

**BYLAWS OF
WEST VIRGINIA FARMERS MARKET ASSOCIATION, INC.**

These Bylaws (these "Bylaws") of **West Virginia Farmers Market Association, Inc.** (the "Corporation") is made and entered into as of the ___ day of _____, 20___ (the "Effective Date"), by a majority vote of the Board of Directors of the Corporation in the State of West Virginia.

**ARTICLE 1
NAME**

Section 1 Corporate Name.

The name of the Corporation shall be West Virginia Farmers Market Association, Inc. (WVFMA). (the "Corporation").

**ARTICLE 2
OFFICES**

Section 1 Principal Office.

The Principal Office of the Corporation is located at 4700 MacCorkle Avenue SE, Suite 101, Charleston, WV 25304 (the "Principal Office").

Section 2 Change of Address.

The designation of the county or state of the Corporation's Principal Office may be changed by amendment of these Bylaws.

**ARTICLE 3
NONPROFIT PURPOSES**

Section 1 IRC Section 501(c)(3) Purposes.

This Corporation is a nonprofit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Act of West Virginia ("West Virginia Nonprofit Corporation Act") exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

Section 2 Specific Purpose.

This Corporation is organized for the purpose of promoting food access for West Virginia residents through direct education, charitable services, and food policy advocacy and providing education, technical assistance, and member services to West Virginia farmers markets.

Commented [JW1]: This purpose is designed to comply with IRS regulations for 501(c)(3) organizations.

ARTICLE 4

LIMITATIONS

Section 1 No Substantial Lobbying.

This Corporation has been formed under the West Virginia Nonprofit Corporation Act for charitable purposes described in Article 3, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation.

Commented [JW2]: This Article includes language that is required for a 501(c)(3) organization.

Commented [JW3]: WVEMA may lobby for legislation as long as it is not a substantial part of the organization's activities.

Section 2 No Political Campaigning.

The Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

Section 3 Prohibited Activities.

The Corporation shall not in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in Article 3. The Corporation may not carry on any activity for the profit of its Officers, Directors, or other persons or distribute any gains, profits or dividends to its Officers, Directors or other persons as such. Furthermore, nothing in Article 3 shall be construed as allowing the Corporation to engage in any activity not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

ARTICLE 5

DEDICATION OF ASSETS

Section 1 Property Dedicated to Nonprofit Purposes.

The property of the Corporation is irrevocably dedicated to charitable purposes. No part of the net income or assets of the Corporation shall inure to the benefit of any of its Directors, Officers, members or to the benefit of any private person, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3.

Commented [JW4]: This Article is also language that is required for a 501(c)(3) organization.

Section 2 Distribution of Assets Upon Dissolution.

Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Code.

ARTICLE 6 MEMBERSHIP

Section 1 Classes of Members.

This Corporation shall have two (2) classes of members: Voting Members and Non-Voting Members. No member shall hold more than one membership class in the Corporation.

(a) Voting Members.

Application for voting membership shall be open to any West Virginia farmer's market group or grower group representing two or more growers or on-farm markets representing one or more families that support the purpose statement in Article 3.

(b) Non-Voting Members.

Application for non-voting membership shall be open to any individual or organization that that supports the purpose statement in Article 3 and does not meet the qualifications of Voting Members under Article 6 Section 1(a).

Commented [JW5]: There are two classes of members as specified in the existing Bylaws and Articles of Incorporation.

Commented [JW6]: These qualifications must be met in order to become a Voting Member of WVFMA.

Section 2 Admission of Members.

Voting and non-voting membership shall be granted upon a majority vote of the Board of Directors after completion and receipt of a membership application and annual dues.

Section 3 Voting Rights.

(a) Voting Members.

Voting Members shall elect the Directors of the Corporation at the Member's Annual Meeting. Each Voting Member is entitled to one vote per member. Each Voting Member shall be eligible to appoint one voting representative to cast the Voting Member's vote in the Director elections.

(b) Non-Voting Members.

Non-Voting Members shall not have voting rights on the election of the Directors of the Corporation. Non-Voting Members are not eligible to attend the Annual Meeting.

Section 4 Dues.

(a) Voting Members.

The annual dues payable to the Corporation by Voting Members shall be \$50.00.

(b) Non-Voting Members.

The annual dues payable to the Corporation by Non-Voting members shall be \$25.00.

Section 5 Number of Members.

There is no limit on the number of members the Corporation may admit.

Section 6 Membership Book.

The Corporation shall keep a membership book containing the name and address of each member. Termination of any member shall be recorded in the book, together with the date of termination of such membership. Such book shall be kept at the Corporation's Principal Office.

Section 7 Member Meetings.

(a) Annual Meeting.

An Annual Meeting shall be held in the first quarter of each year for the purpose of electing Directors of the Corporation. Each Voting Member shall cast one vote.

(b) Special Meetings.

Special meetings may be called by the Board of Directors or by written request to the Board of Directors by Voting Members holding at least five percent of total votes entitled to be cast on any issue. If a call for a special meeting is not issued within fifteen days after receipt of a members' request, members may call the meeting. A special meeting must be preceded by at least two days' notice to each Voting Member of the date, time, and place, but not the purpose, of the meeting.

(c) Place of Meetings.

Meetings of Voting Members shall be held at the Principal Office of the Corporation or at such other place or places as may be designated from time to time by resolution of the Board of Directors.

(d) Members' List

After fixing a record date for a meeting, the Secretary shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address of and number of votes to which each member is entitled. The Members' List shall be available for inspection by any member at the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the Corporation's Principal Office or at a place identified in the meeting notice in the city where the meeting will be held.

(e) Notice of Meetings.

Members shall be notified of the date, time and place of each annual and special meeting no fewer than thirty nor more than sixty days before the meeting date. Written notice may be given personally, by mail, or by electronic or telephonic transmittal. If mailed, the notice is given when it is deposited in the United States' Mail, with postage prepaid, addressed to the member at the member's address as it appears on the records of the Corporation. If notice is sent by electronic or telephonic transmittal, notice is given when an electronic or telephonic confirmation of delivery is received by the Corporation.

(f) Waiver of Notice.

Any member may waive notice of any meeting, in accordance with West Virginia law.

Commented [JW7]: This meeting is required under the WV Nonprofit Corporation Act.

Commented [JW8]: The WV Nonprofit Corporation Act specifies the two ways a special meeting can be called.

Commented [JW9]: The WV Nonprofit Corporation Act requires the organization to prepare and make available a members' list for every member meeting.

Commented [JW10]: The WV Nonprofit Corporation Act requires the corporation to notify Voting Members of any member meeting no fewer than ten nor more than sixty days before the meeting. However, the existing Bylaws of WVFMA require notification of no fewer than thirty days before the meeting.

Section 9 Manner of Meetings.

(a) Quorum.

A majority of the Voting Members immediately before a meeting shall constitute a Quorum. No business shall be considered by the members at any meeting at which the required Quorum is not present or by proxy, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

Commented [JW11]: I changed the necessary amount of members needed to establish a quorum to a simple majority. This will give a better representation of the group as a whole.

(b) Voting Rights.

Each Voting Member is entitled to one vote on each matter submitted to a vote by the Voting Members.

(c) Majority Vote.

Every act or decision done or made by a majority of Voting Members present or by proxy at a duly held meeting at which a Quorum is present shall be the act of the members.

(d) Participation.

Except as required otherwise by law, the Articles of Incorporation, or these Bylaws, Voting Members may participate in the Annual Meeting or special meetings through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting, including in person, internet video meeting or by telephonic conference call.

(e) Proxies.

At each meeting of the members every Voting Member shall be entitled to vote in person or by proxy appointed by an instrument in writing subscribed by such member and delivered to the Secretary at the meeting. Notice of proxy must be given to the Secretary of the Corporation at least 48 hours before a meeting described in Article 6, Section 7. No proxy shall be valid for more than one meeting described in Article 6, Section 7. If a member participates in the meeting in accordance with Article 6, Section 9(d) in which the member voted by proxy, the proxy is revoked.

Commented [JW12]: Proxies allow members to vote without being present. This is good for members that will be spread out across the state.

(f) Conduct of Meetings.

Meetings shall be presided over by a chairperson. The chairperson shall be appointed by the Board of Directors. In the absence of such chairperson, the meetings shall be presided over by the Chairperson of the Board or, in his or her absence, by the Vice Chairperson of the Board or, in his or her absence of all of these persons, by the chairperson chosen by a majority of the Voting Members present at the meeting. The Secretary of the Corporation shall act as secretary of all meetings of the members, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting. The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon.

Commented [JW13]: This person is different than the Chairperson of the Board.

Section 7 Nonliability of Members.

A member of this Corporation is not, as such, personally liable for the debts, liabilities, or obligations of the Corporation.

Section 8 Nontransferability of Memberships.

No member may transfer a membership or any right arising therefrom.

Section 9 Termination of Membership.

The membership of a member shall terminate upon the occurrence of the following events:

(a) Upon his or her notice of such termination delivered to the President or Secretary of the Corporation, such membership to terminate upon the date of delivery of the notice or date of deposit in the mail.

(b) Upon failure to renew his or her membership by paying dues on or before their due date, such termination to be effective thirty (30) days after written notification of delinquency is given personally or mailed to such member by the Secretary of the Corporation. A member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the member's receipt of the written notice of delinquency.

(c) After providing the member with reasonable written notice and opportunity to be heard either orally or in writing, upon determination by the Board of Directors that the member has engaged in conduct materially and seriously prejudicial to the interests or purposes of the Corporation. Any person expelled from the Corporation shall receive a refund of dues already paid for the current dues period.

All rights of a member in the Corporation shall cease on termination of membership as herein provided.

**ARTICLE 7
BOARD OF DIRECTORS**

Section 1 Number of Directors.

The Corporation shall have a Board of Directors consisting of at least three (3) Directors and a maximum of nine (11) Directors. The Board may increase or decrease the number of Directors serving on the Board, including for the purpose of staggering the terms of Directors.

Commented [JW14]: Under state law, the Corporation must always have a minimum of three Directors.

Section 2 Powers.

All corporate powers shall be exercised by or under the authority of the Board and the affairs of the Corporation shall be managed under the direction of the Board, except as otherwise provided by law.

Section 3 Duties.

It shall be the duty of the directors to:

(a) perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;

(b) appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the Corporation;

(c) supervise all officers, agents, and employees of the Corporation to assure that their duties are performed properly;

(d) meet at such times and places as required by these Bylaws; and

(e) register their addresses with the Secretary of the Corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

Section 4 Terms.

All Directors shall be elected to serve a **three-year term**; however, the term may be extended until a successor has been elected. Directors may serve terms in succession.

Commented [JW15]: This is the length provided in WVFMAs original Bylaws.

Section 5 Qualifications and Election of Directors.

To be eligible to serve as a Director on the Board of Directors, the individual must be 18 years of age, not a convicted felon, and have not been accused of any crimes relating to the misuse of company funds such as embezzlement. Directors may be elected at the Annual Meeting by the majority vote of the existing Voting Members. The election of Directors to replace those who have fulfilled their term of office shall take place in the first quarter of each year.

Commented [JW16]: The Board of Directors should not be made up of only farmers markets. It is very important to have disinterested Directors on the Board.

Section 6 Vacancies.

The Board of Directors may fill vacancies due to the expiration of a Director's term of office, resignation, death, or removal of a Director or may appoint new Directors to fill a previously unfilled Board position, subject to the maximum number of Directors under these Bylaws. Vacancies in the Board of Directors due to resignation, death, or removal shall be filled by the Board for the balance of the term of the Director being replaced.

Section 7 Removal of Directors.

A Director may be removed by a two-thirds vote of the Board of Directors then in office, if:

(a) the Director is absent and unexcused from two or more meetings of the Board of Directors in a twelve-month period. The Chairperson is empowered to excuse Directors from attendance for a reason deemed adequate by the Chairperson. The Chairperson shall not have the power to excuse himself or herself from the Board meeting attendance.

(b) the Director has been accused of a felony or of embezzlement. Or:

(c) for cause or no cause, if before any meeting of the Board at which a vote on removal will be made the Director in question is given electronic or written notification of the Board's intention to discuss his or her case and is given the opportunity to be heard at a meeting of the Board.

Section 8 Board of Directors Meetings.

(a) Regular Meetings.

The Board of Directors shall have a minimum of four (4) regular meetings each calendar year at times and places fixed by the Board. Board meetings shall be held upon four (4) days' notice by first-class mail, electronic mail, or facsimile transmission or 48 hours' notice delivered personally or by telephone. If sent by mail, facsimile transmission, or electronic mail, the notice shall be deemed to be delivered upon its deposit in the mail or transmission system. Notice of meetings shall specify the place, day, and hour of meeting. The purpose of the meeting need not be specified.

(b) Special Meetings.

Special meetings of the Board may be called by the Chairperson, Vice Chairperson, Secretary, Treasurer, or any three (3) other Directors of the Board of Directors. A special meeting must be preceded by at least two (2) days' notice to each Director of the date, time, and place, but not the purpose, of the meeting.

(c) Waiver of Notice.

Any Director may waive notice of any meeting, in accordance with West Virginia law.

Section 9 Manner of Meetings.

(a) Quorum.

A majority of the Directors in office immediately before a meeting shall constitute a Quorum for the transaction of business at that meeting of the Board. No business shall be considered by the Board at any meeting at which a Quorum is not present.

(b) Majority Vote.

Except as otherwise required by law or by the Articles of Incorporation, the act of the majority of the Directors present at a meeting at which a Quorum is present shall be the act of the Board.

(c) Hung Board Decisions.

On the occasion that Directors of the Board are unable to make a decision based on a tied number of votes, the Chairperson in the order of presence shall have the power to swing the vote based on his or her discretion.

(d) Participation.

Except as required otherwise by law, the Articles of Incorporation, or these Bylaws, Directors may participate in a regular or special meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting, including in person, internet video meeting or by telephonic conference call.

Section 10 Compensation for Board Service.

Directors shall receive no compensation for carrying out their duties as Directors. The Board may adopt policies providing for reasonable reimbursement of Directors for expenses incurred in conjunction with carrying out Board responsibilities, such as travel expenses to attend Board meetings.

Commented [JW17]: Charities should generally not compensate persons for service on the board of directors except to reimburse direct expenses of such service. If board members are paid more than \$600 per year, the nonprofit must issue them an IRS Form 1099 Msc.

Section 11 Compensation for Professional Services by Directors.

Directors are not restricted from being remunerated for professional services provided to the Corporation. Such remuneration shall be reasonable and fair to the Corporation and must be reviewed and approved in accordance with the Board Conflict of Interest policy and state law.

Section 12 Nonliability of Directors.

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

Section 13 Insurance for Corporate Agents.

Except as may be otherwise provided under provisions of law, the Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a director, officer, employee, or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Articles of Incorporation, these Bylaws, or provisions of law.

**ARTICLE 8
COMMITTEES**

Section 1 Committees of Directors.

The Board may, by resolution adopted by a three-quarters majority of the Directors then in office, create one or more Board Committees ("Committees") each consisting of two or more Directors, to serve at the discretion of the Board. Any Committee, to the extent provided in the resolution of the Board, may be given the authority of the Board except that no Committee may:

- (a) approve any action for which the West Virginia NonProfit Corporation Act also requires approval of the Voting Members;
- (b) fill vacancies on the Board of in any Committee which has the authority of the Board;
- (c) fix compensation of the Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected; or
- (h) approve any transaction (i) between the Corporation and one or more of its Directors or (ii) between the Corporation and any entity in which one or more of its Directors have a material financial interest.

Commented [JW18]: The WV Nonprofit Act specifically states that no Committee may be formed for these purposes.

Commented [JW19]: The only action required by the Voting Members under the WV Nonprofit Corporation Act is the election of Directors. Thus, the Corporation may not create a committee to elect Directors.

Section 2 Meetings and Action of Board Committees.

Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 7 concerning meetings of Directors, with such changes in the context of Article 7 as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of Committees may be determined by the members of each Committee, and special meetings of Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee and shall be filed with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions by these Bylaws. In the absence of rules adopted by the Board, the Committee may adopt such rules.

Section 3 Quorum Rules for Board Committees.

A majority of the Committee members shall constitute a Quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a Quorum, may adjourn any meeting to another time and place. Every act taken or decision made by a majority of the Committee members present at a meeting duly held at which a Quorum is present shall be regarded as an act of the Committee, subject to the provisions of the West Virginia Nonprofit Corporation Act relating to actions that require a majority vote of the entire Board. A meeting at which Quorum is initially present may continue to transact business, notwithstanding the withdrawal of Committee members, if any action taken is approved by at least a majority of the required Quorum for that meeting.

Section 4 Revocation of Delegated Authority.

The Board may, at any time, revoke or modify any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee, and fill vacancies in a Committee from the members of the Board.

Section 5 Advisory Committees.

The Board may create one or more advisory committees to serve at the pleasure of the Board. Appointments to such advisory committees need not, but may, be Directors. The Board shall appoint and discharge advisory committee members. All actions and recommendations of an advisory committee shall require ratification by the Board before being given effect.

ARTICLE 9 OFFICERS

Section 1 Officers.

The Officers of the Corporation ("Officers") shall be a Chairperson, Vice Chairperson, a Secretary, and a Treasurer. The Chairperson, Vice Chairperson, Secretary, and the Treasurer and any additional Officers designated by the Board shall constitute the Executive Committee. The Board shall have the power to designate additional Officers who need not be Directors, with such duties, powers, titles, and privileges as the Board may fix, including such Officers as may be appointed in accordance with Article 9 Section 6.4. Any number of offices may be held by the same person, except that of the Secretary, the Treasurer, and the chief financial officer (if any) may not serve concurrently as the Chairperson.

Commented [JW20]: This can include a President, Vice President, CEO, COO, etc.

Section 2 Election of Officers.

The Officers, except those appointed in accordance with Article 9 Section 6.5, shall be elected by the Board at the Annual Meeting of the Corporation for a term of one (1) year, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal.

Commented [JW21]: This is the length provided in WVFMA's original Bylaws.

Section 3 Removal of Officers.

Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed, with or without cause, (i) by the Board, at any regular or special meeting of the Board, or at the annual meeting of the Corporation, or (ii) by an Officer on whom such power of removal may be conferred by the Board.

Section 4 Resignation of Officers.

Any Officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the Officer is a party.

Section 5 Vacancies in Office.

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than the Chairperson or one appointed in accordance with Article 9 Section 6.5, such vacancy shall be filled temporarily by appointment by the Chairperson and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.

Section 6 Responsibilities of Officers.

Section 6.1 Chairperson of the Board.

The Chairperson of the Board ("Chairperson") shall preside at all meetings of the Board of Directors, shall have general supervision of the affairs of the Corporation, and shall perform such other duties as are incident to the office or are properly required of the Chairperson by the Board of Directors.

Section 6.2 Vice Chairperson.

The Vice Chairperson of the Board ("Vice Chairperson") shall exercise all the functions of the Chairperson during the absence or disability of the Chairperson. The Vice Chairperson shall have such powers and discharge such duties as may be assigned to him or her, from time to time, by the Board of Directors.

Section 6.3 Secretary.

The Secretary of the Corporation ("Secretary") shall attend to the following:

(a) Bylaws

The Secretary shall certify and keep or cause to be kept at the Principal Office of the Corporation the original or copy of these Bylaws as amended to date.

(b) Minute Book

The Secretary shall keep or cause to be kept a minute book as described in Article 12 Section 1.

(c) Notices

The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.

(d) Membership Roster

The Secretary shall keep or cause to be kept a membership roster of all current members of the Corporation.

(e) Members' List

The Secretary shall prepare members' lists before each member meeting in accordance with Article 6 Section 7(d).

(f) Corporate Records

The Secretary shall hold all official documents and sign, along with the Chairperson, any contracts executed on behalf of the organization. Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.

(g) Other Duties

The Secretary shall have such powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.

Section 6.4 Treasurer.

The Treasurer of the Corporation ("Treasurer") shall attend to the following:

(a) Books of Account

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.

(b) Financial Reports

The Treasurer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports. The Treasurer shall prepare a quarterly report of the organization's financial statements and account for all receipts and disbursements. The Treasurer shall prepare a full financial report of the Corporation annually.

(c) Deposit and Disbursement of Money and Valuables

The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board; shall render, or cause to be rendered to the Chairperson and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation; and shall have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

(d) Bond

If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in his possession or under his control on his death, resignation, retirement, or removal from office.

Section 6.5 Additional Officers.

The Board may empower the Chairperson to appoint or remove such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine.

ARTICLE 10
TRANSACTIONS BETWEEN THE CORPORATION AND DIRECTORS OR OFFICERS

Section 1 Transactions with Directors and Officers.

Section 1.1 Interested Party Transactions.

Except as described in Article 10 Section 1.2, the Corporation shall not be a party to any transaction:

- (a) in which one or more of its Directors or Officers has a material financial interest, or
- (b) with any corporation, firm, association, or other entity in which one or more Directors or Officers has a material financial interest.

Commented [JW22]: In order to maintain the organization's 501(c)(3) status, the company should not enter into transactions that could constitute private inurement.

Section 1.2 Requirements to Authorize Interested Party Transactions.

The Corporation shall not be a party to any transaction described in Article 10 Section 1.1 unless:

- (a) the Corporation enters into the transaction for its own benefit;
- (b) the transaction is fair and reasonable to the Corporation at the time the transaction is entered into;
- (c) prior to consummating the transaction or any part thereof, the Board authorizes or approves the transaction in good faith, by a vote of a three-quarters majority of Directors then in office (without counting the vote of the interested Directors), and with knowledge of the material facts concerning the transaction and the interested Director's or Officer's financial interest in the transaction;
- (d) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
- (e) the minutes of the Board meeting at which such action was taken reflect that the Board considered and made the findings described in paragraphs (a) through (d) of this Article 10 Section 1.2.

Commented [JW23]: The Board should conduct a thorough investigation into any transaction with interested parties.

Section 1.3 Material Financial Interest.

A Director or Officer shall not be deemed to have a "material financial interest" in a transaction:

- (a) that fixes the compensation of a Director as a Director or Officer;
- (b) if the contract or transaction is part of a public or charitable program of the Corporation and it (1) is approved or authorized by the Corporation in good faith and without unjustified favoritism, and (2) results in a benefit to one or more Directors or their families only because they are in the class of persons intended to be benefited by the program; or
- (c) where the interested Director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding year of \$100,000.

Section 2 Loans to Directors and Officers.

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer; except that, however, the Corporation may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Corporation.

Section 3 Interlocking Directorates.

No contract or other transaction between the Corporation and any corporation, firm, or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves, or ratifies the contract or transaction, unless (i) the material facts to the transaction and as to such Director's other directorship are fully disclosed or known to the Board or Committee, and the Board or Committee authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 7); or if (ii) the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved, or ratified.

Commented [JW24]: This provision governs transactions with corporations in which a director or officer of WVFM is also a director of the other corporation.

Section 4 Duty of Loyalty; Construction with Article 11.

Nothing in this document shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Corporation. Furthermore, nothing in this document shall be construed to override or amend the provisions of Article 11. All conflicts between the two articles shall be resolved in favor of Article 11.

ARTICLE 11

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

Section 1 Definitions.

For purpose of this Article 11:

(a) **“Agent”** means any person who is or was a Director, Officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of the predecessor corporation;

(b) **“Proceeding”** means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

(c) **“Expenses”** includes all attorneys' fees, costs, and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by

Commented [JW25]: This Article discusses when the Corporation is required to pay for the legal costs of an individual that are incurred due to their relationship as an Agent of the Corporation.

reason of his or her position or relationship as Agent and all attorneys' fees, costs, and other expenses reasonably incurred in establishing a right to indemnification under this Article 11.

Section 2 Applicability of Indemnification Provisions.

Section 2.1 Successful Defense by Agent.

To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 11, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim.

Section 2.2 Settlement or Unsuccessful Defense by Agent.

If an Agent either settles any proceeding referred to in this Article 11, or any claim issue, or matter therein, or sustains a judgment rendered against him, then the provisions of Article 11 Section 3 through Article 11 Section 6 shall determine whether the Agent is entitled to indemnification.

Section 3 Actions Brought by Persons Other than the Corporation.

This Article 11 Section 3 applies to any proceeding other than an action "by or on behalf of the Corporation" as defined in Article 11 Section 4. Such proceedings that are not brought by or on behalf of the Corporation are referred to in this Article 11 Section 3 as "Third Party proceedings."

Section 3.1 Scope of Indemnification in Third Party Proceedings.

Subject to the required findings to be made pursuant to Article 11 Section 3.2, the Corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

Section 3.2 Required Standard of Conduct for Indemnification in Third Party Proceedings.

Any indemnification granted to an Agent in Article 11 Section 3.1 above is conditioned on the following. The Board must determine, in the manner provided in Article 11 Section 5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Corporation, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 4 Action Brought By or On Behalf Of the Corporation.

This Article 11 Section 4 applies to any proceeding brought (i) by or in the right of the Corporation, or (ii) by an Officer or Director, on the ground that the defendant Director was or is engaging in self-dealing (any such proceeding is referred to in these Bylaws as a proceeding "by or on behalf of the Corporation").

Section 4.1 Scope of Indemnification in Proceeding By or On Behalf Of the Corporation.

Subject to the required findings to be made pursuant to Article 11 Section 4.2, and except as provided in Sections 4.3 and 4.4, the Corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Corporation, by reason of the fact that such person is or was an Agent, for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

Section 4.2 Standard of Conduct for Indemnification in Proceeding On Behalf Of the Corporation.

Any indemnification granted to an Agent in Article 11 Section 4.1 is conditioned on the following. The Board must determine, in the manner provided in Article 11 Section 4.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 4.3 Claims Settled Out of Court.

If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Corporation, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition unless such settlement is pre-approved by the Board. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding unless pre-approved by the Board.

Section 4.4 Claims and Suits Awarded Against Agent.

If any Agent is adjudged to be liable to the Corporation in the performance of the Agent's duty to the Corporation, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Article 11 Section 4.1 for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

(a) The determination of good faith conduct required by Article 11 Section 4.2 must be made in the manner provided for in Section 4.5; and

(b) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 5 Determination of Agent's Good Faith Conduct.

The indemnification granted to an Agent in Article 11 Section 4.3 and Section 4.4 is conditioned on the findings required by those Sections being made by:

- (a) the Board by a three-quarters majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
- (b) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by the Corporation.

Section 6 Limitations.

No indemnification or advance shall be made under this Article 11, except as provided in Section 2.1 or Section 5(b), in any circumstances when it appears:

- (a) that the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
- (b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 7 Advance of Expenses.

Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in Article 11.

Section 8 Contractual Rights of Non-Directors and Non-Officers.

Nothing in this Article 11 shall affect any right to indemnification to which persons other than Directors and Officers of the Corporation, or any of its subsidiaries, may be entitled by contract or otherwise.

Section 9 Insurance.

The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 11, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent's status as such, whether or not the Corporation would have the power to indemnify the Agent against the liability under the provisions of this Article 11.

ARTICLE 12
Corporate Records, Reports and Seal

Section 1 Minute Book.

The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Board, the members, or any committee including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting of approvals of the minutes thereof; (vii) all written consents for action without meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

Commented [JW26]: The Corporation must maintain a permanent record of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

Section 2 Books and Records of Account.

The Corporation shall keep adequate and correct books and records of account. "Correct books and records" includes, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains, and losses.

Section 3 Articles of Incorporation and Bylaws.

The Corporation shall keep at its Principal Office, the original or a copy of the Articles of Incorporation and Bylaws as amended to date, that shall be open to inspection by the Directors at all reasonable times during office hours.

Section 4 Maintenance of Federal Tax Exemption Application and Annual Information Returns.

The Corporation shall at all times keep at its Principal Office a copy of its federal tax exemption application and, for five years from their date of filing, its annual information returns. These documents shall be open to public inspection to the extent required by the Code.

Section 5 Annual Report: Statement of Certain Transactions.

The Board shall cause an annual report to be sent to each Director within 120 days after the close of the Corporation's fiscal year containing the following information:

- (a) The assets and liabilities of the Corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for this fiscal year;
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes during the fiscal year;
- (e) A statement of any transaction (i) to which the Corporation, its parent, or its subsidiary was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (iii)

Commented [JW27]: This should be prepared by the Treasurer of the Corporation.

in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a financial interest):

- (1) Any Director or Officer of the Corporation, its parent, or its subsidiary; or
- (2) Any holder of more than ten percent (10%) of the voting power of the Corporation, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Corporation; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

(f) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 10 or Article 11.

Section 6 Directors' Rights of Inspection.

Every Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and the physical properties of the Corporation and each of its subsidiaries. The inspection may be made in person or by the Director's agent of attorney. The right of inspection includes the right to copy and make extracts of documents.

ARTICLE 13

EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

Section 1 Execution of Instruments.

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 2 Checks and Notes.

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Chairperson.

Section 3 Deposits.

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trusts companies, or other depositories as the Board may select.

Section 4 Gifts.

The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the charitable or public purposes of the Corporation. The Board may adopt a Gift Acceptance Policy explaining the Board's acceptance of gifts on behalf of the Corporation.

**ARTICLE 14
CONFLICT OF INTEREST**

Section 1 Purpose.

The purpose of the conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Director of the Corporation or might result in a possible excess benefit transaction. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Section 2 Definitions.

For purpose of this Article 14:

(a) "Interested Person" means any Director, principal officer, or member of a committee with Board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any entity in the health care system of which the Corporation is a part, he or she is an interested person with respect to all entities in the healthcare system.

(b) "Financial Interest" means any person, directly or indirectly, through business, investment, or family has an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement or any compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article 14 Section 3.2, a person who has a financial interest may have a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

Section 3 Procedures.

Section 3.1 Duty to Disclose.

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with Board delegated powers considering the proposed transaction or arrangement.

Section 3.2. Determining Whether a Conflict of Interest Exists.

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, they shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

Section 3.3. Procedures for Addressing the Conflict of Interest.

(a) An interested person may make a presentation at the Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

(b) The Chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(c) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

Section 3.4 Violations of the Conflicts of Interest Policy.

(a) If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4 Records of Proceedings.

The minutes of the Board and all committees with Board delegated powers shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

(b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5 Compensation.

(a) A voting member of the Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

(b) A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

(c) No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Section 6 Annual Statements.

Each Director, principal officer, and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

(a) Has received a copy of the conflicts of interest policy;

(b) Has read and understands the policy;

(c) Has agreed to comply with the policy; and

(d) Understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities, which accomplish one or more of its tax-exempt purposes.

Commented [JW28]: The Clinic has developed an additional Conflict of Interest policy and statement that should be signed annually by all Board members and any person who has been delegated powers by the Board.

Section 7 Periodic Reviews.

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

(a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.

(b) Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Section 8 Use of Outside Experts.

When conducting the periodic reviews as provided for in Section 7, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

Commented [JW29]: It is highly recommended that the Corporation use outside advisers when conducting these periodic reviews. This would help to prevent any fraudulent activity.

ARTICLE 15
AMENDMENTS

Section 1 Amendment by Directors.

Said Corporation's Board of Directors may propose one or more amendments to the Articles of Incorporation or Bylaws from time to time. The proposed amendment must be adopted by vote of at least two thirds of the Directors present at a meeting of the Board of Directors at which a quorum is present.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of West Virginia Farmers Market Association, Inc., a West Virginia nonprofit corporation (the "Corporation"); that these Bylaws, consisting of _____ pages, are the Bylaws of this Corporation as adopted by the Board of Directors on _____, 2017; and that these Bylaws have not been amended or modified since that date.

Executed on _____, 2017 at _____, West Virginia.

Jean Smith