Processors. The principal place of business for this cooperative is the city of Worthington, Minnesota, in the county of Nobles County, Minnesota. The registered office address of this cooperative is 1121 Third Avenue, Worthington, Minnesota 56187.

**ARTICLE II**

**PURPOSES AND POWERS**

**Section 2.1 Purposes.** This cooperative is organized for the following purposes:

- (a) to receive, handle, store, warehouse, manufacture, process, market, buy, sell and otherwise deal in the agricultural products and services of its members and nonmember patrons;
- (b) to manufacture, buy, sell, market, store, warehouse, acquire, transport, distribute, process, produce, drill, mine, refine, and otherwise deal in and procure for its members, nonmember patrons and others, petroleum products, feed, grain, fertilizer, chemicals, livestock, machinery, equipment, supplies, and other goods, products, merchandise and services used or useful in farming and the agricultural industry;
- (c) to engage in activities involving agricultural education, research and development, legislation and economic or social conditions pertaining to farmers and the agricultural industry;
- (d) to engage in the financing of the activities described above; and
- (e) to engage in any activity connected with or related to any such purposes, and to engage in any other lawful purpose.

To this end, the business and activities of this cooperative shall be conducted on a cooperative basis, as more particularly provided in these Articles of Incorporation (these "Articles") and the Bylaws (the "Bylaws") of this cooperative.

**Section 2.2 Powers.** In addition to other powers, this cooperative may perform every act and thing necessary, proper, incidental or convenient to the conduct of its business or the accomplishment of its purposes. This cooperative shall have all powers, privileges and rights conferred upon it by applicable law. Without limiting the foregoing, this cooperative shall have the power:

(a) to borrow money from and to loan money to its members, nonmember patrons and others; to guarantee or stand as surety on loans made to its members, nonmember patrons and others by lenders; to issue bonds, deeds of trust, debentures, notes, and other obligations and to secure the same by pledge, mortgage, or trust deed on any real or personal property of this cooperative; to draw, make, accept, endorse, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants, warehouse receipts, certificates and other obligations, and negotiable or transferable instruments for any purpose deemed necessary to further the objects for which this cooperative is formed;

(b) to acquire, purchase, hold, lease, encumber, sell, exchange, and convey such real estate, buildings, and personal property as the business of this cooperative may require;

(c) to purchase, acquire, own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, equity or debt securities created by any other corporation or other legal entity wherever organized, with all the rights, powers and privileges of ownership thereof;

(d) to borrow money, to incur obligations and to assume obligations of any other person, individual, corporation or other legal entity, in any amount; and to make contracts for hire;

(e) to issue equity and debt securities, whether certificated or uncertificated, as further provided in the Articles and in the Bylaws;

(f) to join with other cooperatives, limited liability companies, corporations, partnerships, associations or other entities to form district, state, or national marketing, manufacturing, purchasing and service organizations, and other organizations engaged in the general purposes for which this cooperative is formed, and to purchase, acquire, and hold the capital stock or other equity interests and the notes, bonds and other obligations of such organizations;

(g) to have one or more offices, and to conduct any or all of its operations and business, and promote its purposes without restriction as to places or amounts; and

(h) to carry on any other business in connection with the foregoing and to engage in any of said activities on its own account or as agent for others, or alone or in association with others; and to employ agents, consultants and nominees to perform any or all of the powers described or referred to herein.

The powers, privileges and rights specified herein shall, except where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms of any other provision of these Articles. The enumeration of powers, privileges and rights herein shall not be held to limit or restrict in any manner the general powers, privileges and rights conferred upon this cooperative under applicable law.

**Section 2.3 Limitation on Nonmember Business.** This cooperative shall not market the products of nonmembers in an amount the value of which exceeds the value of the products marketed for members. It shall not purchase supplies and equipment for nonmembers in an amount the value of which exceeds the value of the supplies and equipment purchased for members. It shall not purchase supplies and equipment for persons who are neither members nor producers of agricultural products in an amount the value of which exceeds fifteen percent (15%) of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the limitations imposed by this section.

### ARTICLE III DURATION

This cooperative shall have perpetual existence.

### ARTICLE IV MEMBERSHIP AND CAPITAL STOCK

**Section 4.1 Authorized Capital Stock.** This cooperative is organized on a capital stock basis. The authorized capital stock of this cooperative shall consist of: Five Thousand (5,000) shares of common stock, with a par value of \$.01 per share; Fifty Million (50,000,000) shares of Class A preferred stock, with a par value of \$.01 per share; and Ten Million (10,000,000) shares of Class B preferred stock, with a par value of \$.01 per share. Except as may be limited by applicable law, these Articles or the Bylaws, the Board of Directors of this cooperative (the "Board of Directors") shall have the authority and power to establish and issue one or more than one series of shares within a class, to set forth the designation of series of such shares, to fix the relative rights, preferences, privileges and limitations of each series of shares; and to establish and maintain such capital reserve, nonstock revolving capital, unit retains, and other types of equity credits as further provided in these Articles and the Bylaws.

#### **Section 4.2 Membership and Common Stock.**

(a) Membership in this cooperative is restricted to the holders of the common stock of this cooperative, and each member of this cooperative must hold one share of common stock. No person may hold more than one share of common stock. Only common stockholders shall have voting power in this cooperative. Holders of the common stock shall be restricted to producers of agricultural products and associations of such producers who meet the requirements and

conditions of membership as provided in these Articles and in the Bylaws. Each holder of common stock shall have one vote in the affairs of this cooperative regardless of the number of shares of Class A preferred stock held by such common stockholder.

(b) The common stock is non-transferable and cannot be pledged. No holder of common stock shall have any right whatsoever to require the redemption of its common stock. The common stock may be redeemed only at the option of the Board of Directors in accordance with the provisions of these Articles and the Bylaws. The Board of Directors shall have the authority to establish a redemption policy on terms and conditions it deems advisable in its sole discretion; provided, however, that the common stock may never be redeemed for more than the value of the consideration for which the common stock was issued. No dividends shall be paid on the common stock of this cooperative.

(c) The Board of Directors shall have the authority to establish such additional terms and conditions, qualifications, methods of acceptance, duties, rights and privileges of holding common stock of this cooperative as it may from time to time deem advisable. The Board of Directors may refuse membership or provide conditional membership to an applicant in its sole discretion.

(d) For purposes of these Articles and the Bylaws, "producers of agricultural products" shall mean persons (including individuals and joint ventures, corporations, partnerships, limited liability companies, limited liability partnerships, unincorporated associations or other legal entities owned or controlled by individual farmers, ranchers or their family groups) that are engaged in the production of one or more agricultural products, including tenants of land used for the production of such products and lessors of such land that receive as rent therefor any part of the product of such land.

**Section 4.3 Class A Preferred Stock.** Holders of the Class A preferred stock shall be restricted to producers of agricultural products and associations of such producers. The Bylaws may establish additional conditions, requirements or limitations of holding Class A preferred stock. The Class A preferred stock is nonvoting, and holders of Class A preferred stock are not entitled to voting rights in this cooperative solely by virtue of their ownership of the Class A preferred stock. No dividends shall be paid on the Class A preferred stock. Shares of the Class A preferred stock shall be transferable only with the approval of the Board of Directors, and then only to persons eligible to hold the Class A preferred stock. No purported assignment or transfer of any Class A preferred stock to any person not eligible to hold such shares shall pass any rights or privileges on account of such shares. The Class A preferred stock may be redeemed only at the option of the Board of Directors in accordance with the provisions of these Articles and the Bylaws. No holder of Class A preferred stock shall have any right whatsoever to require the redemption of its Class A preferred stock. The Board of Directors shall have the authority to establish a redemption policy on terms and conditions it deems advisable in its sole discretion. The Board of Directors shall have the authority to establish such additional terms and conditions, qualifications, methods of acceptance,

duties, rights and privileges of holding Class A preferred stock as it may from time to time deem advisable.

**Section 4.4 Class B Preferred Stock.** Class B preferred stock may be issued to any person or entity. Class B preferred stock is nonvoting stock, and the holders of Class B preferred stock shall have no voting rights. Dividends on Class B preferred stock may be paid as determined by the Board of Directors. Dividends on the Class B preferred stock shall not exceed eight percent (8%) annually on the value of the consideration for which the stock was issued, and the dividends may be cumulative. As further provided herein, the Board of Directors shall have the authority and power to establish and issue one or more than one series of Class B Preferred Stock, to set forth the designation of series of such shares, and to fix the relative rights, preferences, privileges and limitations of each series of shares of Class B preferred stock. The Board of Directors shall have the authority to establish a redemption policy with respect to each series of shares of Class B preferred stock on terms and conditions it deems advisable in its sole discretion. Shares of the Class B preferred stock shall be transferable only with the approval of the Board of Directors.

**Section 4.5 Ineligibility of a Common Stockholder.**

(a) As may be more particularly provided for in the Bylaws, in the event the Board of Directors shall find that any common stock of this cooperative has come into the hands of any person who is not eligible to own common stock or who has otherwise become ineligible for membership in this cooperative, the Board of Directors of this cooperative shall have the right, at its option, (1) to redeem the common stock at an amount equal to the value of the consideration for which the common stock was issued; or (2) to convert the common stock into a nonvoting certificate of interest or other nonvoting equity credit at an amount equal to the value of the consideration for which the common stock was issued. Upon such redemption or conversion, such ineligible holder of common stock shall cease to be a member of this cooperative and shall cease to have voting rights in this cooperative.

(b) In exercising its right to redeem or to convert the common stock under the preceding paragraph, this cooperative may cancel the certificate or certificates of such common stock on its books in the event the holder fails to deliver the certificate or certificates evidencing such common stock to the cooperative. In the event this cooperative exercises its right to convert the common stock into a nonvoting certificate of interest or other nonvoting equity credit, this cooperative shall have no obligation to redeem such nonvoting equity interest, nor shall the holder of such interest have any right to demand the redemption thereof.

(c) Except as specifically provided for in the Bylaws, no action taken by this cooperative with respect to its common stock shall modify the obligations and liabilities of any holder thereof to this cooperative under any uniform marketing and delivery contract or other contract between the holder and this cooperative, nor impair the rights of this cooperative under such contracts.

**Section 4.6 Nonmember Patronage Transactions.** Producers of agricultural products and associations of such producers who patronize this cooperative under conditions established by the Board of Directors or as provided in the Bylaws but who are otherwise ineligible to be members of this cooperative may nevertheless conduct business with this cooperative on a patronage basis as a nonmember patron, as more particularly provided in the Bylaws or by policies and procedures established by the Board of Directors. Such nonmember patrons are not members and are not entitled to voting rights or other rights and privileges incident to membership.

**ARTICLE V  
NET INCOME AND LOSS**

The net income of this cooperative in excess of dividends on equity capital and additions to reserves shall be distributed to members and nonmember patrons annually or more often on the basis of patronage and the records of this cooperative may show the interest of members and nonmember patrons in the reserves. Net income may be accounted for and distributed on the basis of allocation units that may be functional, divisional, departmental, geographic, or otherwise. Net income may be distributed in cash, capital stock credits, allocated patronage equities, revolving fund certificates, securities of this cooperative, other securities, or any combination thereof. Any such allocated equity shall be redeemable only at the option of the Board of Directors. The net loss of an allocation unit or units may be offset against the net income of other allocation units to the extent permitted by Minnesota Statutes Section 308A.705, Subdivision 1. The net income or net loss of this cooperative or any allocation unit may be determined by including the cooperative's proportionate share of the net income or loss of other entities in which the cooperative owns an equity interest. The foregoing provisions of this Article shall be implemented as more particularly provided in the Bylaws of this cooperative.

**ARTICLE VI  
LIQUIDATION**

In the event of any dissolution, liquidation or winding up of this cooperative, whether voluntary or involuntary, all debts and liabilities of this cooperative shall be paid first according to their respective priorities. As more particularly provided in the Bylaws, the remaining assets shall then be paid to the holders of equity capital to the extent of their interests therein and any excess shall be paid to the patrons of this cooperative on the basis of their past patronage. The Bylaws may provide more particularly for the allocation among the members and nonmember patrons of this cooperative of the consideration received in any merger or consolidation to which this cooperative is a party.

**ARTICLE VII**  
**FIRST LIEN**

This cooperative shall have a first lien on all capital stock, equity credits, and other interests standing on its books for all indebtedness of the respective holders or owners thereof to the cooperative. This cooperative shall also have the right, exercisable at the option of the Board of Directors, to set off such indebtedness against the amount of such capital stock, equity credits, or other interests standing on its books; provided, however, that nothing contained herein shall give the owners of capital stock, equity credits, or other interests any right to have such set off made.

**ARTICLE VIII**  
**BOARD OF DIRECTORS**

**Section 8.1 Number and Board.** The business and affairs of this cooperative shall be managed by a board of directors of not less than five (5) persons, as further provided in the Bylaws. Directors shall be elected by the members at the annual meeting of the common stockholders of this cooperative in such manner and for such terms as the Bylaws shall prescribe. The names and addresses of the members of the first Board of Directors of this cooperative, who shall serve for such terms and in such manner as the Bylaws shall prescribe, are as follows:

<u>Name</u>	<u>Address</u>
Robert Kirchner	RR1, Box 176 Brewster, MN 56119
Ron Obermoller	RR2, Box 80 Brewster, MN 56119
Tim Baumgarn	RR2, Box 145 Round Lake, MN 56167
Paul Henning	RR3, Box 4A Okabena, MN 56161
Loren Tusa	RR1 Alpha, MN 56111
Bruce Hill	RR 3, Box 117 Worthington, MN 56187
David Kolsrud	RR 1, Box 58 Beaver Creek, MN 56119

**Section 8.2 Limitation on Liability.** No director of this cooperative shall be personally liable to the cooperative or its members for monetary damages for breach of fiduciary duty as a director, except for liability:

- (a) for a breach of the director's duty of loyalty to this cooperative or its members;
  - (b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
  - (c) for a transaction from which the director derived an improper personal benefit;
- or
- (d) for an act or omission occurring prior to the date when the provisions of this Article became effective.

It is the intention of the members of this cooperative to eliminate or limit the personal liability of the directors of the cooperative to the greatest extent permitted under Minnesota law. If amendments to the Minnesota Statutes are passed after this Article becomes effective which authorize cooperatives to act to eliminate or further limit the personal liability of directors, then the liability of the directors of this cooperative shall be eliminated or limited to the greatest extent permitted by the Minnesota Statutes, as so amended. Any repeal or modification of this Article by the common stockholders of this cooperative shall not adversely affect any right of, or any protection available to a director of this cooperative which is in existence at the time of the repeal or modification.

**ARTICLE IX  
AMENDMENTS**

These Articles of Incorporation may be amended in accordance with the Minnesota Cooperative Law, Chapter 308A, Minnesota Statutes, upon the approval of a majority of the votes cast in person or by mail ballot at an annual or special meeting of the common stockholders of this cooperative.

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Adopted by the Board of Directors on November 17<sup>th</sup>, 1999 at a time when this cooperative did not have any members or stockholders with voting rights.

Amended by the Members on March 12, 2005.