

## Alleviating Food Insecurity Via Cooperative Bylaws

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## I. INTRODUCTION

Income and wealth inequality in the U.S. continue to grow, even after the economy has rebounded from the Great Recession.<sup>1</sup> Employee ownership offers a means to build community wealth.<sup>2</sup> Employee ownership has historically been supported by people on both sides of the political aisle.<sup>3</sup> Forms of employee ownership, including the worker-owned cooperative, create jobs rooted in the local community.

One aspect of the growing inequality is that many urban areas are “food deserts.” A food desert is a locality where people do not have access to affordable, healthy food.<sup>4</sup> In some communities, one part of the solution to providing accessible food is the consumer-owned food cooperative, or community-owned

1. See Estelle Sommeiller & Mark Price, *The New Gilded Age*, ECON. POL’Y INST. (July 19, 2018), <https://www.epi.org/files/pdf/147963.pdf>.

2. JOSEPH R. BLASI ET AL., *THE CITIZEN’S SHARE: PUTTING OWNERSHIP BACK INTO DEMOCRACY* 226 (2013). The Catholic U.S. Bishops 2017 annual Labor Day statement emphasized the growing inequality and suggested worker-ownership is part of the solution. Mark Pattison, *Bishops’ Labor Day Statement Criticizes ‘Excessive Inequality,’* ST. LOUIS REV. (Aug. 30, 2017), <https://www.archstl.org/bishops-labor-day-statement-criticizes-excessive-inequality-2138> (“worker-owned businesses can be a force for strengthening solidarity” and “provide jobs in communities where work opportunities may be scarce”).

3. For example, the most-recent federal bill addressing worker-owned cooperatives, the Main Street Employee Ownership Act, which would increase the Small Business Administration’s focus on and funding of employee-owned businesses, including worker-owned cooperatives, has passed in the House and is sponsored by Senators Kirsten Gillibrand (D-NY) and James Risch (R-ID) in the Senate. See Main Street Employee Ownership Act of 2018, H.R. 5236, 115th Congress (2018), <https://www.congress.gov/bill/115th-congress/house-bill/5236/text>; NAT’L CTR. FOR EMP. OWNERSHIP (Jun. 15, 2018), <https://www.nceo.org/employee-ownership-update/2018-06-15>.

4. Hunt Allcott et al., *The Geography of Poverty and Nutrition: Food Deserts and Food Choices Across the United States*, NAT’L BUREAU ECON. RES. (2017), <https://www8.gsb.columbia.edu/faculty-research/sites/faculty-research/files/finance/Industrial/Rebecca%20Diamond%20-%20Sept%202017.pdf>; Cf. Renee E. Walker, Christopher R. Keane, & Jessica G. Burke, *Disparities and access to healthy food in the United States: A review of food deserts literature*, 16 URB. HEALTH & PLACE 876, 876 (2010) (noting two definitions that limit food deserts to urban areas).

grocery.<sup>5</sup> Legal scholars have discussed food cooperatives as examples of sustainable economic development and as a means of creating social identity.<sup>6</sup> For instance, Paulette Stenzel, a law professor at Michigan State University, discusses the value of using food cooperatives as a grassroots means to create economic stability within a city,<sup>7</sup> the existence of which has the effect of encouraging people to invest in their communities.<sup>8</sup> Nevertheless, while academic business and sociological articles have addressed food cooperatives head on, the scholarly legal literature on food cooperatives is limited. Thus, this Article aims to fill the gap in the legal literature. In particular, the country's growing trend of setting up food cooperatives reflects the need to examine the drafting of bylaws for food cooperatives and the legal and business issues that arise within the process. This Article contributes to the body of business law articles and addresses several issues yet to be explored in the legal literature.

First, new efforts across the country, including those in Cincinnati and Dayton, involve establishing multi-stakeholder food cooperatives.<sup>9</sup> A multi-stakeholder cooperative is one where the co-op is owned jointly by different classes, such as workers and consumers. While the academic legal literature addresses worker-owned cooperatives as a means of community development,<sup>10</sup> the legal literature on multi-stakeholder cooperatives is scarce. As other community members, such as the initiative in Louisville that the authors are part of, consider such a model, more legal discussion about multi-stakeholder cooperatives and more guidance about bylaws that combine consumer and worker-ownership is needed.

Second, the initiatives in Cincinnati and Dayton anticipate that the grocery workers will be unionized.<sup>11</sup> Such cooperatives are known as union co-ops.<sup>12</sup> One of the authors of this Article, Professor Levinson, has written extensively about the labor law issues involved in establishing and operating unionized worker-owned cooperatives,<sup>13</sup> and others have written about the community benefits of unionized worker-owned cooperatives and their potential to decrease income inequality.<sup>14</sup>

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5. See Usha Rodrigues, *Entity and Identity*, 60 EMORY L. J. 1257, 1292 (2011); Paulette L. Stenzel, *Connecting the Dots: Synergies Among Grassroots Tools for Authentic Sustainable Development*, 25 FORDHAM ENVTL. L. REV. 393, 418 (2015).

6. See Stenzel, *supra* note 5; Rodrigues, *supra* note 5.

7. See Stenzel, *supra* note 5, at 418.

8. See generally *id.*

9. See, e.g., APPLE ST. MKT., <https://www.applestreetmarket.coop> (last visited Jan. 31, 2019); GEM CITY MKT., <https://gemcitymarket.com> (last visited Jan. 31, 2019).

10. Ariana R. Levinson, *Union Co-ops and the Revival of Labor Law*, 19 CARDOZO J. OF CONFLICT RESOL. 453, 455–56 (2018).

11. See GREATER DAYTON UNION CO-OP INITIATIVE, <http://gduci.org> (last visited Jan. 31, 2019); CINCINNATI UNION CO-OP INITIATIVE, <https://www.cincinnatiunioncoop.org> (last visited Jan. 31, 2019).

12. Levinson, *supra* note 10, at 457.

13. Levinson, *supra* note 10.

14. See, e.g., Alicia Alvarez, *Lawyers, Organizers, and Workers: Collaboration and Conflict in Worker Cooperative Development*, 24 GEO. J. POVERTY L. & POL'Y 353, 353 (2017); Priya Baskaran, *Introduction to Worker Cooperatives and Their Role in the Changing Economy*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 355, 357 (2014); Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLINICAL L. REV. 325, 331 (2016); Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 98 (2017); Chris Tilly & Marie Kennedy, *Latin America's "Third Left" Meets the U.S. Workplace: A Promising Direction for Worker Protection?*,

No legal article, however, addresses establishing neutrality toward unionization of worker-owners within bylaws governing a multi-stakeholder cooperative.

Third, a number of states have enacted the Uniform Limited Cooperative Association Act (the ULCAA),<sup>15</sup> a promising statute under which to incorporate a multi-stakeholder community grocery. The Louisville initiative has decided to organize under the Kentucky version of the ULCAA. While legal authors have written about the ULCAA as a tool for community-based economic development,<sup>16</sup> none of the literature about the ULCAA addresses incorporating a multi-stakeholder grocery. This Article fills the gap, addressing why the ULCAA should be considered and the legal issues that must be addressed when incorporating thereunder.

Finally, in addition to contributing to the scholarly literature about food cooperatives and the ULCAA, this Article relates to a body of work about clinical-legal education and cooperatives. With the new standards that require law schools to ensure that each of their students receives skills training and experiential learning,<sup>17</sup> the Louisville initiative described in this Article serves as an example of how students can engage in experiential learning related to business entities and social justice. Through the University of Louisville's Brandeis School of Law's Office of Professional Service, Mr. Klump, one of the student co-authors of this Article, was able to complete the required public service over a semester break by working with Mr. Rutledge and Mr. Fenwick, the two attorney co-authors of this Article, and under the supervision of Professor Levinson, the law professor author of this Article, to draft the bylaws for the proposed multi-stakeholder community grocery incorporating under the ULCAA. Schools that are located near attorneys who are willing to engage with students might use a similar model to complete public service that benefits their local communities during academic breaks.

This Article proceeds in three additional Parts. Part II describes the large-scale problem of wealth, income, and food inequality and the role of food, worker-owned, and multi-stakeholder co-ops in addressing the problem. It then describes the existing academic legal literature addressing this problem, the lack of articles addressing multi-stakeholder co-ops, and the significant role the law and drafting of bylaws plays in addressing the problem. Part III provides guidance for those hoping to establish a community-owned grocery, particularly those in states that have adopted the ULCAA or a similar statute. It also provides guidance for law schools that wish to partner with efforts to establish community-owned groceries, or other multi-stakeholder co-ops. Part IV addresses the substantive legal decisions that initiatives to establish community groceries and their attorneys must resolve in the process of drafting the bylaws.

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4 U.C. IRVINE L. REV. 539, 559 (2014); Sara Tonnesen, *Stronger Together: Worker Cooperatives as a Community Economic Dev. Strategy*, 20 GEO. J. POVERTY L. & POL'Y 187, 188 (2012).

15. The Act has been adopted in a number of jurisdictions. See, e.g., COLO. REV. STAT. ANN. § 7-58-101 (West 2006); D.C. CODE § 29 (2001); IOWA CODE ANN. § 501A.101 (West 2008); KY. REV. STAT. ANN. § 272A.14-010 (West 2006); H.B. 1544, 87th Gen. Assemb., Reg. Sess. (Ark. 2009); S.B. 69, 57th Leg., Gen. Sess. (Ut. 2008).

16. See Rodrigues, *supra* note 5, at 1292; Stenzel, *supra* note 5, at 418.

17. *Program of Legal Education*, AM. B. ASS'N 16 (2018-19), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.pdf).

## II. THE ROLE OF LAWYERS IN DRAFTING BYLAWS FOR MULTI-STAKEHOLDER COMMUNITY GROCERIES DESIGNED TO ADDRESS THE PROBLEM OF INCOME INEQUALITY AND FOOD DESERTS

This Part first discusses the problems of inequality and food deserts faced by many U.S. communities. It then describes the role that consumer-owned food cooperatives and worker-owned cooperatives are playing across the country to address these inequities. It describes the initiative in Louisville that aims to establish a multi-stakeholder community-owned grocery. Thereafter, the bulk of this Part addresses the existing academic literature about worker-owned cooperatives and food cooperatives, drafting bylaws for these types of entities, and the Uniform Limited Cooperative Association Act. The gaps in the literature that this Article fills are outlined, and the guidance and utility the Article holds for those involved in establishing multi-stakeholder community groceries is noted.

### *A. The Challenges: Inequality and Food Deserts*

Many scholars have noted the growing wealth and income inequality in the U.S.<sup>18</sup> Income inequality means that some people earn much more from their labor and capital, such as stock dividends and rents from housing ownership, than others, some of whom may have no work or capital at all.<sup>19</sup> Wealth inequality means that some people own much more capital, such as land, buildings, and stocks, than others.<sup>20</sup> Even though the economy has rebounded from the Great Recession, pay remains flat.<sup>21</sup> Income and wealth inequality also continue to grow.<sup>22</sup> With respect to income inequality, the top one percent of Americans saw a consistent increase in the share of income they held.<sup>23</sup> In the past decade, the top one percent experienced an eighteen percent rise in income whereas those in the middle class saw their income decrease.<sup>24</sup> Additionally, the upper class earns about twenty-five percent of the United States' income every year.<sup>25</sup> From 1979 to 2006, the top one percent had an increase in annual salaries by 144 percent whereas the rest of Americans saw their salaries increase only fifteen percent during that time period.<sup>26</sup> Although the Great Recession hurt the average American family, the top one percent of Americans still managed to increase its strong hold on its share of income at twenty-one percent in 2015.<sup>27</sup>

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18. See Sommeiller & Price, *supra* note 1, at 2; Thomas W. Mitchell, *Growing Inequality and Racial Economic Gaps*, 56 HOW. L.J. 849, 852 (2013).

19. See Sommeiller & Price, *supra* note 1, at 48 n.38.

20. See Mitchell, *supra* note 18, at 856.

21. See Sommeiller & Price, *supra* note 1, at 15.

22. See *id.* at 39.

23. See *id.*

24. John J. Chung, *Wealth Inequality as Explained by Quantitative Erasing and Law's Inertia*, 85 UMKC L. REV. 275, 276 (2017).

25. *Id.*

26. Lawrence Mishel & Josh Bivens, *Occupy Wall Streeters are Right About Skewed Economic Rewards in the United States 5* (Econ. Pol'y Inst., Briefing Paper No. 331, 2011), <https://www.epi.org/files/2011/BriefingPaper331.pdf>.

27. See Sommeiller & Price, *supra* note 1, at 21.

The increased disparity of wealth tells an even graver story of the American household. For instance, in 1992, the wealthiest ten percent of households had a median net worth approximately 1,300 times higher than net worth of the bottom twenty-five percent.<sup>28</sup> By 2016, that number grew to about 24,000 times higher.<sup>29</sup> From 1983 to 2007, the middle class experienced an increase in median wealth from \$96,000 to \$161,000 but that gain was essentially eliminated once the financial crisis hit, and by 2013 the median wealth remained stagnant at \$98,000.<sup>30</sup> On the other hand, the median wealth of the upper class doubled from \$323,402 in 1983 to \$729,980 in 2007. The decrease in wealth the upper class experienced when the financial crisis hit was relatively inconsequential considering the fact that they managed to recover their median wealth to about \$650,000 in 2013.<sup>31</sup>

Income and wealth inequality give rise to a host of practical problems. For instance, some people have considerably more money to contribute to political races and to lobby legislators, ensuring that their opinions and beliefs have more weight than others without such resources.<sup>32</sup> Those with more money can afford private primary schools<sup>33</sup> and expensive university tuition,<sup>34</sup> while public school students are often left without resources for basic supplies,<sup>35</sup> and many without wealth cannot afford to gain a college education.<sup>36</sup> As income and wealth inequality grow, so does poverty, which correlates with a number of other intractable problems, such as violence and homicides, lack of or unstable housing, and food insecurity.<sup>37</sup>

For many, the idea that some people hold a large share of income and wealth, far surpassing their needs for a comfortable lifestyle, while others, including working people, do not have enough to secure housing, education, and food, offends their notions of basic justice.<sup>38</sup> As stated by Pope Francis, “[w]orking for

28. Patricia Buckley & Akur Barua, *Are We Headed for a Poorer United States? Growing Wealth Inequality by Age Puts Younger Households Behind*, DELOITTE INSIGHTS (Mar. 12, 2018), <https://www2.deloitte.com/insights/us/en/economy/issues-by-the-numbers/march-2018/us-average-wealth-inequality-by-age.html>.

29. *Id.*

30. Chung, *supra* note 24, at 288.

31. *Id.*

32. *As Inequality Grows, So Does the Political Influence of the Rich*, THE ECONOMIST (July 21, 2018), <https://www.economist.com/finance-and-economics/2018/07/21/as-inequality-grows-so-does-the-political-influence-of-the-rich>.

33. Margaret E. Azhar, *Struggling Middle Class: Merit-Based Scholarships Meet School Vouchers*, 24 NOTRE DAME J.L. ETHICS & PUB. POL’Y 399, 399–402 (2010).

34. Matt Willie, *Taxing and Tuition: A Legislative Solution to the Growing Endowments and the Rising Costs of a College Degree*, 2012 B.Y.U. L. REV. 1665, 1665 (2012).

35. Ann Ness, *Teachers Spend Hundreds of Dollars a Year on School Supplies. That’s a Problem.*, EDUC. WK. TCHR. (Aug. 2, 2017), <https://www.edweek.org/tm/articles/2017/08/02/teachers-spend-hundreds-of-dollars-a-year.html> (“And with a majority of public school students living in poverty, many come from homes where their parents simply can’t afford to make up for a lack of supplies in school.”).

36. Willie, *supra* note 34, at 1665.

37. See Greg J. Duncan & Katherine Magnuson, *Early Childhood Poverty*, PATHWAYS, 24, 24–27 (Winter 2011), [https://inequality.stanford.edu/sites/default/files/PathwaysWinter11\\_Duncan.pdf](https://inequality.stanford.edu/sites/default/files/PathwaysWinter11_Duncan.pdf); Sommeiller & Price, *supra* note 1; UNIV. OF MINN., *The Consequences of Poverty*, in SOCIAL PROBLEMS: CONTINUITY AND CHANGE (2010), <http://open.lib.umn.edu/socialproblems/chapter/2-4-the-consequences-of-poverty> [hereinafter SOCIAL PROBLEMS].

38. SOCIAL PROBLEMS, *supra* note 37; Duncan & Magnuson, *supra* note 37.

a just distribution of the fruits of the earth and human labor is not mere philanthropy. It is a moral obligation.”<sup>39</sup> For this principled reason, solutions to address the growing income and wealth inequality are needed.

One problem to which the growing inequality contributes is that many people in both rural and urban areas suffer from food insecurity or food apartheid.<sup>40</sup> In common parlance, food deserts exist in many areas, including many urban areas. The U.S. Department of Agriculture defines a food desert as a low-income area where residents have low access to a grocery store with healthy and affordable food.<sup>41</sup> Low income for an urban area is measured by a twenty percent poverty rate in the area or a median family income at or below eighty percent of the median income in the metropolitan area.<sup>42</sup> Low access is measured by a combination of proximity to a grocery and vehicle ownership.<sup>43</sup> The number of individuals living with food insecurity under the various measures is in the tens of millions and constitute anywhere between six to seventeen percent of the U.S. population.<sup>44</sup> One measure estimated that there are forty-eight million people living with food insecurity.<sup>45</sup> Major metropolitan areas across the country have food deserts located in certain historically disenfranchised neighborhoods.<sup>46</sup> States that have enacted the ULCAA are impacted by this problem. Every county in Arkansas has food deserts.<sup>47</sup> Food deserts are located in Denver and rural areas of Colorado.<sup>48</sup> As high

39. Tom Huddleston Jr., *5 Times Pope Francis Talked About Money*, FORTUNE (Sept. 14, 2015), <http://fortune.com/2015/09/14/pope-francis-capitalism-inequality>.

40. See Allcott, et al., *supra* note 4 at 1–2; Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 303–04 (2015); Walker, Keane, & Burke, *supra* note 4. The term “food insecurity” describes a household without reliable access to nutritional food. See *Definitions of Food Security*, U.S. DEP’T OF AGRIC., ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx> (last visited Feb. 16, 2019) (describing food insecurity as “a household-level economic and social condition of limited or uncertain access to adequate food”). The term “food apartheid” is used to refer to urban food deserts to emphasize that the lack of access to food is not a naturally occurring phenomena but rather a result of purposeful human action, such as redlining, discrimination, and disinvestment. Christopher Cook, *Covering Food Deserts*, CTR. FOR HEALTH JOURNALISM, <https://www.centerforhealthjournalism.org/resources/lessons/covering-food-deserts> (last visited Feb. 16, 2019).

41. ALANA RHONE, ET AL., U.S. DEP’T. OF AGRIC., *Low-Income and Low-Supermarket-Access Census Tracts, 2010–2015*, in ECONOMIC INFORMATION BULLETIN NO. 165 (2017), <https://www.ers.usda.gov/webdocs/publications/82101/eib-165.pdf?v=42752>.

42. RHONE, *supra* note 41, at 3.

43. RHONE, *supra* note 41, at 3–4; see Emily M. Broad Leib, *All (Food) Politics is Local: Increasing Food Access Through Local Government Action*, 7 HARV. L. & POL’Y REV. 321, 329 (2013).

44. Chung, *supra* note 24, at 283; RHONE, *supra* note 41, at 12. See *Key Statistics & Graphics*, U.S. DEPT. OF AGRIC. (2017), <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx> (last visited Feb. 16, 2019).

45. Chung, *supra* note 24, at 283. See U.S. DEPT. OF AGRIC., *supra* note 44.

46. See Tess Feldman, *Re-stocking the Shelves: Policies and Programs Growing in Food Deserts*, 16 PUB. INT. L. REP. 38, 39 (2010) (discussing the problem of food deserts in urban areas such as Chicago, Detroit, South Los Angeles, and Baltimore).

47. *Food Deserts: Fact Sheet*, ARK. CTR. FOR HEALTH IMPROVEMENT (2017), <https://achi.net/wp-content/uploads/2018/01/Food-Deserts-Fact-Sheet.pdf>.

48. Rebekah Sosa, *Exploring Food Deserts in Colorado*, MEDIUM (Nov. 9, 2017), <https://medium.com/re-write/exploring-food-deserts-in-colorado-6c774be29543>.

as eleven percent of Washington D.C. is a food desert.<sup>49</sup> In Des Moines, “great swaths of the downtown core are designated as food deserts.”<sup>50</sup> In Louisville, Kentucky, approximately, 3.6% of households are situated in food deserts.<sup>51</sup> The negative implications of this food insecurity can be seen in the health of its residents.<sup>52</sup> For instance, in one food desert, West Louisville, thirty-seven percent of residents reported they had high blood pressure and seventy-four percent reported they were overweight or obese.<sup>53</sup> Additionally, twelve percent of residents within this food desert reported having diabetes.<sup>54</sup> A recent study indicates that food insecurity persists in Louisville, with 44,000 residents living in food deserts, and 120,100 who are food insecure.<sup>55</sup>

*B. Part of the Solution: Worker-Owned Cooperatives and  
Consumer-Owned Food Cooperatives*

One method that more and more communities across the U.S. are turning to in order to combat wealth and income inequality and its resultant problems is the worker-owned cooperative.<sup>56</sup> Worker-owned cooperatives are businesses owned and managed by those who work there.<sup>57</sup> These businesses follow the general cooperative principles, such as recognizing the importance of education, cooperation among cooperatives, and concern for community.<sup>58</sup>

Additionally, worker-owned cooperatives operate on the principle that capital is subordinate to labor. The default rule in cooperatives is that each worker has one share of the business and one vote.<sup>59</sup> While many decisions may be delegated to management as the business grows, key decisions are always decided by the

49. Christina Sturdivant, *Report: More Than 11 Percent of D.C. Is A Food Desert*, DCIST (Mar. 15, 2017), [http://dcist.com/2017/03/food\\_desserts\\_latest.php](http://dcist.com/2017/03/food_desserts_latest.php).

50. Global Site Plans—The Grid, *The Food Deserts of Des Moines, Iowa: Limited Access in the Breadbasket of America*, SMART CITIES DIVE (Oct. 30, 2014), <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/food-deserts-des-moines-iowa-limited-access-breadbasket-america/1007501>.

51. *Food Deserts*, GREATER LOUISVILLE PROJECT, <http://greaterlouisvilleproject.org/factors/food-desert> (last visited Feb. 16, 2019).

52. See KATE GERONEMUS, CONG. HUNGER CTR., THE STATE OF FOOD: A SNAPSHOT OF FOOD ACCESS IN LOUISVILLE 4 (2010), <https://louisville.edu/cepm/westlou/louisville-wide/state-of-food-2008> (“The mere presence of a supermarket in communities correlates with lower rates of obesity and better health.”).

53. *Id.* at 3.

54. *Id.*

55. LIFT A LIFE FOUND. & COMM. FOUND. OF LOUISVILLE, ENDING FOOD INSECURITY: IT WILL TAKE US ALL, <https://www.cflouisville.org/ending-food-insecurity-it-will-take-us-all/> (last visited Feb. 16, 2019).

56. Minsun Ji, *Revolution or Reform? Union-Worker Cooperative Relations in the United States and Korea*, 41 LAB. STUD. J. 355, 360 (2016); Levinson, *supra* note 10, at 462.

57. Levinson, *supra* note 10, at 457.

58. Simon Berge & Masud Khawaja, *Food Cooperatives in Canada*, ENCYC. OF FOOD AND AGRIC. ETHICS 1–7 (P.B. Thompson & D.M. Kaplan eds., 2016); Elaine Waterhouse Wilson, *Cooperatives: The First Social Enterprise*, 66 DEPAUL L. REV. 1013, 1019–20 (2017).

59. Levinson, *supra* note 10, at 457; UNIF. LTD. COOP. ASS’N ACT § 511 (amended 2013) (NAT’L CONF. OF COMM’RS ON UNIF. ST. L. 2007); see also MASS. GEN. LAWS ANN. ch. 157A, § 6–7 (West 2005); James B. Dean & Thomas Earl Geu, *The Uniform Limited Cooperative Association Act: An Introduction*, 13 DRAKE J. AGRIC. L. 63, 66 (2008).



worker-owners on a democratic basis. Because worker-owned cooperatives are owned by the workers, who are community residents, co-ops provide local jobs and recirculate money in the local economy.<sup>60</sup> Many co-ops utilize a flat pay scale within the organization that combats income inequality. For instance in the Mondragon Corporation cooperatives, the highest paid employee makes no more than six times the lowest.<sup>61</sup> Mondragon Corporation is the world's largest association of worker-owned cooperatives, with over one hundred cooperatives located in the Basque region of Spain.<sup>62</sup> Many cooperatives provide employees ongoing training, not only in the job requirements, but in financial literacy and dispute resolution skills needed to run a business.<sup>63</sup> This education builds the community's human capital.

Worker-owned cooperatives have a long history in the U.S. In the late 1800s, the Knights of Labor used worker-owned cooperatives to organize work,<sup>64</sup> and the history of black-owned co-ops is documented in Jessica Gordon Nembhard's groundbreaking book *Collective Courage*.<sup>65</sup> Cooperatives such as Hoedads, a reforestation cooperative in the Pacific Northwest, were used to create environmentally and economically sustainable jobs during the 1970s.<sup>66</sup>

60. Huertas-Noble, *supra* note 14, at 340.

61. Stefan Gigacz, *Ugarte Explains Mondragon Pay Differentials*, MONDRAGON NEWS, (Jul. 11, 2015), <http://www.mondragon-news.com/2015/07/ugarte-explains-mondragon-pay.html>. Although not uniformly utilized, flat pay scales in worker-owned cooperatives are symbolic of economic purposes generally found in most worker-owned cooperatives, such as “advanc[ing] social and economic justice” by providing living-wages. See Justin Schwartz, *Voice Without Say: Why More Capitalist Firms Are Not (Genuinely) Participatory*, 18 FORDHAM J. CORP. & FIN. L. 963, 996–97 (2013); Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLIN. L. REV. 255, 265–66 n.32, 269–70 (2010).

62. *Companies and Cooperatives*, MONDRAGON, <https://www.mondragon-corporation.com/en/our-businesses/companies-and-cooperatives> (last visited Feb. 16, 2019).

63. See, e.g., Scott L. Cummings, *Developing Cooperatives As A Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 187 (1999) (stating “many cooperatives are formed primarily to facilitate job training”); ELAINE WANG, COMMUNITY WEALTH, THE CLEVELAND EVERGREEN COOPERATIVES: BUILDING COMMUNITY WEALTH THROUGH WORKER-OWNED BUSINESS 35, <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/article-wang-filion.pdf> (providing training in basic work skills and managing life responsibilities). See also CALIFORNIA CENTER FOR COOPERATIVE DEVELOPMENT, <https://www.cccd.coop> (last visited Feb. 1, 2019) (offering support to cooperatives by “work[ing] with established cooperatives and groups that are interested in forming cooperatives by providing education, technical assistance and specialized events”).

64. William E. Forbath, *The Shaping of the American Labor Movement*, 102 HARV. L. REV. 1109, 1121–22 (1989); Alex Gourevitch, *The Contradictions of Progressive Constitutionalism*, 72 OHIO ST. L. J. 1159, 1178–79 (2011); Minsun Ji, *Limitations of Business Unionism and Co-op Conservatism: A Case Study of Denver's Taxi Driver Union Cooperatives*, in EMPLOYEE OWNERSHIP AND EMPLOYEE INVOLVEMENT AT WORK: CASE STUDIES 121, 126 (Daphne Berry & Takao Kato eds., 2018), <https://doi.org/10.1108/S0885-333920180000018004>.

65. See generally JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* (2014).

66. Ariana R. Levinson, *Founding Worker Cooperatives: Social Movement Theory and the Law*, 14 NEV. L.J. 322, 329–32 (2014).

Today, there are an estimated 357 worker-owned co-ops in the U.S.<sup>67</sup> Many of these more recently created cooperatives were started to foster economic development or create jobs in the face of the Great Recession. In Cleveland, many groups partnered with the Democracy Collaborative to form the Evergreen co-ops and provide jobs to those in the area.<sup>68</sup> The Cleveland model relies on anchor institutions to serve as customers of the co-ops to help insure they will be financially successful businesses.<sup>69</sup> For instance, Evergreen Laundry entered into a contract with the Cleveland Clinic in 2018, enabling it to increase the number of workers 122 percent by year end.<sup>70</sup> Rochester, New York is currently fostering economic development using the Cleveland model.<sup>71</sup> In Cincinnati, in response to the historic agreement between Mondragon and the Steelworkers to foster co-ops in the U.S., the Cincinnati Union Co-op Initiative (CUCI) implemented the first union co-ops.<sup>72</sup> This group of co-ops was formed directly to address the widespread joblessness during the Great Recession.<sup>73</sup> This model is more grassroots-oriented and less reliant on major community institutions and relies on market studies, rather than anchor institutions, to ensure financial viability. In Dayton, a group is using the CUCI model to open a multi-stakeholder grocery.<sup>74</sup> In New York City, the Mayor has devoted over five million dollars in five years to efforts to foster worker-owned co-ops.<sup>75</sup> The effort is a city-wide initiative to provide jobs and foster economic development.<sup>76</sup> Madison, Wisconsin is following this model of city funding with a similar initiative of its own.<sup>77</sup> Businesses all over Maine and North Carolina are converting to worker-owned co-ops.<sup>78</sup>

At the same time, others are using cooperative economics to address food inequality by opening consumer-owned food cooperatives. Community groceries

67. TIM PALMER, DEMOCRACY AT WORK INST., 2016 STATE OF THE SECTOR REPORT: WORKER COOPERATIVES IN THE U.S., <https://institute.coop/resources/2016-worker-cooperative-state-sector-report> (last visited Feb. 16, 2019).

68. EVERGREEN COOPERATIVES, <http://www.evgo.com> (last visited Feb. 16, 2019); Ted Howard, *Correcting the Record on The Evergreen Cooperatives*, DEMOCRACY COLLABORATIVE: BUILDING COMMUNITY WEALTH, <https://democracycollaborative.org/content/correcting-record-evergreen-cooperatives> (last visited Feb. 16, 2019).

69. See *Cleveland Foundation*, DEMOCRACY COLLABORATIVE, <https://democracycollaborative.org/content/cleveland-foundation-1> (last visited Feb. 16, 2019).

70. *Id.*

71. Press Release, City of Rochester, Market Driven Community Corporation Project Launches First Startup, Announces Pilot Project at Rochester General Hospital (Apr. 2, 2017), <http://cityofrochester.gov/article.aspx?id=8589971658>.

72. Levinson, *supra* note 10, at 458–59.

73. *Id.* at 465.

74. GREATER DAYTON UNION CO-OP INITIATIVE, *supra* note 11.

75. Levinson, *supra* note 10, at 463–64.

76. *Id.*

77. Ajowa Nzinga Ifateyo, *\$5 Million for Co-op Development in Madison*, GRASSROOTS ECON. ORG. (Jan. 26, 2015), <http://www.geo.coop/story/5-million-co-op-development-madison>.

78. Patrick McHugh, *Down Home Capital: How Converting Businesses into Employee-Owned Enterprises Can Save Jobs and Empower Communities*, N.C. JUST. CTR. (Dec. 12, 2016), <https://www.ncjustice.org/publications/down-home-capital-how-converting-businesses-into-employee-owned-enterprises-can-save-jobs-and-empower-communities>; COOP. DEV. INST., COOPERATIVES BUILD A BETTER MAINE (2016), <http://cooperativesinmaine.yolasite.com/resources/CooperativesBuildaBetterMaine2017.pdf>.

not only provide a location at which to buy healthy, affordable food, which is critical for those who do not have vehicles or reliable public transportation or are of limited mobility, but they also provide education about nutrition and financial know-how, all of which can combat food insecurity.<sup>79</sup> Many food cooperatives opened in the 1970s and were predominately formed by middle-class white people desiring healthier or more local food.<sup>80</sup> Recently, however, there have been several consumer-owned co-ops that have opened or opened branches in food deserts. In North Carolina, Renaissance grocery opened in October 2016.<sup>81</sup> In 2012, Nola Food in New Orleans transitioned from a buying club to a consumer cooperative.<sup>82</sup> In Minneapolis, Seward Community Co-op opened a second branch in 2015 in a historically lower-income and predominately Black and Latinx community.<sup>83</sup> Also in 2015, Nu Waters, a cooperative farm and store, opened in a low-income community in Houston.<sup>84</sup> In Detroit, there is an initiative to open a community grocery.<sup>85</sup>

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79. See Dan DePasquale et. al., *Forging Food Justice Through Cooperatives in New York City*, 45 *FORDHAM URB. L.J.* 909, 923, 942 (2018).

80. Co-ops are also sometimes seen as “white” spaces. Andrew Zitcer, *Collective Purchase: Food Cooperatives and Their Pursuit of Justice*, in *THE NEW FOOD ACTIVISM: OPPOSITION, COOPERATION, AND COLLECTIVE ACTION 181–205* (2017); Andrew Zitcer, *Food Co-ops and the Paradox of Exclusivity*, 47 *ANTIPODE* 812–828 (2015).

81. Liz Pleasant, *After Decades in a Food Desert, These Neighbors Are Building a \$2 Million Co-op—And They Own It*, *YES MAG.* (Nov. 12, 2015), <http://www.yesmagazine.org/new-economy/after-decades-in-a-food-desert-these-neighbors-build-a-2-million-co-op-and-they-own-it-20151112>; *History of Renaissance Community Co-op*, RENAISSANCE CMTY. CO-OP, <https://renaissancecoop.com/about> (last visited Feb. 16, 2019); *Supermarket Access Map*, ARCGIS, <https://www.arcgis.com/home/webmap/viewer.html?webmap=ac0f05f0e8fc46f89a6bc111722e9550&extent=-93.3179,34.9795,-91.9618,35.6351> (type “North Carolina” in search bar on top right hand corner) (last visited Feb. 16, 2019); *infra* Appendix B.

82. See *NEW ORLEANS FOOD CO-OP*, <http://www.nolafood.coop> (last visited Feb. 16, 2019); *Supermarket Access Map*, ARCGIS, <https://www.arcgis.com/home/webmap/viewer.html?webmap=ac0f05f0e8fc46f89a6bc111722e9550&extent=-93.3179,34.9795,-91.9618,35.6351> (type “New Orleans, LA” in search bar on top right hand corner) (last visited Feb. 16, 2019); *infra* Appendix B.

83. See Susan Pagani, *This Cooperative Grocery Store Wants to Break the Diversity Mold*, *CIVIL EATS* (Sept. 20, 2016), <https://civileats.com/2016/09/20/this-minneapolis-cooperative-grocery-store-is-working-to-break-the-diversity-mold/>; *SEWARD COMMUNITY CO-OP*, <http://www.seward.coop> (last visited Feb. 16, 2019); *Supermarket Access Map*, ARCGIS, <https://www.arcgis.com/home/webmap/viewer.html?webmap=ac0f05f0e8fc46f89a6bc111722e9550&extent=-93.3179,34.9795,-91.9618,35.6351> (type “Minneapolis, MN” in search bar on top right hand corner) (last visited Feb. 1, 2019); *infra* Appendix B.

84. See Angela Cortez, *Food Desert Bill Would Entice New Grocery Stores With Tax Incentives*, *NEW HOPE NETWORK* (Sept. 3, 2009), <https://www.newhope.com/managing-your-business/food-desert-bill-would-entice-new-grocery-stores-tax-incentives>; *NUWATERS CO-OP*, <http://www.nuwaters.org> (last visited Feb. 16, 2019); U.S. DEP’T OF AGRIC., ECON. RES. SERV., <https://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas> (type “Houston, TX” in search bar on top left hand corner) (last visited Feb. 16, 2019); *Supermarket Access Map*, ARCGIS, <https://www.arcgis.com/home/webmap/viewer.html?webmap=ac0f05f0e8fc46f89a6bc111722e9550&extent=-93.3179,34.9795,-91.9618,35.6351> (type “Houston, TX” in search bar on top right hand corner) (last visited Feb. 1, 2019); *infra* Appendix B.

85. Detroit People’s Food Co-Op, *About*, FACEBOOK, [https://www.facebook.com/pg/detroitpeoplesfoodcoop/about/?ref=page\\_internal](https://www.facebook.com/pg/detroitpeoplesfoodcoop/about/?ref=page_internal) (last visited Feb. 16, 2019).

One longstanding community grocery is a worker-owned, rather than a consumer-owned, cooperative. Mandela Grocery Cooperative in Oakland, California, has been in business for nine years. It provides SNAP patrons with half-price fruits and vegetables.<sup>86</sup> Two recent initiatives to open community-owned groceries in food deserts anticipate opening multi-stakeholder worker and consumer-owned groceries. These are the CUCI initiative to open Apple Street Market, and the initiative of the Greater Dayton Union Co-op Initiative to open Gem City Market.<sup>87</sup>

Additionally, in Louisville, an initiative by LACE, the Louisville Association for Community Economics,<sup>88</sup> aims to open a multi-stakeholder grocery in one of five targeted food desert neighborhoods. While Louisville is already home to a member-based non-profit, Falls City Community BikeWorkers,<sup>89</sup> and a consumer-owned cooperative, Mama's Hip,<sup>90</sup> the grocery would be the first multi-stakeholder cooperative. Like many initiatives to start worker-owned co-ops, the group of people hoping to open a food cooperative in Louisville started with a study group and read and discussed community economics. Thereafter, they launched the non-profit LACE and began to hold regular outreach meetings and to attend neighborhood associations and events to discuss and educate other community members about cooperative economics.<sup>91</sup> They use a committee work-structure so that people can volunteer their skills for work with which they are most comfortable. The four committees are Marketing Research and Real Estate, Finance and Fundraising, Governance, and Outreach.<sup>92</sup> LACE also surveyed community members on their food needs and desire for a community-owned grocery.

Professor Levinson and Mr. Fenwick became involved in the LACE Governance Committee. This committee studied potential governance structures for a multi-stakeholder community grocery. Through the University of Louisville Office of Professional Development's Public Service Program,<sup>93</sup> Mr. Klump was

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86. See MANDELA GROCERY WORKER-OWNED COOPERATIVE, <http://www.mandelafoods.com> (last visited Feb. 16, 2019). SNAP is the federal Supplemental Nutrition Assistance Program. See *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last visited Feb. 16, 2019).

87. *Our Story*, APPLE ST. MKT., <https://www.applestreetmarket.coop/our-story-2> (last visited Feb. 16, 2019); GEM CITY MKT., *supra* note 9.

88. *Join LACE*, LOUISVILLE COOP. GROCERY, <https://loufoodcoop.com/join-lace-form> (last visited Feb. 16, 2019).

89. See *generally* FALLS CITY CMTY. BIKEWORKS, <https://www.fccbikeworks.org> (last visited Feb. 16, 2019).

90. See *generally* MAMA'S HIP, <http://mamas-hip.com> (last visited Feb. 16, 2019).

91. See *Collective Courage: Diversity, Collaborative Economics and the Law*, UNIV. OF LOUISVILLE SUSTAINABILITY, <https://louisville.edu/sustainability/events/cooperative-hall-of-famer-jessica-gordan-nembhart> (last visited Feb. 16, 2019); *Worker Co-Operatives: Transforming Communities*, UNIV. OF LOUISVILLE, [http://events.louisville.edu/event/worker\\_co-operatives\\_transforming\\_communities#.W1iT7NJKjIU](http://events.louisville.edu/event/worker_co-operatives_transforming_communities#.W1iT7NJKjIU) (last visited Feb. 16, 2019) (partnering with University of Louisville Brandeis School of Law to host two experts about cooperatives for community talks).

92. LOUISVILLE COOP.GROCERY, *supra* note 88.

93. See *generally* *Office of Professional Development*, BRANDEIS SCH. L., <https://louisville.edu/law/careers> (last visited Feb. 16, 2019).

placed with LACE to complete his public service hours over semester break. He worked under the supervision of Mr. Fenwick and Professor Levinson to draft bylaws and present the major governance decisions that will need to be made to LACE. The process used to draft the bylaws is described in detail in Part III.

### C. *The Existing Academic Literature*

The academic legal literature on community-owned groceries, the ULCAA, and drafting bylaws for multi-stakeholder co-ops is scant. Because of this, this Part discusses aspects of food cooperatives and drafting cooperative bylaws authored by lawyers and scholars in different disciplines, as well as the legal scholarship.

#### 1. The Literature About Food Cooperatives

As introduced in Part I, legal scholars have discussed food cooperatives as examples of sustainable economic development and as a means of creating social identity.<sup>94</sup> For instance, Paulette Stenzel, a law professor at Michigan State University, has discussed the value of using food cooperatives as a grassroots-means to create economic stability within a city,<sup>95</sup> the existence of which has the effect of encouraging people to invest in their communities.<sup>96</sup>

The topic of food cooperatives is addressed more directly in non-legal business and social science articles. Generally, the business articles have used food cooperatives as case studies that examine the effectiveness of cooperatives and determine ways to strengthen them in food systems.<sup>97</sup> Although one study identified and analyzed a unique multi-stakeholder food cooperative composed of employers, producers, and consumers, it was done in the context of the effectiveness in management of cooperatives generally.<sup>98</sup> Additional business articles focused on business practices of food cooperatives and the positive impact of food cooperatives on the economic development of local communities.<sup>99</sup>

Food cooperatives are also addressed more directly in social science articles, many of which are based in international studies. Within the United States, the researchers studied the management of food cooperatives as they balance

94. See Rodrigues, *supra* note 5, at 1292; Stenzel, *supra* note 5, at 418.

95. See Stenzel, *supra* note 5, at 419.

96. See *id.*

97. See Amelia Carr, Amanie Kariyawasam & Maureen Casile, *A Study of the Organizational Characteristics of Successful Cooperatives*, RESEARCHGATE (June 18, 2014), [https://www.researchgate.net/publication/228352518\\_A\\_study\\_of\\_the\\_organizational\\_characteristics\\_of\\_successful\\_cooperatives](https://www.researchgate.net/publication/228352518_A_study_of_the_organizational_characteristics_of_successful_cooperatives); see also Jennifer Sumner, J. J. McMurtry & Hannah Renglich, *Leveraging the Local: Cooperative Food Systems and the Local Organic Food Co-ops Network in Ontario, Canada*, 4 J. AGRIC., FOOD SYS., & CMTY. DEV. 47 (2014).

98. See Carr et al. *supra* note 97, at 5 (discussing the Growing Circle Food Cooperative in Salt Spring Island, British Columbia, Canada).

99. See Ani L. Katchova & Timothy Woods, Presentation at the Agricultural and Applied Economics Association's AAEE & NAREA Joint Annual Meeting, *The Effectiveness of Local Food Marketing Strategies of Food Cooperatives* (2011); see also Rhonda Phillips, *Food Cooperatives as Community-Level Self-Help and Development*, 6 INT'L J. SELF-HELP & SELF-CARE 189 (2012).

pragmatism and idealism, and the impact of unions in food cooperatives.<sup>100</sup> Social scientists also examine food cooperatives within the context of a new framework by analyzing the role that food cooperatives have as a source of community development.<sup>101</sup> Outside of the United States, authors have studied the long-term impact of food cooperatives on a country's economy, the role that food cooperatives play in creating sustainable local food systems, and the effectiveness of collaboration between farmers and food cooperatives.<sup>102</sup>

## 2. The Literature About Drafting Bylaws for Food Cooperatives

The scholarly legal literature about drafting bylaws for food cooperatives is nearly non-existent.<sup>103</sup> There are legal guides written by attorneys or those involved in cooperatives that discuss drafting bylaws for a food cooperative and the legal governance issues involved. For example, Joel Dahlgren's *Legal Primer: For Formation of Consumer-Owned Food Cooperatives*<sup>104</sup> discusses the important aspects of how to develop bylaws for consumer-owned food co-ops and how to fit the bylaws to the needs of the particular situation. Karen Zimbelman's *How to Start a Food Co-op: A Guide from the Cooperative Grocers' Information*

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100. Blake E. Ashforth & Peter H. Reingen, *Functions of Dysfunction: Managing the Dynamics of an Organizational Duality in a Natural Food Cooperative*, 59 ADMIN. SCI. Q. 474 (2004) (observing the interactions of a member-owned cooperative [under the pseudonym "Natura"] between the pragmatists and the idealists. Pragmatists were members who emphasized financial viability in the operation of the co-op whereas idealists focused on social justice. Researchers found that despite the tensions that arise from the duality of idealists and pragmatists, the cooperative continued to be sustainable over time due to its organizational mechanisms used to manage tensions.); Cecile Reuge & Teresa Mares, *Workplace Democracy and Civic Engagement in Vermont Food Cooperatives*, 19 J. LAB. & SOC'Y 207, 225 (2016).

101. Kimberly Zeuli et al., *Cooperatives in Rural Community Development: A New Framework for Analysis*, 35 J. CMTY. DEV. SOC'Y 17, 22, 27 (2004) (stating that typically, cooperatives are categorized as unifunctional or multifunctional which, according to the researchers, results in a limited perspective of the role that cooperatives have in their communities). After observing and analyzing the operations of various cooperatives, the researchers created new categories of cooperatives that better reflect the different ways cooperatives can help in community development: 1) extrinsic community development cooperatives, 2) inherent community development cooperatives, and 3) community cooperatives. *Id.* at 24-31.

102. See Gill Seyfang, *Growing Sustainable Consumption Communities*, 27 INT'L J. SOC. & SOC. POL'Y 120, 129 (2007) (explaining that in the web of local food systems food cooperatives were important to that ecosystem because they were means for increasing food access by increasing purchasing power); JACINDA FAIRHOLM, LIFE CYCLES, URBAN AGRICULTURE AND FOOD SECURITY INITIATIVES IN CANADA: A SURVEY OF CANADIAN NON-GOVERNMENTAL ORGANIZATIONS, CITIES FEEDING PEOPLE SER. NO. 25 (1999); Ulrike Jaklin, Susanne Kummer & Rebecka Milestad, *Why Do Farmers Collaborate with a Food Cooperative? Reasons for Participation in a Civic Food Network in Vienna, Austria*, 22 INT'L J. SOC. AGRIC. & FOOD 41, 57 (2015) (finding that farmers collaborated with food cooperative members because of their shared values of "direct contact, solidarity, and transparency").

103. An extensive review of databases of academic legal articles, such as Westlaw, LEXIS, and HeinOnline, revealed no such scholarly article.

104. JOEL DAHLGREN, FOOD CO-OP INITIATIVE, LEGAL PRIMER: FOR FORMATION OF CONSUMER-OWNED FOOD COOPERATIVES (Oct. 2010), <http://www.fci.coop/wp-content/uploads/2017/02/LegalPrimer.pdf>; see STUART REID, FOOD CO-OP INITIATIVE, THE FCI GUIDE TO STARTING A FOOD CO-OP 89 (Jan. 19, 2017), <https://www.fci.coop/sites/default/files/Startup%20guide-02.2017.pdf>.

*Network*<sup>105</sup> uses multiple case studies in its discussion of areas necessary to start a food co-op. The guide specifies it is not intended for those establishing worker-owned co-ops<sup>106</sup> and does not address multi-stakeholder co-ops. It mentions bylaws are necessary, but does not address drafting bylaws.<sup>107</sup>

The *Cultivate Coop* web page outlines the most important aspects of cooperative bylaws. It provides general information about the following sections of co-op bylaws: I. Mission, Purpose, and Legal Structure; II. Membership; III. Membership Meetings; IV. Board of Directors; V. Board Officers; VI. Finances; VII. Administration and Miscellaneous; VIII. Amendment to the Bylaws; and IX. Dissolution. It also links to “Model Bylaws for A Worker Cooperative.” The web page states that food co-ops bylaws generally have a “mission statement, vision statement, or stated purpose” in the opening section,<sup>108</sup> but it does not give any specifications about food co-op bylaws. The most relevant article is *Cooperatives as a Community Development Strategy: Linking Theory and Practice* in the peer-reviewed *Journal of Regional Analysis and Policy* by Kimberly Zeuli and Jamie Radel. The authors attempt to bridge the gap between theory and community development,<sup>109</sup> and mention the prevalence of groceries using the consumer-owned food cooperative model in the United States.<sup>110</sup> It also briefly mentions the Canadian model for multi-stakeholder cooperatives.

### 3. The Literature About the Uniform Limited Cooperative Association Act

Legal scholars have written a small number of articles about The Uniform Limited Cooperative Association Act.<sup>111</sup> Some give an introduction, while others discuss certain aspects of the ULCAA, but none explain or describe the bylaws of a cooperative organized under the ULCAA. Finalized in 2008, the ULCAA has been enacted in six jurisdictions across the country, from Colorado to Washington,

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105. KAREN ZIMBELMAN, HOW TO START A FOOD CO-OP: A GUIDE FROM THE COOPERATIVE GROCERS' INFORMATION NETWORK (Mar. 2002), <http://www.icdc.coop/sites/default/files/how-to-start-food-coop-manual.pdf>.

106. *Id.* at 7.

107. *Id.* at 24.

108. *Cooperative Bylaws*, CULTIVATE.COOP (Mar. 12, 2016), [http://cultivate.coop/wiki/Cooperative\\_Bylaws](http://cultivate.coop/wiki/Cooperative_Bylaws).

109. See Kimberly Zeuli & Jamie Radel, *Cooperatives as a Community Development Strategy: Linking Theory and Practice*, 35 J. REGIONAL ANALYSIS & POL'Y 4, 44 (2005).

110. *Id.* at 50.

111. Dean & Geu, *supra* note 59, at 66. See Thomas E. Rutledge, *Shareholders Are Not Fiduciaries: A Positive and Normative Analysis of Kentucky Law*, 51 U. LOUISVILLE L. REV. 535, 548 (2013) (discussing how shareholders of LCA's under the new Kentucky ULCAA are not fiduciaries, but the board of directors are, and describing how amendments to the foundation occur); Linda D. Phillips & Jason R. Wiener, *Cooperative Businesses*, in THE PRACTITIONER'S GUIDE TO COLORADO BUSINESS ORGANIZATIONS § 13.4 (E. Lee Reichert & Allen E. Rozansky eds., Colorado Bar Ass'n CLE 2d ed. Supp. 2016) (“In summary, ULCAA provides for a single entity built on the law of unincorporated entities but grounded in cooperative principles. It contains many provisions consistent with, and protective of, cooperative principles.”); R. Douglas Martin, *Authority to Sell Real Estate*, in KENTUCKY REAL ESTATE LAW AND PRACTICE (UK/CLE) § 14.126 (4th ed. 2013) (discussing the ability of a cooperative to buy, sell, lease, and mortgage assets).

D.C.<sup>112</sup> James B. Dean and Thomas E. Geu's article, *The Uniform Limited Cooperative Association Act: An Introduction*,<sup>113</sup> provides a baseline understanding of the ULCAA and discusses the four main principles underlying the ULCAA: (1) Democratic ownership and control by users, (2) limited returns on capital, (3) return of benefits or margins to users on the basis of use, and (4) the obligation of user-owner financing.<sup>114</sup> The article explains how the ULCAA works in more detail noting: "This Act would not replace any existing state co-op laws. Rather, it would be a free-standing statute to fill a different niche in the cooperative economic ecosystem just as cooperative enterprises fill a niche in the general organizational ecosystem."<sup>115</sup> Furthermore, this Act contains unique provisions which are "intended to provide an unincorporated cooperative structure with centralized management but democratic member control as an alternative to a limited liability company."<sup>116</sup>

The seminal article in the area is a 2009 article titled, *The New Uniform Limited Cooperative Association Act: A Capital Idea for Principled Self-help Value Added Firms, Community-Based Economic Development, and Low-Profit Joint Ventures*. This second article written by Dean and Geu provides a detailed history of the ULCAA while also mentioning potential uses including: Worker-owned cooperatives; stock and nonstock (membership) cooperatives; "consumer cooperatives, including consumer stores; housing cooperatives; condominiums; . . . utility cooperatives; health cooperatives; marketing cooperatives; business purchasing cooperatives; workers' production cooperatives; financial cooperatives, including credit unions, mutual savings banks, savings and loan associations, and production credit associations; [and] insurance cooperatives."<sup>117</sup> For-profit and non-profit distinctions still exist under the ULCAA. The article demonstrates that limited cooperative associations (LCAs) are versatile enough to mold any business into a local consumer-centered organization. The article does not mention the particular challenges present in multi-stakeholder worker- and consumer-owned cooperatives. A few other articles give brief explanations of the ULCAA as a generally newer legal form under which

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112. COLO. REV. STAT. ANN. § 7-58-101 (West 2006); D.C. CODE § 29-101.01 (2001); IOWA CODE ANN. § 501A.101 (West 2008); KY. REV. STAT. ANN. § 272A.14-010 (West 2006); UTAH CODE ANN. § 16-16-101 (West 2010); H.R. 1544, 87th Gen. Assemb., Reg. Sess. (Ark. 2009).

113. James Dean and Thomas Geu served as the reporters (primary drafters) of the Uniform Limited Cooperative Association Act.

114. Dean & Geu, *supra* note 59, at 66.

115. Dean & Geu, *supra* note 59, at 75. This principle is clear in Kentucky law. While Kentucky has long had Cooperative Association Acts that, depending upon an election made by the Cooperative in its articles of incorporation, to the extent not set forth in the Cooperative Association Act, the entity will be governed by either the business corporation or the nonprofit Corporation Act. See KY. REV. STAT. ANN. § 272.042 (West 2006). In contrast, a limited cooperative association organized under the Act does not cross reference the laws of business corporations, nonprofit corporations, or any other form of business entity as a "gap filler."

116. Dean & Geu, *supra* note 59, at 75.

117. James B. Dean & Thomas E. Geu, *The New Uniform Limited Cooperative Association Act: A Capital Idea for Principled Self-Help Value Added Firms, Community-Based Economic Development, and Low-Profit Joint Ventures*, 44 REAL PROP. TR. & EST. L.J. 55 (2009).



food cooperatives may organize.<sup>118</sup> Other articles provide general reference to types of cooperative associations other than the multi-stakeholder food cooperative, such as agricultural co-ops or worker-owned cooperatives.<sup>119</sup>

*D. Providing Guidance on Governance of Multi-Stakeholder Community Groceries and Incorporating Under the ULCAA*

Most practical pieces that discuss drafting bylaws for a consumer food cooperative do not address multi-stakeholder food cooperatives,<sup>120</sup> and those that address worker-owned co-ops do so only briefly.<sup>121</sup> This Article provides an in-depth discussion for those starting initiatives to combine the benefits of both types of cooperatives to challenge wealth inequality and food apartheid. For instance, *Cooperatives as a Community Development Strategy: Linking Theory and Practice* specifically mentions the challenges of cooperatives and mentions the Canadian multi-stakeholder model. This Article does not, however, provide any particular direction for the different model types.<sup>122</sup> This Article thus contributes to the academic legal literature by providing direction to those seeking to establish multi-stakeholder consumer and worker-owned food cooperatives.

Moreover, none of the handful of articles written about the ULCAA explain or describe how to develop and implement an LCA. This article provides that explanation with the specific discussion of drafting bylaws for a multi-stakeholder food cooperative. With such little legal scholarship addressing consumer-owned food cooperatives<sup>123</sup> and the ULCAA,<sup>124</sup> this Article makes a significant contribution to the literature about food co-ops and the literature about the ULCAA, adding significant value to the academic space. With some, but not much, guidance available about drafting bylaws for initiatives to start a consumer-owned food co-op, this Article also contributes to that guidance. In particular, this is the first article to address drafting bylaws for a multi-stakeholder community grocery, and the first to discuss using the ULCAA to do so. It is also the first article to address drafting a neutrality clause toward worker-owners unionizing as part of community grocery bylaws. Finally, it provides a model that other law schools can utilize to involve their students in public service projects supporting cooperatives. The ability of food cooperatives to solve health and food needs of the community, while adding a diverse business that is run by the community it is aiding, needs in-depth explanation. Ultimately, this Article will expand the scope of food cooperative inquiries by addressing the drafting process for governing documents for multi-stakeholder food cooperatives.<sup>125</sup>

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118. See Thomas E. Rutledge & Thomas E. Geu, *The Analytic Protocol for the Duty of Loyalty Under the Prototype LLC Act*, 63 ARK. L. REV. 473, 501 (2010); Thomas E. Rutledge, *External Entities and Internal Aggregates: A Deconstructionist Conundrum*, 42 SUFFOLK U. L. REV. 655, 656–57 (2009).

119. See Peter C. Carstensen, *Agricultural Cooperatives and the Law: Obsolete Statutes in A Dynamic Economy*, 58 S.D. L. REV. 462, 489 (2013).

120. See, e.g., DAHLGREN, *supra* note 104.

121. See, e.g., ZIMBELMAN, *supra* note 105.

122. Zeuli, *supra* note 109, at 50.

123. See, e.g., Rodrigues, *supra* note 5, at 1292 (2011); Stenzel, *supra* note 5, at 418.

124. See, e.g., Dean & Geu, *supra* note 59, at 66; Dean & Geu, *supra* note 117, at 55.

125. Carr et al., *supra* note 97.

### III. FIRST STEPS: THE PROCESS OF CREATING A TEAM AND DRAFTING THE BYLAWS

This Part describes the process of creating a legal team and drafting the bylaws. As previously stated, Professor Levinson and Mr. Klump worked with Mr. Fenwick, a local cooperative attorney, to help draft bylaws for the first multi-stakeholder, worker- and consumer-owned food cooperative organized in Kentucky. The experience can be used as a model for other groups establishing cooperatives and for law schools that wish to be involved in public service aiding cooperatives. This Part first describes assembling the legal team and then addresses the steps to drafting the bylaws. It briefly mentions other types of research projects in which law students can engage to help cooperatives, and potential funding sources for those students.

#### *A. Assembling the Legal Team*

The first step is to find an attorney who is familiar with cooperative law, and ideally both consumer and worker-owned cooperatives. In Louisville, LACE uses a committee structure, and the Governance Committee was tasked with locating an attorney and others to draft suggested bylaws for a food cooperative.<sup>126</sup> At that time, Professor Levinson was chairing the Committee. She knew that one of her former law students, Mr. Fenwick, was interested in helping the food cooperative. She also knew that he was knowledgeable about Kentucky co-op law, having written a book about it.<sup>127</sup> She called Mr. Fenwick and convinced him to join the Committee. In some areas of the country finding a cooperative attorney knowledgeable about consumer and worker-owned cooperatives can be difficult, but lists of attorneys familiar with worker-owned co-ops do exist.<sup>128</sup> Another good option is to find a lawyer knowledgeable about producer or agricultural co-ops who is willing to help.

After locating an attorney, those involved in the initiative and the attorney should think of other people knowledgeable about cooperative law or willing to volunteer time to help with the effort. The University of Louisville Brandeis School of Law has one of the oldest public service programs in the country, administered by the Office of Professional Development. The Office had recently started an initiative to aid 1L students in completing their public service during the semester break, and Professor Levinson was aware of this. She was able to help LACE submit a request for a student to be supervised by Mr. Fenwick as part of this program. Mr. Klump volunteered to dedicate his 1L year semester break to public service on behalf of LACE and assist Mr. Fenwick with drafting the

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126. *What is LACE?*, LOUISVILLE CMTY. GROCERY, <https://loufoodcoop.com/louisville-association-community-economics> (last visited Feb. 16, 2019).

127. *See generally* RYAN FENWICK & ELIZABETH JONES, BUILDING COMMONWEALTH: A GUIDE TO BUILDING A SUSTAINABLE, EQUITABLE COOPERATIVE BUSINESS IN KENTUCKY (2016), <https://static1.squarespace.com/static/57a2756d197aeab65e301cde/t/58038c6d197aea7e4ae651f8/1476627566958/Building+Commonwealth+v.1.pdf> (last visited Feb. 23, 2019).

128. Levinson, *supra* note 10, at 552–59; *infra* Appendix A.

bylaws.<sup>129</sup> Professor Levinson helped by answering some of Mr. Klump's questions and assisting with his drafting skills.

Professor Levinson, Mr. Fenwick, and Mr. Klump also sought help from other experts. They knew that Mr. Rutledge, another author of this Article, had drafted the Kentucky ULCAA, and that he was an extremely highly-regarded attorney whose practice focuses on entity formation, including cooperatives.<sup>130</sup> They sought an introduction to Mr. Rutledge from the then-law school Dean, Susan Duncan. Mr. Rutledge took a break out of his busy schedule to meet them over lunch and kindly provided Mr. Klump a standard template for cooperative bylaws under the ULCAA, which Mr. Klump used as the starting point for the LACE bylaws. Finally, Mr. Klump, Mr. Fenwick, and Professor Levinson met with one of Professor Levinson's colleagues, Lisa Nicholson, a Business Law Professor, about the different options for entity formation.<sup>131</sup> Her advice paralleled Mr. Rutledge's: to incorporate under the Kentucky ULCAA.

### *B. The Process of Drafting the Bylaws*

For the drafting process, the team worked closely with the other Governance Committee members, which included a sustainability expert<sup>132</sup> and a faith and justice community leader.<sup>133</sup> These members provided a mission statement for LACE. Ideally the attorney should have a business plan for the multi-stake holder cooperative before drafting bylaws, but, if not, the bylaws should be redrafted once the business plan is finalized.

LACE provided the legal team with bylaws from other food cooperatives they were interested in using as a model, including Good Foods in Kentucky, Apple Street Market in Cincinnati, and the Nashville Co-op Grocery Store in Nashville.<sup>134</sup> For each example, the legal team should ascertain in which state and under what law the co-ops were incorporated. When incorporated under different laws than those of the multi-stakeholder co-op, it is necessary to use only provisions that comply with the law being used.

If the entity does not already have bylaws from other food cooperatives, the legal team should acquire some. For a multi-stakeholder co-op, Apple Street's

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129. *Samuel L. Greenbaum Public Service Program*, BRANDEIS SCH. L., <http://louisville.edu/law/careers/public-service> (last visited Feb. 16, 2019).

130. *See Thomas E. Rutledge*, STOLL KEENON & OGDEN, PLLC, <https://www.skofirm.com/attorney/thomas-e-rutledge> (last visited Feb. 16, 2019). *See generally* KY. REV. STAT. ANN. § 272A (West 2006).

131. *Lisa H. Nicholson*, BRANDEIS SCH. L., <https://louisville.edu/law/faculty-staff/faculty-directory/nicholson-lisa> (last visited Feb. 16, 2019).

132. Janet Cappiello, *UofL's Justin Mog Wins City's 2017 Environmental Leadership Award*, U. LOUISVILLE (June 5, 2017), <https://louisville.edu/sustainability/news/uofl2019s-justin-mog-wins-city2019s-2017-environmental-leadership-award>.

133. *Mission and Focus*, SOWERS OF JUST. NETWORK, <http://www.sowersofjusticenetwork.org/mission-and-focus.html> (last visited Feb. 16, 2019).

134. *See generally FAQ & Bylaws*, APPLE ST. MKT., <https://www.applestreetmarket.coop/faq-bylaws> (last visited Feb. 16, 2019) (stating it is incorporated in Ohio); *Our History*, GOOD FOODS CO-OP, <http://goodfoods.coop/about-the-co-op/our-history> (last visited Feb. 16, 2019) (stating it is incorporated as a Vermont cooperative); *Bylaws of the Nashville Food Cooperative Corporation*, NASHVILLE FOOD CO-OP, <https://nashville.coop/bylaws/?v=9a0d701a3b2a> (last visited Feb. 16, 2019) (stating it is subject to Tennessee law).

bylaws are a good example with which to start. It would also be helpful to have bylaws for a food or worker-owned co-op in the state in which you are located and intend to organize. If an entity is organizing under the ULCAA, then having bylaws of a cooperative incorporated under the ULCAA will also be helpful. LACE's legal team had the template for incorporating under the ULCAA—provided by Mr. Rutledge—as well as the bylaws of the co-ops it wished to emulate.

Before drafting, the attorney and student should determine the law under which the co-op will be organized and familiarize themselves with its provisions, including those that may be unusual or interesting. Mr. Fenwick and Mr. Klump helped LACE read through the Kentucky ULCAA and verified that it was flexible enough to accommodate different classes of owners and sufficiently up-to-date to provide for electronic notice of meetings.

To start drafting the bylaws, use the template or bylaws that appear most applicable. For example, determining the classes of membership changes the operation and impact of the cooperative. Investor voting can impact the locality of the cooperative. Worker owners and Consumer owners can potentially pull the cooperative in different directions. Other key provisions will be apparent as the bylaws are fleshed out in this Article.

For Mr. Rutledge to draft the template that Mr. Klump and Mr. Fenwick used as a starting point for LACE's bylaws, he began with the bylaws of a business corporation. With respect to procedural requirements, the ULCAA and the Model Business Corporation Act are quite similar. On a provision by provision basis, it will be necessary to confirm that the model corporate bylaw is applicable or, rather, in need of modification. In addition, the statute should be compared against the bylaws to see whether additional issues need to be addressed that are not addressed in the corporate model. Still, by beginning with corporate bylaws, a substantial portion of the work of drafting cooperative bylaws will have been accomplished.

LACE provided Mr. Klump and Mr. Fenwick with the bylaws of two consumer food cooperatives, Good Foods in Lexington, Kentucky and the Nashville Co-op Grocery Store. They sought to utilize these bylaws as models.<sup>135</sup> Additionally, Mr. Klump and Mr. Fenwick used Apple Street Market's bylaws as a sample of a multi-stakeholder, worker-and-consumer-owned cooperative bylaws. Those interested in drafting grocery bylaws can find other bylaws that might serve as a good starting point by going to web lists of grocery cooperatives or other cooperatives, and then clicking through to their webpages and searching for their bylaws.<sup>136</sup> A few possible exemplars include The Ozark Food Cooperative Exchange,<sup>137</sup> because of its balance between simplicity and comprehensiveness, and the Food Front

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135. See generally GOOD FOODS CO-OP, *supra* note 134; APPLE ST. MKT., *supra* note 134; NASHVILLE CO-OP GROCERY STORE, *supra* note 134.

136. *Food Co-ops and Associates*, COOP. GROCER NETWORK, <https://www.grocer.coop/coops> (last visited Feb. 16, 2019) (listing grocery cooperatives); COOP DIRECTORY SERVICE LISTING, <http://www.coopdirectory.org/directory.htm> (last visited Feb. 16, 2019) (listing various cooperatives, although not every link is up to date due to the many cooperatives in the United States); see also *Guidelines and Sample Bylaw Language for Multi-stakeholder Cooperatives*, COOP. DEV. FOUND., <https://www.cdf.coop/2013/01/29/guidelines-and-sample-bylaw-language-for-multi-stakeholder-cooperatives/> (last visited Feb. 16, 2019) (providing a template for a multi-stakeholder cooperative).

137. BYLAWS OF THE OZARK FOOD COOPERATIVE EXCHANGE, <http://onf.coop/wp-content/uploads/2018/11/ONF-Bylaws-2015.pdf> (last visited Feb. 16, 2019).

Cooperative Grocery,<sup>138</sup> because their bylaws include explanations written for lay people.

After locating a template or sample bylaws with which to begin, modify them to coincide with the stakeholders' vision by pulling from other bylaws or simply drafting original language to coincide with the stakeholders' vision. The legal team can work closely with those involved in the initiative, asking them questions as they come across them while drafting.<sup>139</sup> Keeping a list of questions that need to be resolved and periodically meeting with those involved in the initiative to discuss items from the list can prove helpful. As lawyering to help a group interested in establishing a food cooperative is collaborative, a good drafting technique is to use many comment bubbles to annotate the draft. The comment bubbles can be used to explain decisions that the legal team made and to offer alternative provisions, when the decision is a more significant one on which client input would be needed or valued.

Transparency is also valued when working with a cooperative organization. LACE uses Google Drive<sup>140</sup> to store all of its documents (such as minutes of meetings, feasibility studies, and information sheets) and any helpful materials from other sources (such as articles about other cooperatives, city food studies, or conference materials). More well-funded or established organizations may have a more sophisticated document retention system, but Google Drive works well for a low-budget non-profit. The legal team posted the bylaws it relied on, the template for a cooperative under the ULCAA, and drafts of the proposed bylaws in a Google Drive folder designated for these materials, so that LACE had access to them.

Once done with an initial draft, the attorney and student should go back to the ULCAA, systematically checking that all important provisions are within the draft and that no provision is incompatible with the ULCAA's requirements. Mr. Klump and Mr. Fenwick did this with Mr. Rutledge's help. Those involved with establishing the co-op must ultimately hire an attorney knowledgeable about entity formation and cooperatives to finalize the bylaws. Having the draft and the discussions about the bylaws with the volunteer attorney and law student should make the process more efficient and effective for the hired attorney and enable the group to more easily answer questions the attorney has about major decisions.

### *C. Other Co-op Related Legal Research Projects and Potential Funding Sources*

For law schools and students interested in continuing involvement with cooperatives or non-profits that work with worker-owned or food cooperatives, additional projects are available. For instance, LACE worked with one of the students who is a co-author of this Article, Ms. Ly, on incorporating the non-profit. Two other law students, Chad Eisenback and Bethany Beal, with funding from an internal university grant, are researching the applicability of employment laws to

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138. FOOD FRONT BOARD OF DIRECTORS POLICY DIRECTORY, <https://foodfront.coop/docs/board/FFBoardPolicies.Bylaws.Appendices1.pdf> (last visited Feb. 16, 2019).

139. See Carmen Huertas-Noble, *supra* note 61, at 271–75.

140. See generally *Google Drive*, GOOGLE, <https://www.google.com/drive> (last visited Feb. 16, 2019).

a multi-stakeholder food co-op.<sup>141</sup> A fifth law student, Margaret Sites, is working with a group interested in establishing worker-owned cooperatives as a community development technique in a low-income neighborhood.<sup>142</sup> She had funding from a law school fellowship program to pursue the project over a summer break.<sup>143</sup>

#### IV. THE SUBSTANTIVE DECISIONS

This Part outlines some of the major decisions that that the client, the non-profit or group of people interested in establishing the multi-stakeholder grocery, needs to make in consultation with the legal team. It first addresses the decision about which form to organize in and then discusses drafting the bylaws, including the primary topics that should be included in the bylaws and some of the alternatives available to address major issues.

##### *A. Form of Organization*

The first major legal issue to decide is the form in which to organize and under which state law. Some states, such as Massachusetts, have statutes specific to worker-owned cooperatives,<sup>144</sup> but organizing as a multi-stakeholder cooperative requires a law with enough flexibility to permit different ownership classes. The LLC and the Limited Cooperative Association (LCA) are two entity forms which permit multi-stakeholder cooperatives. In states that have not enacted the ULCAA or a similar cooperative statute,<sup>145</sup> organizing as an LLC provides the flexibility to establish a multi-stakeholder cooperative through an operating agreement.<sup>146</sup>

In a state where the ULCAA is available, the direction it provides to ensure that the organization is a cooperative entity may make drafting the bylaws more self-explanatory and better ensure that the cooperative is structured to function as a cooperative. One of the difficulties LLCs encounter is having to draft an operating agreement that by private ordering adopts the cooperative principles already embodied in the ULCAA.<sup>147</sup>

In Louisville, the legal team researched various forms of entity types to help LACE determine what form the Louisville Community Grocery incorporation

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141. *Grants and Research Support*, COOP. CONSORTIUM FOR TRANSDISCIPLINARY SOC. JUST. RES., U. LOUISVILLE, <https://louisville.edu/socialjustice/grant-research-support/funded-projects-1> (last visited Feb. 16, 2019).

142. *See Ongoing Smoketown Initiatives*, SMOKETOWN VOICE, <http://www.smoketownvoice.com/initiatives-1> (last visited Feb. 16, 2019).

143. *See* BRANDEIS SCH. L., *supra* note 129.

144. Levinson, *supra* note 66, at 360.

145. *See generally* Ohio Rev. Code Ann. § 1729 (WEST 2018) (Ohio, for instance has a cooperative statute under which multi-stakeholder co-ops can successfully incorporate); *see also Cooperative Statutes by State*, NAT'L. COOP. BUS. ASS'N. CLUSA INT'L., <https://ncba.coop/our-work/cooperative-statute> (last visited Feb. 16, 2019) (listing state statutes that are uniquely cooperative and not versions of the ULCAA).

146. Cummings, *supra* note 63, at 209. LLC's are also sometimes used to address immigration issues because the paperwork required of owners differs from that required of employees. *See* Miriam A. Cherry, *Decentering the Firm: The Limited Liability Company and Low-Wage Immigrant Women Workers*, 39 U.C. DAVIS L. REV. 787, 800 (2006).

147. *See* Cummings, *supra* note 63, at 209; *see supra* text accompanying notes 82–111.

should take. Ultimately, the grocery decided to incorporate under the ULCAA.<sup>148</sup> As a group that promotes cooperative economics, the group felt that it was important to incorporate as a co-op. This eliminated the possibility of organizing as an LLC. Additionally, as a group that promotes local communities, they also desired to organize in Kentucky if doing so was feasible.

The decision to organize as an LCA was based on numerous benefits of the ULCAA as opposed to other cooperative statutes, such as Kentucky's statutes for agricultural cooperative associations,<sup>149</sup> and Kentucky's older cooperative statutes for a cooperative for profit using shares<sup>150</sup> and a cooperative non-profit using members.<sup>151</sup> The cooperative form was also more preferable than other forms of organization, such as business corporations<sup>152</sup> or non-profits.<sup>153</sup> First, the ULCAA is thorough and takes into account many aspects needed to form and operate a cooperative as a legal entity.<sup>154</sup>

Additionally, the framework of the ULCAA provides flexibility. For instance, the ULCAA is flexible enough to accommodate different visions of cooperative ownership in addition to the solely consumer-owned cooperative,<sup>155</sup> and permits different classes of members, such as workers, consumers, and investors. The ULCAA expressly states that "organic rules may provide for the establishment of classes of members."<sup>156</sup> With no limitation on who may constitute a member of a class, the statute thus creates the opportunity for non-profits and businesses to be members of a class.<sup>157</sup> Moreover, different classes can be limited to making certain types of decisions depending on how a cooperative chooses to structure its organization.<sup>158</sup> For example, worker-owners can have a greater say than consumer-owners on issues that affect workers more directly. Further, the ULCAA permits non-voting investor-class members.<sup>159</sup> The ULCAA states that "[i]f the organic rules provide for investor members, each investor member has one . . . vote, unless the organic rules otherwise provide."<sup>160</sup> The phrase "unless the organic rules otherwise provide" means the bylaws of the cooperative dictate whether an investor may be a non-voting member.<sup>161</sup> Having investor members (whether voting or non-voting) may be important to obtaining financing, even if voting investors may not control a majority of votes in the LCA, thereby retaining overall control in the hands of the consumers and workers. The ULCAA also permits nonmembers to sit on the board of directors so long as the bylaws provide

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148. See KY. REV. STAT. ANN. §§ 272A.1-010, 272A.17-040 (West 2006).

149. See KY. REV. STAT. ANN. § 272 (West 2006).

150. KY. REV. STAT. ANN. § 272.020(2) (West 2006).

151. *Id.*

152. See KY. REV. STAT. ANN. § 271B (West 2006).

153. See KY. REV. STAT. ANN. § 273.237 (West 2006).

154. See *infra* Part IV.B.

155. See KY. REV. STAT. ANN. § 272A.5-150 (West 2006).

156. *Id.* § 272A.5-150(3).

157. See KY. REV. STAT. ANN. §§ 272A.5-110, -150 (West 2006).

158. See § 272A.5-110.

159. See *id.*

160. *Id.*

161. *Id.* "Organic rules" is a defined term in the Act. See KY. REV. STAT. ANN. § 272A.1-020(20) (West 2006).

for it.<sup>162</sup> By allowing nonmembers to be directors, the ULCAA allows other stakeholders, such as community representatives, to have a direct voice on the board.

Moreover, the provisions of the ULCAA are more clearly stated than those of Kentucky's older cooperative statutes and show that it has evolved with the times.<sup>163</sup> Unlike other statutes under which food cooperatives have previously been organized, the ULCAA does not require that meeting notices be hand-mailed.<sup>164</sup> Instead, the ULCAA provides that "[n]otice of a members meeting shall be given in a [tangible, electronic, or other medium]<sup>165</sup> unless oral notice is reasonable under the circumstances."<sup>166</sup> Providing such clarity eases the manner in which member meetings are conducted and ensures easy compliance with statutory requirements. Thus, the statute's flexibility affords organizations the freedom to tailor their default rules to fit their needs. Simultaneously, the statute's clarity allows for consistency in how these organizations operate throughout Kentucky and the other states that have adopted the ULCAA. As a result, the ULCAA provides greater stability for these types of entities to flourish.

### *B. Drafting the Bylaws*

#### 1. Article I – Organization

When drafting bylaws, some of the first decisions to make are what the name,<sup>167</sup> purpose, and vision of the cooperative will be.<sup>168</sup> These are decisions which rely heavily on the group organizing the cooperative and are required under the ULCAA.<sup>169</sup> The draft of the bylaws for the Louisville group included these matters in Article I, Organization. This section includes the Name, Purpose, Vision, and Triple Bottom Line Principles.<sup>170</sup>

##### *i. Name*

While the Name section is fairly self-explanatory, a group may change the name over time.<sup>171</sup> For instance, the Louisville Food Cooperative has elected to

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162. See KY. REV. STAT. ANN. § 272A.8-030(3) (West 2006).

163. See § 272A.1-020.

164. See KY. REV. STAT. ANN. § 272A.5-070 (West 2006).

165. § 272A.1-020(26).

166. § 272A.5-070(4).

167. See UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 117.

168. See *id.* Art. 3 § 301 (requiring articles of association to state the name and purposes of the association).

169. See generally *id.*

170. *Id.*; see *infra* Appendix A.

171. Of course, the name must be set forth in the articles and filed with the Secretary of State. KY. REV. STAT. ANN. § 272A.3-010(2), (3)(a) (West 2006). Changes in the name are accomplished by amending the articles. Alternatively, the cooperative may adopt an amended name. See KY. REV. STAT. ANN. § 365.015(9) (West 20106); see also Thomas E. Rutledge & Margaret "Megan" Walton, *The Kentucky Assumed Name Statute*, KY. BAR ASS'N: BENCH & BAR HOT TOPICS (Sept./Oct. 2017),



change the name of the proposed food co-op to the Louisville Community Grocery, in order to emphasize that it is a grocery for a community dealing with food insecurity and not the type of upper-class food co-op that some might envision when hearing that term.<sup>172</sup>

### *ii. Purpose*

The Purpose is arguably the most important part of this section. The language from the bylaws of the Nashville Co-op Grocery Store provides a good starting point because it references the democratic integration of the co-op into the community, including local farms, as well as general education and healthy eating.<sup>173</sup> The Louisville Community Grocery draft bylaws indicate that the cooperative is owned and democratically controlled by its members in order to promote local food and community culture and to provide healthy and high-quality food in Kentucky. It also ties local farmers and suppliers into this community grocery system by purchasing some products from them and educating owners and community members about how eating local products can be healthier and stimulate the economy. This example essentially exemplifies how cooperatives showcase what their true goals are. The Purpose section needs to be concise but all-encompassing of the ideas and goals of the cooperative. Further, under the ULCAA, the Purpose should determine whether the cooperative organizes as a for-profit or non-profit entity.<sup>174</sup>

### *iii. Vision*

The Vision Section of the Grocery draft bylaws was modeled after the Apple Street Grocery bylaws.<sup>175</sup> By title alone, this section may appear repetitive of the Purpose, but there are distinctions. The Vision is meant to go more in depth about how the Purpose will be implemented.

### *iv. Triple Bottom Line*

The Triple Bottom Line Principle states another important aspect of a cooperative business. It requires the managers to maximize financial benefit to the members but simultaneously to pursue optimal benefit to the concerns of the cooperative's community, including the employees, and the sustainability of the

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[https://cdn.ymaws.com/www.kybar.org/resource/resmgr/hot\\_topics/BB\\_September\\_2017\\_hottopic\\_w.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/hot_topics/BB_September_2017_hottopic_w.pdf).

172. For sources discussing the perception of food cooperatives as stores for more customers, see Zitcer, *supra* note 80.

173. See generally NASHVILLE FOOD CO-OP, *supra* note 134.

174. See UNIF. LTD. COOP. ASS'N ACT, *supra* note 159, at § 104(b) (“A limited cooperative association may be organized for any lawful purpose, regardless of whether for profit . . .”); see also KY. REV. STAT. ANN. § 272A.1-050(2) (West 2006); Geu & Dean, *supra* note 117, at 99.

175. See generally *Bylaws Apple Street Market Cooperative*, APPLE ST. MKT., [https://www.applestreetmarket.coop/wp-content/uploads/2018/07/Bylaws\\_of\\_Apple\\_Street\\_Market\\_Cooperative\\_amended\\_2017\\_08\\_15\\_.pdf](https://www.applestreetmarket.coop/wp-content/uploads/2018/07/Bylaws_of_Apple_Street_Market_Cooperative_amended_2017_08_15_.pdf) (last visited Feb. 16, 2019).

environment. This balance places the focus on business, the community, and the members. That is the true goal of a cooperative and is necessary in the bylaws.

## 2. Article II – Member Status

Many major determinations must be made revolving around membership. The ULCAA grants flexibility on the development of membership but requires various duties to be enumerated, including member duties, classes, voting, payment plans, requirements members must meet *ab initio*, the membership fee, and what happens when a member dies or withdraws from membership.<sup>176</sup> Perhaps the most robust section of the Louisville Community Grocery draft bylaws, as it should be, is the Member Status section.

### *i. Admission Requirements*

First, the requirements for admission must be determined. The legal team for LACE drafted a Request for Admission to attain member status as a sub-section of the Membership Status Article. A basic principal of cooperatives is open membership,<sup>177</sup> so the provision is fairly straightforward and allows for minimal discretion in the admittance of new members. There are only five requirements: (i) Completion of an application in the form determined by the Board of Directors, (ii) acceptance by the Board of Directors, (ii) payment of the membership fee, (iv) satisfaction of the by-law requirements for a class of members, and (v) satisfaction of such other terms and requirements as may be determined from time to time by the Board of Directors.<sup>178</sup>

Although not specifically covered in the ULCAA, a cooperative's bylaws should also include a non-discrimination clause, stating the co-op will not discriminate based on race, national origin, creed, age, religion, sex, disability, marital, or veteran status. Local law may dictate the inclusion of other protected categories such as sexual orientation and gender identity, and even if not so required, they may be included. This basic statement furthers the overall goal of most cooperatives—to further grow a community as one entire group, regardless of any discerning features.

### *ii. Membership Fee*

The membership fee must be determined by the client. Many food cooperatives simply have a one-time or annual flat membership fee. Some include the fee in the bylaws and others do not, leaving it to the board to establish the fee and with the

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176. See UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 303(a), Art. 5.

177. Wilson, *supra* note 58, at 1022; see, e.g., *The Rochdale Principles*, ROCHDALE PIONEERS MUSEUM, <https://www.rochdalepioneersmuseum.coop/about-us/the-rochdale-principles> (last visited Feb. 16, 2019).

178. See generally UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 502 (requiring that after co-op formation a person becomes a member as provided in the bylaws, among other options).

ability to raise the fee over time with inflation.<sup>179</sup> In Louisville, discussion centered around tiering the fee. A tier would enable those on SNAP, or who are otherwise low-income, to pay nothing or pay less than wealthier members, yet all receive the same single vote in decision-making. It would also enable some members, such as businesses and non-profits, to become members, but they would be required to pay more and included in a different non-voting class. One option would be to create an entirely different class for business and non-profit investors. Another option would be to place these corporate investors into the traditional investor class with individuals. In either situation voting rights would likely be prohibited, but each entity could receive dividends. A number of actions can facilitate setting an appropriate fee or fees, such as research into fees other food cooperatives have used, having a feasibility study, surveying the targeted community on willingness and ability to pay, and discussing with group members varying amounts. The fee can be tiered based on need, perhaps proven by SNAP assistance, or rely on sponsorships for those who cannot afford to pay.<sup>180</sup> Where an individual does not have enough cash, the membership fee can be satisfied through various payment plans. For instance, consumer members may pay back a loan through a plan created by the board of directors. Workers may pay back a loan through paycheck deductions.

For example, Mariposa Food Cooperative in Philadelphia, PA has the “Mariposa Membership Fund,” which “seeks to subsidize the cost of membership (\$200) for low-income residents. The co-op’s goal is to provide this subsidy to at least ten percent of their membership.”<sup>181</sup> Another model for incorporating low-income residents into the cooperative is seen in the Portland Food Cooperative:

Share purchase requirement. Applicants shall be required to purchase one common share and such additional, if any, series A preferred shares as they may be able and willing to provide as a financial expression of support for the PFC. Applicants who are low-income persons on public assistance shall be required to purchase no more than one-tenth of a common share. All purchases of shares shall be at their par value of one hundred dollars per share. The share purchase requirement may be paid in installments by applicants who express a need to do so.<sup>182</sup>

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179. See, e.g., *Current Bylaws*, MONADNOCK FOOD COOP., <https://monadnockfood.coop/bylaws> (last visited Feb. 16, 2019); *Recreational Equipment, Inc. Bylaws*, RECREATIONAL EQUIP., INC. (May 1, 2017), <https://www.rei.com/content/dam/documents/pdf/REI%20Bylaws/REI%20Bylaws.pdf>; *Bylaws of Richmond Food Cooperative, Inc.*, RICHMOND FOOD COOP., <http://richmondfoodcoop.com/bylaws> (last visited Feb. 16, 2019); *Bylaws*, UKIAH NATURAL FOODS COOP. (Apr. 2014), [https://www.ukiahcoop.com/wp-content/uploads/2015/08/Bylaws\\_Amended\\_2014.pdf](https://www.ukiahcoop.com/wp-content/uploads/2015/08/Bylaws_Amended_2014.pdf).

180. See, e.g. BLAIR BERNHARDT, TEK CHHETRI, PATRICK GORHAM, MADISON MEREDITH & BENNETT SEMPLE, UNIV. OF LOUISVILLE COLL. OF BUS., FINAL REPORT FOR LOUISVILLE ASSOCIATION FOR COMMUNITY ECONOMICS, INC. (LACE) 50 (2018) (on file with author).

181. Daniel Reyes & Marnie Thompson, *How Cooperative Grocery Stores Are Bringing Food Access to Low-Income Neighborhoods*, NEW ECON. COAL. (Jun. 18, 2015), <https://neweconomy.net/blog/how-cooperative-grocery-stores-are-bringing-food-access-low-income-neighborhoods-0>.

182. *Bylaws of Portland Food Cooperative*, <https://www.portlandfood.coop/our-bylaws> (last visited Feb. 16, 2019).

A co-op could also choose to follow a food bank model such as that of the Food Bank of Delaware's Community Supported Agriculture Program which has "'community shares,' discounted weekly payment plans for shareholders receiving food assistance, and 'sponsor shares,' sold at the full cost of the share plus a \$100 tax deductible donation that subsidizes the community shares."<sup>183</sup>

### *iii. Classes of Membership*

Members can differ not only in the fee amount paid, but also in the role they play in the cooperative and its decision-making. The initial draft bylaws include a consumer class and a worker class, both of which are necessary for a multi-stakeholder cooperative. For the Louisville Community Grocery, the consumer member must be a natural person who signs a consumer-owner contract. This is intended to give those in the community, who do not have the time to aid the effort, a voice in how the business operates within the neighborhood in which they live and to ensure that individuals from the community control the Grocery. Another group could provide a different structure. For instance, a consumer class could include organizations as well as individuals. A group might decide to permit farms, non-profits, or other entities consumer member status.

The Grocery draft bylaws also require worker-class members to be natural persons, and that they must share responsibility for the cooperative, which includes sufficient training. Furthermore, to complete the process of becoming a worker member, the employee must work for eighteen months for at least twenty hours per week, including vacation, sick, or other paid leave. This definition creates a minimum commitment for the workers to be able to impact the company.<sup>184</sup> Different groups might decide on a different time period or number of hours worked, as well as different types of training that are required. Training may include financial literacy and life skills, in addition to training specific to working at the grocery.<sup>185</sup> A group should also decide if there are certain matters over which the workers should have more decision-making power than the consumers and vice-versa. For example, through certain bylaw provisions, worker votes could count more than consumer votes on issues related to working conditions, such as minimum hours or wages.

Sometimes bylaws provide that once a worker becomes an owner, termination must be for-cause. For example, the bylaws of the Seattle Central Co-op<sup>186</sup> require that worker-owners may only be fired for cause. Other bylaws leave the owners' terms of employment to be determined by an employment contract.<sup>187</sup>

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183. Reyes, *supra* note 181.

184. *See, e.g., id.*

185. *See e.g., COMMUNITY WEALTH, supra* note 63, at 35 (discussing training in basic work skills and managing life responsibilities); Cummings, *supra* note 63, at 187 (1999) (stating "many cooperatives are formed primarily to facilitate job training").

186. *Amended and Restated Bylaws of Central Coop*, SEATTLE CENT. COOP § 2.10(b), <https://www.centralcoop.coop/docs/Bylaws.pdf> (last visited Feb. 16, 2019).

187. *See, e.g., Bylaws Apple Street Market Cooperative*, APPLE ST. MKT. § III.B.1. (AUG. 15, 2017), [https://www.applestreetmarket.coop/wp-content/uploads/2018/07/Bylaws\\_of\\_Apple\\_Street\\_Market\\_Cooperative\\_amended\\_2017\\_08\\_15\\_.pdf](https://www.applestreetmarket.coop/wp-content/uploads/2018/07/Bylaws_of_Apple_Street_Market_Cooperative_amended_2017_08_15_.pdf).

The Louisville Community Grocery draft bylaws also include an investor class. An investor class may be included while still preserving one hundred percent ownership and control to consumers and workers by providing only a financial return without voting power. This is the option the draft bylaws use. They may attend meetings but do not have voting rights or interest in the property and may not serve on any committee. However, they may receive dividends. Essentially, the investor class can support the cause but cannot control how it operates. This prevents members from outside the community from controlling the cooperative decision-making and ensures patronage controls capital.

However, given the difficulty of financing a cooperative grocery, and the difficulty of raising capital without voting rights, some may decide to provide investors certain voting power. For instance, investors may be less inclined to join the venture if their only avenue of control is through an investor class board member that they do not have any authority to elect. The investors may instead desire voting rights, although the investors cannot control more than forty-nine percent of the cooperative.<sup>188</sup> On the other hand, the cooperative business model is often seen as altruistic, and investors may join for reasons other than control and profit, even though dividends could come at an infrequent rate. Other than the limitation of ownership percentage, everything can be drafted towards what the cooperative needs.

#### *iv. Voting*

Voting is also another key component of a cooperative because it is based on a one share, one vote system. Again, the ULCAA allows for variations and restrictions on voting rights to be determined in the bylaws.<sup>189</sup> The Grocery draft bylaws provide that each worker and consumer member is entitled to one vote, without proxy. A group establishing a multi-stakeholder cooperative should also determine whether a worker can have two shares—one as a consumer and one as a worker—effectively affording the worker members a disproportionate voice with respect to any matter upon which both consumer and worker members vote as a single class.

#### *v. Terminating Membership*

In the Grocery draft bylaws, a member may withdraw by delivering written notice, surrendering the certificate of membership, and satisfying any outstanding financial obligations to the cooperative. This protects the cooperative from members withdrawing with outstanding debts, unless the cooperative chooses to release those obligations. In the scenario involving the death of a member, the certificate is immediately null and void. There is no transfer of rights, and

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188. UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 514(a)(2) (“If a limited cooperative association has both patron and investor members, the following rules apply: (1) the total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote”); KY. REV. STAT. ANN. § 272A.5-120 (West 2006).

189. *See* UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 303(a)(3).

nullification protects the cooperative from individuals outside of the community inheriting interests and dictating local policy.

### 3. Article III – Member Meetings

#### *i. Calling Meetings*

As the ULCAA provides, the bylaws should contain provisions addressing member meetings because the members of a cooperative elect the decision-making board and decide on important matters.<sup>190</sup> The Grocery draft bylaws include an annual meeting on a specified day. The purpose of the meeting is to elect directors and transact other business as may properly come before the meeting. Specifying a particular day appeared most efficient to ensure the meeting will be held and to protect the owner's rights to a meeting. The board of directors, which is comprised of the elected officers, also has the right to call a special meeting at any time.<sup>191</sup> Moreover, if at least ten percent of voting members sign and file a petition with the President, demanding a meeting for specific business related to an organic matter, a special meeting will be called. While ten percent is a flexible number in the deployment of the bylaws, it balances prevention of frivolous meetings with the primacy of the members' decision-making power.

#### *ii. Organic Matters*

Major decisions by an entity are commonly referred to as “organic matters,” and the term encapsulates mergers and acquisitions, sale of major property or the cooperative, and liquidation, among other key decisions.<sup>192</sup> However, because “organic matters” is not referenced in the ULCAA or Kentucky Revised Statutes, parties drafting cooperative bylaws should define the term to best fit the needs of the organization. “Organic matter” should have as large or as small of a scope as the entity requires, and the term need not be used if unhelpful. The bylaws can permit the members to raise any type of business issue.

However, the more matters that the members can vote on, the less efficient the cooperative will be. The members have far more control in a cooperative than in a typical shareholder-controlled corporation because they elect the board of directors. Doing so furthers the cooperative principles while permitting the board to efficiently run the company and honor their fiduciary duties toward the cooperative and members. For example, a board may use a poll of the members to determine how to proceed while still protecting their fiduciary duties. But if the board acts based on the results without discretion, such as following a vote, fiduciary duties can be raised. Membership influence on day-to-day business can

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190. *See id.* at Art. 8 § 811 (amended 2013); *see also* KY. REV. STAT. ANN. § 272.A.8-010(2) (West 2006).

191. APPLE ST. MKT., *supra* note 186, at § IV.H.; UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 507.

192. *See* TAX ADVISORS PLAN. SYST., *Client Letter: Major Issues in Choice of Entity*, RES. INSTIT. AM. § 50.04, 2000 WL 225238 (stating “shareholder voting can be limited to organic matters, such as mergers or election of the board of directors”).

lead to business difficulties because the members likely have little to no business experience.

On the other hand, limiting the breadth of “organic matters” solely to major decisions weakens the purpose of the cooperative, as the design is to be community-owned and community-responsible. A good way to insure community responsibility while authorizing an elected board to run the company, other than for major organic decisions, is an open book policy where the financials are easily visible to all members, coupled with financial literacy and training for members. Doing so means community members can bring innovation and ideas to enhance the business to the board’s attention and foster an ownership culture.

### *iii. Notice Requirements*

The notice requirements for meetings included in the Grocery draft bylaws encapsulate more modern approaches of notification.<sup>193</sup> A member may be notified of a meeting by email, text message, social media message, or by other electronic means. A notice provision should include that notice of the place, date, and hour of the meeting is required. The Grocery draft bylaws permit members to waive the notice requirements through written authorization.

### *iv. Quorum*

Bylaws for multi-stakeholder cooperatives should also contain quorum requirements.<sup>194</sup> The Grocery draft bylaws include a low quorum of two percent of members, chosen due to the large number of potential members. Some groups may increase the required percent to require more member participation in order for a decision to be made. Another option is to require a certain percent of worker members that is higher than the percentage of consumer members required for a quorum. This would ensure worker voice in decision-making.

Once a quorum is verified, any decision made by the majority of non-investor members present becomes the will of the cooperative.<sup>195</sup> Bylaws can, however, specify issues that require a super-majority.<sup>196</sup> The Grocery draft bylaws specify several issues that require a super-majority vote—at least two-thirds approval of all voting members—such as: To merge the Grocery with another cooperative or business organization, to sell the Grocery or substantially all of its assets, and to amend the Articles of Association or Bylaws.<sup>197</sup> These provisions, calling for a super-majority vote, are designed to ensure the Grocery remains a cooperative entity based in the community.<sup>198</sup> A group may also decide to require a super-majority vote for relocation or may require a certain percentage higher than a majority of only the consumer-owners to vote on relocation. Some bylaws may not

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193. *See generally*, UNIF. LTD. COOP. ASS’N ACT, *supra* note 59, at §§ 508–09.

194. *See generally id* at § 510 (specifying bylaws can provide for a quorum).

195. *Id.* at § 514.

196. *Id.* at § 514(A) (specifying bylaws can provide for more than a majority vote).

197. *See infra* Appendix A, Grocery draft bylaws § 3.7.

198. *Id.*

permit sale of the cooperative to avoid take-over by those outside the community, and some may include a veto right on any sale by a related non-profit.

#### 4. Article IV – Directors

Generally, under the ULCAA, a board of directors is the group of people who are democratically elected by the cooperative members.<sup>199</sup> The board makes administrative and executive decisions on behalf of the stakeholders as to the direction of the company with the exception of decisions explicitly left to the stakeholders in the bylaws. When the Grocery legal team drafted the rules for the board of directors, a number of questions arose. Initially, the number of directors, the requirements to be a director, and how they are elected particularly stood out.

##### *i. Number of Directors*

When selecting the number of directors, the options of nine, eleven, thirteen, and fifteen were presented;<sup>200</sup> however, the final decision was to have a board of nine directors.

##### *ii. Requirements for Serving as a Director*

There are a few requirements placed on the directors.<sup>201</sup> The Grocery bylaws require that one director must be an investment member, and another, once there are three worker-owners, must be a worker. A third, who need not be a member, is appointed by the President to be the community ambassador. The others can be any member of the cooperative elected by their fellow members. The type and number of board members can be altered to suit the goals of a particular group establishing a food cooperative. For example, the bylaws could require a certain number of worker-owners serve as directors proportional to the number of worker-owners as compared to consumer owners.

##### *iii. Terms*

For the initial co-op Board, three members will be elected for a one-year term, three for a two-year term, and three for a three-year term.<sup>202</sup> Thereafter, every year three Board members are elected for a three-year term.<sup>203</sup> This election format ensures continuity of management rather than pausing until an election is held. The

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199. *See generally* UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at Art. 8.

200. *See generally id.* at § 804(a).

201. *See id.* at § 803(a) (“Unless the organic rules otherwise provide, and subject to subsection (c), each director of a limited cooperative association must be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.”).

202. *Id.* at § 805.

203. *See id.*



format would change or be proportional if the number of directors was increased.<sup>204</sup>

#### *iv. Directors' Duties*

The Grocery draft bylaws explain that the duties of the directors include managing the property and business, hiring a manager, and delegating responsibilities. Normally, running a business like a grocery requires a manager with expertise in the field, so the manager may be one of the few positions that is not filled by a community member. However, another cooperative might hire a less experienced individual who is a member to be a manager. Furthermore, one-third approval by the Board can refer a decision to the membership of the Cooperative. This allows flexibility in an attempt to receive input and control from members.

### 5. Article V – Officers

While the board is the governing body, generally meeting once a month to make major decisions, a cooperative with many members also normally has management. The management format is provided for under the ULCAA.<sup>205</sup> Similarly, the Grocery Draft mandates that the Board of Directors selects the officers including: President, Vice-President, Secretary, and Treasurer. Members of the Board may be selected for the aforementioned positions.<sup>206</sup> Any officer may be removed from their office by a majority vote of the Board at any time.<sup>207</sup> Cooperatives may allow the members to vote for officers and for removal of officers—making the process more democratic.<sup>208</sup>

#### *i. Duties*

The Grocery bylaws have additional articles explaining the duties of each officer. The President presides over Board meetings and executes decisions by the Board in order to effectively manage the cooperative. The Vice-President performs those duties and powers in the absence of the President, and performs other duties assigned by the Board. The Secretary has three main duties: to keep records of the meetings (including notification), membership records (signing and maintaining membership certificates), and the bylaws.<sup>209</sup>

The Treasurer's duties include receiving all monies paid to the Grocery, maintaining receipts and disbursements, and depositing money. Upon request of the Board, the Treasurer must also produce a report of receipts, disbursements, and balances. Other bylaws might add an explicit provision that the Treasurer may hire an accountant or bookkeeper and delegate some of these responsibilities, less they

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204. *See generally id.* (permitting great flexibility in the terms of directors as long as a term does not exceed three years).

205. UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 801.

206. *Id.* at § 822.

207. *Id.* at § 823(a).

208. *Id.*; KY. REV. STAT. ANN. § 272A.8-010(3) (West 2006); APPLE ST. MKT., *supra* note 186, at Art. 3; SEATTLE CENTRAL CO-OP, *supra* note 185, at 2.

209. KY. REV. STAT. ANN. § 272A.8-210(2) (West 2006).

become too burdensome. Finally, the Treasurer will, along with the Secretary and President, execute all deeds, leases, transfers, contracts, notes, bonds, and other obligations on behalf of the Grocery. The Grocery bylaws require the Treasurer, before assuming office, to give bond in such sum as the Directors may require for faithful discharge of the Treasurer's duties.

### *ii. Additional Positions*

Moreover, provisions in the Grocery draft bylaws regarding Personnel and Salaries specify a need for a general manager, marketing sales manager, and public accountant, all of whose salaries will be determined by the Board. Each of these positions provide a unique benefit to the Cooperative and require unique skill sets. The general manager covers the day-to-day operations of the Cooperative and oversees non-executive employees:

“Including by recruiting, selecting, orienting, training, coaching, counseling, and disciplining managers; communicating values, strategies, and objectives; assigning accountabilities; planning, monitoring, and appraising job results; developing incentives; developing a climate for offering information and opinions; and providing educational opportunities.”<sup>210</sup>

The marketing sales manager oversees the marketing of the entire Cooperative, including: “[A]ccomplish[ing] business development activities by researching and developing marketing opportunities and plans; implementing sales plans; [and] managing staff.”<sup>211</sup> Lastly, the public accountant is fairly self-explanatory—he or she “provides financial information to management by researching and analyzing accounting data; [and] preparing reports.”<sup>212</sup>

### *iii. Suspension of Officers*

The President has the ability to suspend other officers for-cause or pending an investigation. However, the officer has a right to appeal to the Board within thirty days, and suspension as an officer does not deprive a member of their ownership share and vote.

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210. *General Manager Job Description Sample*, MONSTER, <https://hiring.monster.com/hr/hr-best-practices/recruiting-hiring-advice/job-descriptions/general-manager-job-description-sample.aspx> (last visited Feb. 16, 2019).

211. *Id.*

212. *Accountant Job Description Sample*, MONSTER, <https://hiring.monster.com/hr/hr-best-practices/recruiting-hiring-advice/job-descriptions/accountant-job-description-sample.aspx> (last visited Feb. 16, 2019).

## 6. Article XI – Financial

### *i. Review by Accountant and Tax Attorney Necessary*

The financial portion of cooperative bylaws is by far the most complex. Both an accountant and tax attorney should review this section.

### *ii. Patronage Dividends*

The ULCAA provides that the basic idea of a cooperative is that members own the business and may receive dividends based on their patronage.<sup>213</sup> Patronage is the buying that consumer owners do and the work that worker owners do.

### *iii. Worker-Owned Financial Model*

As to worker ownership, one model is to use individual accounts with the value that each owner owns therein.<sup>214</sup> Along with the individual accounts, there is a capital account where funds for later use by the business are held.<sup>215</sup> This is the model used by Mondragon and in states, like Massachusetts, that have a worker-cooperative specific law.<sup>216</sup>

### *iv. Consumer-Owned Financial Model*

A consumer cooperative can either be: (1) a stock entity or (2) a membership entity.<sup>217</sup>

From a general perspective, a cooperative formed with voting common stock (even if the holders are called “members” rather than “stockholders”) creates the semblance of a more formal corporate structure, while a cooperative formed without voting common stock may create a semblance of an association that more accurately reflects cooperative principles. These generalizations overstate the case; the historical reasons for the difference between stock and non-stock cooperatives are now largely obsolete.<sup>218</sup>

Yet while there is little difference between stock and membership ownership for cooperatives, there may be differences in how money is distributed to owners. The value of a membership share is typically the initial cost of membership plus

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213. *See generally* UNIF. LTD. COOP. ASS’N ACT, *supra* note 59, at § 303 (specifying bylaws must specify the members’ interests and the manner in which distributions are made among patron members and between patron and investor members).

214. Levinson, *supra* note 66, at 360.

215. *Id.*

216. *Id.*

217. LINDA D. PHILLIPS & JASON R. WIENER, THE PRACTITIONER’S GUIDED TO COLORADO BUSINESS § 13.2.5, 13.3 (E. Lee Richert & Allen E. Rozansky eds., 2nd ed. 2016); GEU & DEAN, *supra* note 117, at 82.

218. PHILLIPS & WIENER, *supra* note 217, at § 13.6.2.

any “additional assessments paid by the patron owner.”<sup>219</sup> Membership entities may still pay dividends upon approval by the board.<sup>220</sup> However, consumer cooperatives may use various means besides dividends to provide value to consumer owners for their stake in the cooperative. The following excerpt explains the value distribution models in membership entities:

Instead of patronage refunds, a number of consumer cooperatives return net income or net margins to their members through rebates. These are generally treated as a return of overcharges. They may be paid in cash or in discount coupons. The amounts are not included in the income of individuals who receive them because they are treated as a return of the purchase price paid by the individuals for the goods or services received and paid by the individual consumer.<sup>221</sup>

More specifically, the ULCAA permits that if a consumer cooperative decides to pay dividends, it may do so through a segment of a specific fund (i.e. revolving capital accounts) divided by the number of stocks in a stock entity or members in a membership entity.<sup>222</sup> The ULCAA also permits an alternative wherein the cooperative may provide distributions through individual capital accounts in a membership entity.<sup>223</sup>

#### *v. Multi-stakeholder Cooperative Financial Model*

For a multi-stakeholder cooperative, the financial model must work for both worker and consumer owners. Dividends, if paid, are based on the amount purchased or worked and can simply go into the individual accounts, or another group account, or actually be paid out to individual owners as dividends.

#### *vi. Grocery Draft Bylaws*

For the Grocery, the initial draft bylaws contain three types of funds: The Internal Capital Accounts, Individual Capital Accounts, and the Fixed Asset Fund. Other funds are left to the Board’s discretion, but the Grocery is also planning to use a Retained Earnings Account and a Reserve Fund, contingent upon advice from an attorney. Each fund is described below, and then the allocation between funds is explained.

The Fixed Asset Fund is for ongoing maintenance expenses. The Grocery draft bylaws grant the Board complete authority over this fund, which handles all physical plant expansion, maintenance expenses, and periodic loans for that area.

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219. EASTWOOD MARKET BYLAWS (on file with author); *see generally*, Douglas K. Moll & Robert A. Ragazzo, *Closely Held Corporations* § 1-2, 2.01 (2017) (The cooperative could instead require that the member receive a “fair value” buyout of his or her membership stake, like an LLC).

220. GOOD FOODS BYLAWS § 4.1 (on file with author).

221. PHILLIPS & WIENER, *supra* note 217 at § 13.8.

222. *See generally*, UNIF. LTD. COOP. ASS’N ACT, *supra* note 59, at Art. 10.

223. *Id.*

The retained earnings account is comprised of (a) that portion of retained earnings not allocated to Individual Capital Accounts or the Reserve Fund determined each fiscal year, and (b) any gifts or grants to the Cooperative, unless otherwise allocated to Individual Accounts. The goal of this account is to have a list of target business purposes for spending at a later date and to provide a place holder for grant money received, as opposed to the Reserve Fund which acts more like a rainy-day fund.

The Reserve Fund is an account kept for contingency purposes or particular events as determined by the Board.<sup>224</sup> The formula which allocates the accrual and use of the Reserve Fund can be determined by the board or restricted in the bylaws.<sup>225</sup> In the case of the Grocery Draft bylaws, the Board will determine the formula for which percentage of net earnings will be allocated to the Reserve Fund.

The Individual Capital Accounts reflect the equity of each worker member which includes the initial membership fee, amount of Written Notices of Allocation denoting added capital to the account, and any losses allocated to the individual capital accounts, and redemption, which indicate the value of the capital account if a member were to cash out.

The Internal Capital Accounts are equity accounts that reflect the allocation of net worth among the Consumer and Investor Members and determine the redemption value of Ownership Shares and Written Notices of Allocation.

The Grocery draft bylaws provide that a portion of the excess of operating revenue over operation expenses is allocated to the Consumer Members based upon dollar volume done by each member, the patronage amount. The amount allocated to Worker Members is by hours worked, the patronage amount. Groups may also want to consider if there is a way that rewards founding owners more than later owners because grocery co-ops often take years to operate without a loss. One method of doing this would be to create a fourth class of members, such as Founding Consumer Members, and allocating a greater percent of patronage for a certain number of the initial years when the Grocery is profitable to these members.

This section of the Grocery draft bylaws also limits dividend payment to when the co-op is financially sound. The bylaws for a multi-stakeholder co-op may designate a formula created by both an accountant and lawyer to distinguish what amount is paid in yearly dividends and what amount is placed into individual capital accounts. The Grocery draft bylaws borrow the Apple Street cooperative model of simply distributing twenty percent of the Patronage Dividend to members and the other eighty percent to the Individual Capital Accounts and Internal Capital Accounts of Owners.<sup>226</sup> As to the distribution between the classes, while the Grocery draft bylaws allows for the Board to make the determination, the Apple Street bylaws define the patronage distribution stating “sixty-five percent (65%) shall be divided equally among the Worker-Owners after that class has reached capacity and thirty-five percent (35%) shall be divided equally among

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224. UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 1004(d); *See also* KY. REV. STAT. ANN. § 272.030 (West 2006) (Section 272 is the old version of the cooperative model in Kentucky).

225. KY. REV. STAT. ANN. § 272.030 (West 2006).

226. *See, e.g.*, APPLE ST. MKT., *supra* note 134, at § III.B.I.

Community-Owners.”<sup>227</sup> Another group could elect to pay dividends directly to the individual capital accounts.<sup>228</sup>

Some micro-level decisions must be addressed in the bylaws draft to address payment of any dividend. For instance, although not laid out in the bylaws, the Louisville Community Grocery plans to use a payment voucher, which can be redeemed at the Grocery, for cash, goods of the cash equivalent, or a charitable donation.<sup>229</sup> If someone fails to redeem the dividend voucher within three months then the Grocery contributes the amount to a charitable organization.<sup>230</sup>

## 7. Article XV – Neutrality

### *i. Union Co-ops*

One type of worker-owned or multi-stake holder cooperative is a union co-op.<sup>231</sup> The ULCAA does not provide specific provisions for the intertwining of a union into the cooperative business model. A union co-op is any co-op where the employees are unionized, but in the recent past, unions have taken initiative to contribute resources and people power to implementing co-ops.<sup>232</sup> Those establishing a co-op should consider whether they would like to partner with unions in their community. If so, the unions may wish to see statements of support for unionization in the bylaws. Bylaws traditionally do not address topics such as unionization,<sup>233</sup> thus the partner union may be willing to see the support through other verbal and written statements and through action, rather than in the bylaws.

### *ii. Neutrality Provision*

Another approach which the Grocery draft bylaws utilize, is to include neutrality language in the bylaws or another document. Neutrality language indicates that just as the co-op respects diversity through its anti-discrimination principle, so too does it respect its employees’ right to organize.<sup>234</sup> The Neutrality portion essentially states that the cooperative will be neutral in the case of any union organizing campaign or campaigns, and that it will advise its employees in writing and orally that it is not opposed to a labor organization.<sup>235</sup> It will also inform the Board and management of the obligations of the cooperative to act in

227. *See, e.g., id.*

228. UNIF. LTD. COOP. ASS’N ACT, *supra* note 59, at § 1004(a); *See, e.g., APPLE ST. MKT., supra* note 134, at Art. X.

229. The Grocery draft bylaws sections 11.1, 11.2, and 11.4 need to be adjusted in order to allow for a voucher patronage dividend program. *Id.*

230. *Id.*

231. Levinson, *supra* note 10, at 458.

232. *Id.*

233. Cooperative statutes, articles about drafting bylaws, and bylaws themselves almost never include discussion of a neutrality clause. *See, e.g., UNIF. LTD. COOP. ASS’N ACT, supra* note 59, at § 1004(d); DAHLEGREN, *supra* note 104; GOOD FOODS CO-OP, *supra* note 134; NASHVILLE CO-OP GROCERY STORE, *supra* note 134; GOOD FOODS BYLAWS, *supra* note 220.

234. Levinson, *supra* note 10, at 533.

235. *Id.*

conjunction with a union that has been recognized as a majority representative of employees.<sup>236</sup>

## 8. Additional Articles

Other provisions of bylaws for a multi-stakeholder cooperative grocery are more standard for any type of business entity and, thus, do not warrant extensive discussion. These include provisions addressing indemnification, provisions for notice of board meetings, deceased members' rights, the fiscal year, certified audits, tax notifications, and limited liability. An indemnification clause protects certain members and officers from liability, as the cooperative would promise to cover any losses an individual incurred in a lawsuit which occurred while the individual represented the cooperative.<sup>237</sup> Notice provisions insure that proper notice of board meetings is provided to the members, including notice of virtual board meetings if permitted.<sup>238</sup> The Deceased's Rights provision determines whether the individual capital accounts can be transitioned and inherited to a family member (as a whole or in fractions) or if the account is automatically just cashed out to the estate of the deceased.<sup>239</sup> The ULCAA specifically discusses transferability, and fleshes out this discussion.<sup>240</sup> The Fiscal Year typically falls in line with the calendar year or runs for twelve-month periods, such as July 1st to June 30th.<sup>241</sup> An attorney must be consulted about whether tax consent notifications are required of owners. Lastly, because the ULCAA provides limited liability for directors and members,<sup>242</sup> the limited cooperative entity in many jurisdictions maintains limited liability in a similar fashion to various corporate structures.<sup>243</sup>

One overall challenge for a legal team working with a group establishing a multi-stakeholder food cooperative is to draft the bylaws with a balance between making the document understandable to lay people but also insuring the bylaws satisfy legal requirements and promote smooth operation of the cooperative. One option groups can try is to draft a short summary of the bylaws in lay terms. Such a document can aid members in understanding the legal document. Perhaps the discussion in this Article can serve as a starting point for the types of primary concerns to include in such a summary.

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236. *Id.*

237. UNIF. LTD. COOP. ASS'N ACT, *supra* note 159, at Art. 9.

238. *The Practitioner's Guide to Colorado Business Organizations*, *supra* note 111, at 13–60.

239. UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 603.

240. *Id.*

241. *Choosing Between a Calendar Year and a Fiscal Year*, BELFINT, <http://www.belfint.com/choosing-between-a-calendar-year-and-a-fiscal-year> (last visited Feb. 16, 2019) (A fiscal year consists of twelve consecutive months that do not begin on January 1st or end on December 31st—for example, July 1st through June 3rd of the following year. A fiscal year can also include periods of fifty-two to fifty-three weeks. These might not end on the last day of a month, but instead might end on the same day each year, such as the last Friday in March.).

242. UNIF. LTD. COOP. ASS'N ACT, *supra* note 59, at § 504.

243. KY. REV. STAT. ANN. § 272A.1-040 (West 2006).

## V. CONCLUSION

Across the country, communities are turning to establishing food cooperatives or community groceries as a part of the solution to finally halting enduring food apartheid and to lessen income and wealth inequality. Some of these groups want a governance structure where both consumers and workers have decision-making power over the grocery. The multi-stakeholder consumer- and worker-owned cooperative is one way of insuring that these stakeholders do have decision making-power, and the Uniform Limited Cooperative Association Act is one law that readily permits such a structure.

This Article has explained what cooperatives are and outlined the existing legal literature about drafting co-op bylaws. It also described the process community groups can use to draft bylaws under the ULCAA. It focused on the crucial decisions that must be made when drafting the bylaws and explained different ways of addressing those decisions. The crucial decisions discussed include: The name, purpose, and vision of the cooperative; the classes of members and the fee structure; the relationship of the members, the board and the management of the cooperative; and the financial structure of the cooperative.

This is the first article to address drafting bylaws for a multi-stake holder community grocery. This Article is also the first to discuss using the ULCAA to do so. And, the Article is the first to address drafting a neutrality clause toward worker-owners unionizing as part of community grocery bylaws. Moreover, it provides a model that law schools can utilize to involve their students in public service projects supporting cooperatives. Many other issues remain to be explored by scholars and student researchers, such as how a variety of employment laws, from wage and hour laws to workers' compensation, apply to multi-stakeholder community groceries.



## VI. APPENDIX A

The Appendix is the draft of the Louisville Community Grocery bylaws as of October 1, 2018. Before incorporation, the bylaws will continue to be modified based on LACE's decisions and attorney advice.

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## BYLAWS<sup>244</sup> OF LOUISVILLE COMMUNITY GROCERY, LCA

### ARTICLE I.

#### ORGANIZATION

1.1 NAME. The name of the association is Louisville Community Grocery, LCA (herein referred to as “the Cooperative”).<sup>245</sup>

1.2 PURPOSE.<sup>246</sup> The Cooperative is owned and democratically controlled by its Members. The Members have organized the Cooperative to promote local food and community culture, and to provide healthy and high-quality food into the Kentucky food system. The Cooperative will do this by supporting local farms and suppliers through a cooperative-grocery system and engaging in education and outreach in the community to encourage healthy eating and supporting a local economy.<sup>247</sup>

244. The adoption of bylaws is a necessary step in the organization of a limited cooperative association. *See* KY. REV. STAT. ANN. § 272A.3-020(1)(a)–(b) (West 2006). The minimum contents of the bylaws are set forth in KY. REV. STAT. ANN. § 272A.3-030(1)(a)–(g) (West 2006).

245. The Kentucky Limited Cooperative Association Act, at KY. REV. STAT. ANN. § 272A.1-100 (West 2006), cross-references KY. REV. STAT. ANN. § 14A.3-010 (West 2010), a provision of the Kentucky Business Entity Filing Act, with respect to name requirements. With respect to the Kentucky Business Entity Filing Act, *see generally* Thomas E. Rutledge & Laura K. Tzanetos, *The Kentucky Business Entity Filing Act: The Next Step Forward in the Rationalization of Business Entity Law*, 38 N. KY. L. REV. 423 (2011). Under KY. REV. STAT. ANN. § 14A.3-010 (West 2010), the name of a limited cooperative association must end with “limited cooperative association” or “limited cooperative” or “L.C.A.” or “LCA.” Limited may be abbreviated as “Ltd.,” cooperative may be abbreviated as “co-op” or “coop,” and “Association” may be abbreviated as “Assoc.” or “Assn.” The use of an assumed name in Kentucky will be governed by the Kentucky assumed name statute, KY. REV. STAT. ANN. § 365.015 (West 2015). As for that statute, *see generally* Walton & Rutledge, *supra* note 171.

246. Under the Kentucky Limited Cooperated Association Act, an LCA may be organized for any lawful purpose, whether or not for profit. *See* KY. REV. STAT. ANN. § 272A.1-050(2) (West 2006).

247. *See also* KY. REV. STAT. ANN. § 272A.1-040(1) (West 2006), which provides that “A limited cooperative association organized under this chapter is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, which permits combining:

- (a) Ownership, financing, and receipt of benefits by the members for whose interests the association is formed; and
- (b) Separate investments in the association by members who may receive returns on their investments and a share of control.”

It is also provided that the association may bring an action against a member for harm caused to the association consequent to the member’s violation of a duty or the breach of the organic laws or the organic rules. KY. REV. STAT. ANN. § 272A.1-060(2) (West 2006). “Organic rules” is a term of art in the law of LCA’s, defined at KY. REV. STAT. ANN. §272A.1-020(20) (West 2006) as the articles of association and bylaws. The Kentucky Limited Cooperative Association Act contains a non-uniform provision, KY. REV. STAT. ANN. § 272A.1-080(1) (West 2006), that provides in part “it shall be the policy of the General Assembly through this chapter to give maximum effect to the principles of freedom of contract and to the enforceability of organic rules.” *See also* VanWinkle v. Walker, No. 2016-CA-000097-MR, 2018 WL 4043388, at \*3 (Ky. App. Aug. 24, 2018) (applying the equivalent provision of the Kentucky LLC Act).

1.3 VISION. The Cooperative cultivates strong relationships with food and the community through cooperative principles. We connect the food we eat, the people who produce it, the friends and family we share it with, and those who most need access to safe healthy food through a member-owned grocery. We strive to buy directly from farmers and food producers whenever possible, and nurture strong connections within our local economy. We are committed to just, safe, and sustainable growing, production, and food delivery practices. We use a democratic cooperative process to effect community decision-making, place-based ownership and investment, and workers' rights. We strive to minimize our impact on the more than human world and nonrenewable resources. We are committed to being good co-members and good neighbors who listen carefully, and who include our neighbors in the identity, work, responsibility, and benefits of the cooperative.

1.4 TRIPLE BOTTOM LINE PRINCIPLES. The Cooperative will be operated according to Triple Bottom Line principles. The duty of the managers to maximize financial benefit to the members is supplemented by a co-equal duty to responsibly pursue optimal benefit to concerns of the company's community, including its employees and associates and the health and safety of the public, and of the sustainability of the biological environment.

1.5 POWER. Subject to the principles, obligations, and constraints stated in these bylaws, the Cooperative will have all the powers available under Kentucky law.<sup>248</sup>

## ARTICLE II.

### MEMBER STATUS

2.1 REQUEST FOR ADMISSION.<sup>249</sup> Admission to membership in the Cooperative is contingent upon: (i) Completion of an application in the form determined by the Board of Directors; (ii) the acceptance by the Board of Directors of the application; (iii) payment of the membership fee; (iv) satisfaction of the by-law requirements set forth in section 2.2–2.5 for a class of members; and (v) satisfaction of such other terms and requirements as may be determined from time to time by the Board of Directors.

2.2 CLASSES OF MEMBERS. The Cooperative has three classes of members. The different classes of members have different voting rights, patronage

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248. Unlike the Business Corporation Act, the Kentucky Limited Cooperative Association Act does not set forth a listing of the powers of a cooperative. *Cf.* KY. REV. STAT. ANN. § 271B.3-020 (West 2006). Rather, in the Kentucky Limited Cooperative Association Act, the equivalent "power provision" is set forth rather cryptically in KY. REV. STAT. ANN. § 272A.1-060(1) (West 2006) which provides that a LCA may "do all things necessary or convenient to carry on its activities," which activities must, of course, be lawful. *See* KY. REV. STAT. ANN. § 272A.1-050(2) (West 2006).

249. Provisions with respect to the method for the admission of members is a mandatory topic of the bylaws. *See* KY. REV. STAT. ANN. § 272A.3-030(1)(b) (West 2006).

shares, and governance rights based on the amount of business done by and through the cooperative.<sup>250</sup>

2.2.1 CONSUMER MEMBERS. Consumer members must be natural persons. All consumers who elect to become consumer members must sign a consumer-owner contract. Consumer members will receive patronage dividends dependent on the amount of business done by and through the cooperative.<sup>251</sup>

2.2.2 WORKER MEMBERS. Worker members must be natural persons. In order to be an effective worker member who shares responsibility for the Cooperative, an employee requires a substantial amount of training and time working at the Cooperative. As a condition precedent to applying for worker member status, that person must work for the Cooperative for eighteen months for at least twenty hours per week, including approved vacation, sick, or other paid leave.<sup>252</sup> All employees who elect to become worker members must sign a worker-owner contract and pay the membership fee set by the Board. After receiving worker membership status, worker members may receive patronage dividends dependent on the amount of business done by and through the Cooperative.

2.2.3 INVESTOR MEMBERS.<sup>253</sup> Investor membership includes entities such as farms, nonprofit organizations, community organizations and groups, and other businesses that are not natural persons. Investor membership may be approved by the Board of Directors to any entity interested in the culture of food cooperation

250. See also KY. REV. STAT. ANN. § 272A.3-030(1)(a) (West 2018), which provides that the bylaws include:

(a) A statement of the capital structure of the limited cooperative association, including:

1. The classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and
2. The rights to share in profits or distributions of the association;

(b) A statement of the method for admission of members.

251. It is required that the bylaws contain a statement as to each class of member's "rights to share in profits or distributions of the association." See KY. REV. STAT. ANN. § 272A.3-030(1)(a)(2) (West 2006).

252. Consequent to the eighteen-month delay in even applying for status as a worker member, for at least the first year and a half that the Cooperative is in existence, the "worker members" will be a null set.

253. One significant development in the Uniform Limited Cooperation Association Act is the enablement of investor members. Traditional cooperatives have at times encountered problems accessing capital as only participants, typically producers, could provide equity. Consumer cooperatives in which membership is limited to purchases have been subject to similar limitations. The ULCAA's enablement of investor members (*i.e.*, equity owners who are neither producers or consumers) allows cooperatives better access to capital markets and, with more capital, better access to the debt market.

As herein utilized, the investor member is different from its original concept. In this Cooperative, rather than providing equity with a rate of return (often investor member rights are similar to a corporate preferred stock and therefore a priority as to patronage dividends), the investor members are a group, including business entities, that are not either consumer (a group here limited to natural persons) or worker members. In effect it is a residual category.

that is not eligible for consumer or worker membership. Investor members may attend meetings of the Cooperative but will not have voting rights or any interest or equity in the property of the Cooperative. Investor members will receive patronage dividends dependent on the amount of business done by and through the Cooperative.<sup>254</sup>

**2.3 NON-DISCRIMINATION.** The Cooperative shall not discriminate on social or political grounds or on the basis of race, national origin, creed, age, religion, sex, gender identity, disability, sexual orientation, marital, or veteran status.

**2.4 APPLICATION.** Each person desiring to join the Cooperative will present a written application with a membership fee of one hundred dollars (\$100.00) as a consumer member and with a fee determined by the Board for a worker or investor member to any officer or director, and such application will be reviewed and either approved or disapproved by the Board of Directors. Each application will include an agreement to conform to the duties of members and abide by the Bylaws of the Cooperative. If the application is approved, the membership fee will be applied. If the application is not approved, the membership fee will be returned.

**2.5 PAYMENT PLANS.** If an individual does not have enough money for the membership fee upon application and acceptance, then the new Member may be credited with the fee as part of a loan payment program.

- (i) A Consumer Member may pay back the loan through a plan determined by the Board of Directors.
- (ii) A Worker Member may pay back the loan through paycheck deduction as determined by the Board of Directors.
- (iii) An Investor Member will have no opportunity to use a loan payment plan. The Member must pay fully during application.

**2.6 ACCOUNTS.** Members will have their own capital accounts within the Cooperative. Members are not liable for the debts of the Cooperative. A Member has no interest in specific cooperative property. Each Member agrees and waives any rights to have cooperative property partitioned. Memberships and Member Interests are not transferable.

**2.7 MEMBERSHIP CERTIFICATE.** The Cooperative will issue a member certificate to each Member (including investor class members) signed by the President and Secretary.<sup>255</sup> A Membership Certificate is not transferable. Any membership certificate issued to any Member whose member status is terminated

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<sup>254</sup>. It is required that the bylaws contain a statement as to each class of member's "rights to share in profits or distributions of the association." See KY. REV. STAT. ANN. § 272A.3-030(1)(a)(2) (West 2006).

<sup>255</sup>. See also KY. REV. STAT. ANN. § 272A.6-010(3) (West 2006) (stating a member's interest in the cooperative "may be in certificated or un-certificated form.").

as provided in section 2.11 or 2.12 or 2.13 of these Bylaws or otherwise will be, without the need for any further action by the Cooperative, canceled and thereafter null and void.

2.8 FORFEITURE BY ACTION OF DIRECTORS. A Member's position as a Member will be terminated if the Board of Directors determines, in its sole discretion, that the Member, by words or action, has acted in a manner detrimental to the Cooperative.

2.9 WITHDRAWAL. Any Member may withdraw from the Cooperative by: (i) Delivering written notice to the Secretary; (ii) surrendering the Member's membership certificate; and (iii) full satisfaction of all financial obligations to the Cooperative.

2.10 DEATH OF MEMBER. Any Member who dies shall thereby cease to be a Member. The membership reverts to the Cooperative and does not transfer to heirs.

#### 2.11 VOTING.

- (i) Each Consumer and each Worker Member will be entitled to a single vote on any matter put to the Members for a vote.
- (ii) Investor Members have no voting rights.
- (iii) The Secretary will certify annually to each Member their right to vote. A list of all Members will be posted in the meeting room and electronically, such as on social media, prior to the annual meeting.
- (iv) A Member may not vote by proxy.
- (v) In the event an individual is both a Consumer and a Worker Member, that Member is entitled to two votes.

Except as may be otherwise provided herein, all Members shall vote as a single class.

2.12 HEARING. Any voting Member wishing for a hearing before the Board of Directors on any matter pertaining to the business of the Cooperative is entitled to be given an opportunity to be heard at the next meeting of the Board of Directors following a petition of ten percent of the members or any officer and receipt of written request delivered to the Secretary of the Cooperative that hearing is desired.

2.13 DUTIES OF MEMBERS. Each Member agrees and covenants to satisfy all obligations imposed upon the Members by these bylaws or the Board of Directors.

## ARTICLE III.

MEMBER MEETINGS

3.1 ANNUAL MEETING. The annual meeting of the Members is held on the third Tuesday of each November of each year for the purpose of electing directors and transacting other business as may properly come before the meeting.<sup>256</sup> If the day fixed for the annual meeting is a legal holiday at the place of the meeting, the meeting will be held on the next succeeding business day. If the annual meeting is not held on such date, the Board of Directors will cause the meeting to be held as soon thereafter as is practicable. Unless the Board of Directors provides notice of a different location, the annual meeting of the Members will be held at the principal office of the Cooperative.<sup>257</sup>

3.2 SPECIAL MEETINGS. The Board of Directors is entitled to call a membership meeting at any time. Ten percent (10%) of the voting membership may file a petition with the President, stating the specific business related to an organic matter to be brought before the Cooperative, and demand a special membership meeting at any time. Upon the presentation of a petition from at least ten percent (10%) of the voting members, the Board of Directors shall call the special meeting for the requested purpose.

An “organic matter” is a major decision, including mergers and acquisitions, consolidation, division, sale or purchase of major property, sale of the Cooperative, sale of substantially all assets (other than inventory) outside the ordinary course, and liquidation.

## 3.3 NOTICE OF MEETING.

- (i) The Secretary must deliver notice to each Member entitled to notice of, or to vote at, the meeting either by personal delivery, mail, orally by telephone or voice-mail, by email, text message, or social media message, or by other electronic means not less than ten (10) nor more than fifty (50) days before the meeting.<sup>258</sup> The notice will state the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called.<sup>259</sup> At any time, upon properly authorized written request of the Members, the Secretary will give notice of a special meeting of Members to be held on such date and at such place and time as the Secretary may fix, not less than ten (10) or no more than

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256. If it was desired that the matters to be addressed at the annual meeting be restricted to those identified in the meeting notice, that limitation would need to be set forth in the Articles of Association. See KY. REV. STAT. ANN. § 272A.1-110(2)(d) (West 2018).

257. See also KY. REV. STAT. ANN. § 272A.5-050 (West 2018).

258. See also KY. REV. STAT. ANN. § 272A.5-070(1) (West 2018). Note that the statute provides an outer limit of 60 days’ notice of a meeting, which period has in these bylaws been reduced to 50 days.

259. With respect to the absence of a requirement of the purpose of the meeting with respect to an annual meeting, see KY. REV. STAT. ANN. § 272A.5-070(2) (West 2018). In contrast, a notice of a special meeting of the members needs to set forth each purpose of the meeting. See KY. REV. STAT. ANN. § 272A.5-070 (West 2018).

thirty-five (35) days after receipt of said request,<sup>260</sup> and if the Secretary neglects or refuses to issue such notice, the person making the request may do so and fix the date for such meeting.

- (ii) If such notice is mailed, it is deemed delivered when deposited in the United States mail properly addressed and postage prepaid to the Member at the Member's address as it appears on the membership books of the Cooperative. If the notice is given in any other manner, it is deemed delivered on the date posted.
- (iii) Whenever any notice is required to be given to any Member under the provisions of these Bylaws, the Articles of Association, or the Kentucky Limited Cooperative Association Act (herein referred to as "the Act"), a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice.<sup>261</sup>

3.4 QUORUM. Two percent (2%) of the Members constitutes a quorum at any annual or special meeting of the Cooperative.<sup>262</sup> If less than a quorum is present at any meeting, the Members present have the power to adjourn to a day certain, and the Secretary will give notice of the adjourned meeting to each Member. At least three (3) days written notice will be given by the Secretary to all Members of the time and place of the adjourned meeting.

3.5 MANNER OF ACTING. If a quorum is present, the affirmative vote of the majority of the Members entitled to vote on the subject matter at the meeting is deemed the act of the Members, unless the vote of a greater number is required by these Bylaws, the Articles of Association, or the Act.

3.6 UNANIMOUS ACTION BY MEMBERS WITHOUT A MEETING. Any action which could be taken at a meeting of the Members may be taken without a meeting if a written consent setting forth the action so taken is signed by all Members entitled to vote with respect to the subject matter thereof. Any such consent will be inserted in the minute book as if it were the minutes of a meeting of the Members.<sup>263</sup>

3.7 SUPERMAJORITY REQUIRED FOR CERTAIN DECISIONS. The following actions by the Cooperative may only be made through an election with approval of at least two-thirds of all voting Members entitled to vote:

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260. The notice of a special meeting of the members needs to set forth each purpose of the meeting. *See* KY. REV. STAT. ANN. § 272A.5-070 (West 2006).

261. *See also* KY. REV. STAT. ANN. § 272A.5-050(1) (West 2006).

262. For all intents and purposes, the Kentucky Limited Cooperative Association Act has no quorum requirement. Rather, whatever portion of the membership is present constitutes a quorum for transacting business, unless the organic rules have set a higher threshold. *See* KY. REV. STAT. ANN. § 272A.5-090 (West 2006). In this case, a de minimis two percent threshold has been adopted.

263. *See also* KY. REV. STAT. ANN. § 272A.5-140 (West 2006).



- (i) To merge the Cooperative with another Cooperative or business organization;
- (ii) to sell the Cooperative or substantially all of its assets;<sup>264</sup> or
- (iii) to amend the Articles of Association.

#### ARTICLE IV.

#### DIRECTORS<sup>265</sup>

4.1 NUMBER OF DIRECTORS. The Board of Directors will consist of up to nine (9) members, all save one of whom will be elected by the Members. If there are at least three worker members, one Director must be a worker member.<sup>266</sup> If there are investor members, one Director must be an investor member. One Director, who need not be a Member of the Cooperative,<sup>267</sup> will be appointed by the President of the Board to serve as the Cooperative's community ambassador (the "Community Director"). All other Directors must be members of the Cooperative.

#### 4.2 ELECTION OF DIRECTORS, STAGGERED.

4.2.1 From and after the first annual meeting of the members, the Directors of the Cooperative shall be divided into three classes, each class to be as nearly equal in number as possible, said classes to be designated as Class I, Class II and Class III Directors.

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264. Without making reference to the Articles of Association, it is unclear whether or not this particular bylaw is valid. Under the Kentucky Limited Cooperative Association Act, certain matters, set forth in KY. REV. STAT. ANN. § 272A.1-110(2) (West 2006), may be varied only in the articles of association; amendment only in the bylaws is a legal nullity. One of those matters that may be amended only in the articles of organization are those that would "[p]rovide for member approval of asset dispositions under KRS § 272A.15-101." See KY. REV. STAT. ANN. § 272A.1-110(2)(i) (West 2006). In consequence, this bylaw is valid only if the appropriate language is in the Articles of Association. Failure to consider whether certain provisions must be in the Articles of Association to be effective will at minimum lend to significant confusion.

265. While not express in these Bylaws, each Director, irrespective of how elected/appointed, owes their fiduciary obligations to the entity. See KY. REV. STAT. ANN. § 272A.8-180(1) (West 2006). Put a different way, a Director appointed by a particular constituency does not owe its fiduciary obligations to, and does not necessarily represent the interest of, that constituency. In the event of a vote which would pit the interest of the cooperative against the interest of a particular constituency that has appointed/designated a member of the Board of Directors, that director is obligated to look out for and protect the interests of the cooperative generally, and not to favor the particular interests of the constituency that caused said person to become a member of the Board of Directors.

266. As noted previously with respect to section 2.2.2, because there can be no worker members until at least eighteen months have elapsed from the formation of the company, the requirement that one director be a worker member is, for at least that period of time, a nullity.

267. Unless modified in the organic rules, a director must be a member. This clause, as to this position on the Board of Directors, eliminates that rule. See KY. REV. STAT. ANN. § 272A.8-030 (West 2006).

4.2.2 At the first annual meeting of the members there shall be elected nine (9) Directors of the Cooperative, as follows: (a) Three (3) members of Class I Directors who shall hold office until the second annual meeting of the members at which second annual meeting the number of Class I Directors elected to office shall hold office for a term of three (3) years or until their respective successors are duly elected and qualified; (b) three (3) members of Class II Directors who shall hold office until the third annual meeting of the shareholders at which the number of Class II Directors elected to office shall hold office for a term of three (3) years or until their respective successors are duly elected and qualified, and (c) three (3) members of Class III Directors who shall hold office for a term of three (3) years or until their respective successors are duly elected and qualified and following the expiration of their initial term of office the number of Class III Directors elected shall hold office for a term of three (3) years or until their respective successors are duly elected and qualified. In the first election of directors, all nine (9) Directors shall be elected as a single group, and each Director shall thereafter be designated as Class I, Class II and Class III by lot.

4.2.3 Any vacancy occurring on the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

4.3 Each Director will be elected for a term of three years. Each Director whose term has not expired at the time of the adoption of these Bylaws will continue to hold office until their term expires and until their successors have been duly elected and qualified. If for any reason the election of the Directors is not held, the Directors then in office will serve until their successors are duly elected and qualified. Any vacancy on the Board of Directors due to the death, resignation or removal will be filled by a majority vote of the remaining members of the Board of Directors. If any duly elected Director will be absent for four (4) successive regular board meetings, said Director will forfeit directorship and a successor selected herein provided for. Directors may serve two (2) consecutive terms if re-elected.

4.4 DUTIES. The property and business of the Cooperative will be managed by its Board of Directors.<sup>268</sup> In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all powers of the Cooperative and do all such lawful acts and things as are not by statute or by the Certificate of Association or by these Bylaws directed or required to be exercised or done by the Members.

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268. It is required that a limited cooperative association have a Board of Directors. KY. REV. STAT. ANN. § 272A.8-010(1) provides in part “a limited cooperative association shall have a Board of Directors . . .” (emphasis added). KY. REV. STAT. ANN. § 272A.8-010(1) (West 2006). That Board must be comprised of at least three individuals. See UNIF. LTD. COOP. ASS’N ACT, *supra* note 59, at § 801, (stating “the general management authority of the Board of Directors is mandatory.”).

#### 4.5 REMOVAL OF DIRECTORS OR OFFICERS.

4.5.1 At a meeting of Members called expressly for that purpose, one (1) or more Directors (including the entire Board) may be removed, with or without cause, by a vote of the holders of the majority of the Members then entitled to vote on the election of Directors.

4.5.2 Any Member may bring charges against an officer or director by filing them in writing with the Secretary of the Cooperative, together with a petition signed by ten percent (10%) of the Members, requesting the removal of the director or officer in question. The removal must be voted upon at the next regular or special meeting of the Cooperative, and by a vote of the majority of the Members but in no event less than a quorum, at such meeting of the Cooperative, may remove the director or officer. The director or officer against whom such charges are made will be informed in writing of the charges at least ten (10) days previous to the meeting and is entitled to an opportunity at the meeting to be heard in person or by counselor or both and to present witnesses, and the person or persons bringing the charges against him is entitled to the same opportunity.

4.6 REFERENDUM. Upon demand of one-third of the entire Board of Directors any matter that has been approved or passed by the Board must be referred to the membership of the Cooperative for a decision at the next special or regular meeting, provided, that a special meeting is called for this purpose unless a regular meeting is to be held within thirty (30) days from the time of such demand.

4.7 COMPENSATION. Directors and officers as such will not receive any salary or other compensation for their services. A director or officer is entitled, subject to the submission of appropriate documentation, to reimbursement for reasonable expenses incurred in the discharge of Cooperative business.<sup>269</sup>

4.8 MEETINGS OF THE BOARD. The Board of Directors may meet immediately after the annual meeting of the members for the purpose of organization and for such other business as may properly come before the meeting, provided a majority of the whole Board is present, or they may meet at such place and time as is agreed upon or upon call of the President.

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269. Under the default rule of the Kentucky Limited Cooperative Association Act, the board of directors may set the remuneration of the individual directors and those persons who are appointed to committees and are not themselves directors. *See* KY. REV. STAT. ANN. § 272A.8-100 (West 2006). The rule is qualified by “unless the organic rules otherwise provide.” *Id.* Here, it is provided that, while directors and others are entitled to reimbursement of third-party expenses, they will not receive separate compensation for service.

4.9 REGULAR MEETINGS. Regular meetings of the Board of Directors may be held at such time and place as will from time to time be determined by the Board.<sup>270</sup>

4.10 SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the President on five (5) days' notice to each Director,<sup>271</sup> provided however there may be a meeting of Directors without notice, but in such case the entire board must be present. Special meetings must be called by the President on the request of not fewer than three (3) Directors.

4.11 MEETINGS BY TELEPHONE. Members of the Board, or any committee designated by the Board, may participate in a Board or committee meeting by a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Participation by such means constitutes presence in person at a meeting.<sup>272</sup>

4.12 NOTICE OF SPECIAL MEETINGS. Notice of a special Board or committee meeting stating the place, day, and hour of the meeting must be given to a Director in person, by mail, orally by telephone or voice-mail, by email, text message, or social media message, or by other electronic means. Such notice must specify the agenda for the special Board or committee meeting, including the purpose of the meeting.<sup>273</sup> Notice sent by mail is considered effective if sent five (5) days before a meeting; all other forms of notice are effective if sent three (3) days before a meeting.

4.13 WAIVER OF NOTICE. A Director may waive any notice of any meeting of the Board of Directors as required by this agreement before or after the date and time of the meeting stated in the notice. The waiver must be in writing, signed by the Director entitled to the notice, and filed with the minutes of such meetings.<sup>274</sup> A Director's attendance, including by conference call or other means at a meeting waives any required notice to the Director of the meeting, unless the Director objects to holding the meeting or transacting business at the meeting promptly

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270. *See also* KY. REV. STAT. ANN. § 272A.8-130(1) (West 2006) (“Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.”). Many boards will schedule regular meetings of the board by resolution at the beginning of the year, allowing the directors to then calendar those obligations. If that is done, the secretary is relieved of the obligation to provide a notice of each of those regularly scheduled meetings. Still, there will need to be distributions to the directors for each meeting of information with respect to the items to be considered.

271. As a default rule that may be modified in the organic rules, directors are entitled to three days' notice of any special meeting of the Board of Directors. *See* KY. REV. STAT. ANN. § 272A.8-130(2) (2006).

272. *See also* KY. REV. STAT. ANN. § 272A.8-110(2) (West 2006).

273. With respect to the requirement that the notice of a special meeting set forth the agenda, *see* KY. REV. STAT. ANN. § 272A.8-130(2) (West 2006) (“The notice shall contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.”).

274. *See also* KY. REV. STAT. ANN. § 272A.8-140(1) (West 2006).

upon the Director's arrival and does not vote for or assent to action taken at the meeting.<sup>275</sup>

4.14 QUORUM. A majority of the number of Directors in office will constitute a quorum for the transaction of business at any Board meeting, but if less than a majority is present at a meeting, a majority of the Directors may adjourn the meeting without further notice.<sup>276</sup>

4.15 MANNER OF ACTING. The act of the majority of the Directors present at a Board meeting at which there is a quorum will be the act of the Board, unless the vote of a greater number is required by these Bylaws, the Articles of Association, or the Act.<sup>277</sup>

4.16 ACTION BY BOARD OR COMMITTEES WITHOUT A MEETING. Any action which may be taken at a Board or committee meeting may be taken without a meeting if a written consent setting forth the action so taken is signed or electronically signed by each of the Directors or by each committee member.<sup>278</sup> Any such written consent will be inserted in the minute book as if it were the minutes of a Board or a committee meeting.

4.17 RESIGNATION. Any Director may resign at any time by delivering written notice to the President, the Secretary of the Board, or to the registered office of the Cooperative, or by giving oral notice at a Directors' or Members' meeting. Any such resignation takes effect at the time specified, or if the time is not specified, upon delivery thereof, and, unless otherwise specified, the acceptance of such resignation is not necessary to make it effective.<sup>279</sup>

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275. *See also* KY. REV. STAT. ANN. § 272A.8-140(2) (West 2006).

276. This provision of the bylaws repeats the statutory default rule as to what is a quorum for a meeting of the Board of Directors. *See* KY. REV. STAT. ANN. § 272A.8-150(1) (West 2006). The quorum requirement may be changed to a number more than a simple majority only in the articles of association; a higher bylaw provision appearing only in the bylaws is not effective. *See id.* ("Unless the articles of association provide for a greater number . . .); *see also* KY. REV. STAT. ANN. § 272A.1-110(2)(e) (West 2006). There is no authority for altering the quorum of the Board of Directors to less than a majority.

277. *See also* KY. REV. STAT. ANN. § 272A.8-160(2) (West 2006) ("Unless the organic rules otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.").

278. *See also* KY. REV. STAT. ANN. § 272A.8-120(1) (West 2006). ("Unless prohibited by the organic rules, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.").

279. *See also* KY. REV. STAT. ANN. § 272A.8-060 (West 2006).

## ARTICLE V.

OFFICERS

5.1 OFFICERS. The Officers of the Cooperative will be chosen by the Directors<sup>280</sup> and will be a President, Vice-President, Secretary, and Treasurer.<sup>281</sup>

5.2 ELECTION OF OFFICERS. The Board of Directors, at its first meeting after each annual meeting of Members, will elect officers. No officer need be a member of the Cooperative.

5.3 REMOVAL OF OFFICERS. Any Officer elected by the Board of Directors may be removed at any time by the majority vote of the Board of Directors.<sup>282</sup>

5.4 RESIGNATION. Any Officer may resign by delivering written notice to the President, or the Secretary, or by giving oral notice at any meeting of the Board. Any such resignation takes effect at the time specified, or if the time is not specified, upon delivery thereof and, unless otherwise specified, the acceptance of such resignation is not necessary to make it effective.

5.5 PERSONNEL. The Board of Directors may contract with a general manager and a marketing sales manager. The Board of Directors may appoint a certified public accountant to make an annual audit of the books of the Cooperative.

5.6 SALARIES. The Board of Directors shall fix the salaries of all Officers and other employees (including worker members) of the Cooperative.

5.7 DUTIES MAY BE DELEGATED. In case of the absence of any officer or personnel of the Cooperative or for any reason that the Board may deem sufficient, the Board of Directors may delegate, for the time being, the powers or duties or any part thereof of such Officer or Personnel to any person, provided a majority of the entire Board concur therein.

5.8 EXECUTION OF INSTRUMENTS. Except as otherwise determined by the Board of Directors, all deeds, leases, transfers, contracts, notes, bonds, and other obligations authorized to be executed on behalf of the Cooperative will be signed by the President or Treasurer, or General Manager.

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280. *See also* KY. REV. STAT. ANN. § 272A.8-210(1) (West 2006).

281. *See also* KY. REV. STAT. ANN. § 272A.8-210(3) (West 2006) (“Unless the organic rules otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.”).

282. *See also* KY. REV. STAT. ANN. § 272A.8-220(1) (West 2006).

## ARTICLE VI.

PRESIDENT

6.1 DUTIES. The President is the Chief Executive Officer of the Cooperative and maintains the following duties:

- (i) Preside at all meetings of the Members and Directors;
- (ii) have a general and active management of the business of the Cooperative, and see that all orders and resolutions of the Board are carried into effect subject, however, to the right of Directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers, committee, or employee or employees of the Cooperative;
- (iii) execute all deeds, leases, transfers, contracts, notes, bonds, and other obligations on behalf of the Cooperative, which also requires the signature of the Secretary and Treasurer.

6.2 POWERS. The President is ex-officio a member of all standing committees of the Board of Directors and has the power and duties of supervision and management usually vested in the office of president of an association.

6.3 SUSPENSION OF OFFICERS. The President has power to suspend any Officer for cause or pending an investigation, but such suspended Officer is entitled to appeal to the Board of Directors within thirty (30) days, upon which a meeting of the Board will be called immediately upon notice of such an appeal being given. Time of notice to be as for special meetings as herein provided for.

## ARTICLE VII.

VICE-PRESIDENT

7.1 DUTIES. The Vice-President will perform the duties and exercise the powers of the President during any absence or incapacity of the President and will perform such other duties from time to time as delegated by the Board of Directors.

## ARTICLE VIII.

SECRETARY

8.1 RECORDS. The Secretary will record in the book or electronic folder to be kept for that purpose, all votes and minutes of all proceedings of the Cooperative

and of the Board of Directors.<sup>283</sup> The Secretary will see that proper notice is given of all meetings of the Members and of the Board of Directors, will perform such duties as may be required by the Board of Directors or the President, will make such reports and perform such other duties as are incident to said office, and will be responsible only to the Board of Directors.

8.2 MEMBERSHIP RECORDS. The Secretary will sign all membership certificates and keep complete records thereof.

8.4 BYLAWS. The Secretary will furnish all new Members with a copy, which may be electronic, of the Bylaws of the Cooperative and will send electronically, including by posting on social media, or otherwise every Member copies of all amendments and alterations in the Bylaws of the Cooperative.

## ARTICLE IX.

### TREASURER

9.1 BOND. The Treasurer will give bond in such sum as the Directors may require for the faithful discharge of the Treasurer's duties.

9.2 DUTIES. The Treasurer will receive all monies paid to the Cooperative, enter the receipts and disbursements in the books of the Cooperative to be kept for that purpose, and deposit the moneys in the depository or depositories designated by the Board of Directors in the name of the Cooperative. The Treasurer will disburse the funds of the Cooperative as may be ordered by the Board of Directors; taking proper vouchers for such disbursements. The Treasurer will produce to the Board of Directors when requested, a report of receipts and disbursements and balances on hand belonging to the Cooperative. The Treasurer will execute all deeds, leases, transfers, contracts, notes, bonds, and other obligations on behalf of the Cooperative, which also requires the signature of the Secretary and President.

9.3 OTHER DUTIES. The Treasurer will perform such other duties as may be imposed upon the Treasurer by the Board of Directors.

## ARTICLE X.

### INDEMNIFICATION

10.1 To the fullest extent permitted by the Act, the Cooperative will indemnify any person made, or threatened to be made, a party to any proceeding (whether brought by or in the right of the Cooperative or otherwise) by reason of the fact that such person is or was a Director or Officer of the Cooperative, against judgements, penalties, fines, settlements and reasonable expenses (including

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283. *See also* KY. REV. STAT. ANN. § 272A.8-210(2) (West 2006) (“The organic rules may designate or, if the rules do not designate, the board of directors shall designate, one (1) of the association's officers for preparing all records required by KRS 272A.1-120 and for the authentication of records.”).



attorney's fees) actually incurred in connection with such proceeding; and the Board may, at any time, approve indemnification of any other person which the Cooperative has the power to indemnify under the Act. This indemnification will not be deemed exclusive of any other rights to which a person may be entitled as a matter of law or by contract or by vote of the Board or the Members. The Cooperative may purchase and maintain indemnification insurance for any person to the extent allowed by applicable law. Any indemnification of a Director, including any payment or reimbursement of expenses, will be reported to the Members with the notice of the next meeting of Members or prior thereto in a written report containing a brief description of the proceedings involving the Director being indemnified and the nature and extent of such indemnification.

## ARTICLE XI.

### FINANCIALS AND PATRONAGE DIVIDENDS

11.1 PATRONAGE EARNINGS. The Cooperative operates on a cooperative basis in accordance with Subchapter T of the Internal Revenue Code. The Board determines the amount of surplus patronage earnings each year, which are those earnings that in the Board's opinion are not needed to conduct the business of the Cooperative. For fiscal years with surplus patronage earnings, the Cooperative may declare a patronage dividend to be distributed among the Members in accordance with the patronage business generated by each member during that fiscal year.<sup>284</sup> The Board's decision of whether there is a surplus and the amount returned to each member will be conclusive.

11.2 PATRONAGE DIVIDENDS. The net distributable surplus from the Cooperative's conduct of business on a cooperative basis may be returned annually to active members as patronage dividends, in proportion to their purchases from the Cooperative or their hours worked for the Cooperative during the fiscal year for which the dividend is declared, subject to the Board's determination about the formula for division of patronage between Worker, Consumer, and Investor classes and the other provisions of this Article XI. The Board will annually determine the amount of net distributable surplus for the prior fiscal year, the time and manner of distribution of patronage dividends from such amount, and any other related matters, in accordance with such policies and procedures as it may adopt from time to time. The Board may elect not to declare or distribute a patronage dividend of net distributable surplus for any fiscal year if it determines that such election is in the best interest of the Cooperative.

11.3 DEFINITIONS. As used in this Article XI, "net distributable surplus" means the amount equal to (a) the annual earnings from the conduct of business on a cooperative basis for such year as determined by the Board less (b) such reserves as the Cooperative's Board may consider necessary or appropriate for business purposes or contingencies. As used in this Article XI, "purchases" means all purchases of merchandise or services on the cooperative plan, except that: (x)

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284. See also KY. REV. STAT. ANN. §§ 272A.3-030(1)(a), (1)(e) (West 2006).

Unless otherwise specified by the Board, services will not qualify as purchases; (y) the Board may designate specified merchandise (such as sale merchandise and merchandise with low profit margins) as not being sold on the cooperative plan and not qualifying as “purchases;” and (z) the Board may establish separate allocation units or pools for specified merchandise or services, and distribute net profits on the basis of the value of business done with or for members with respect to such units or pools.

11.4 FORM OF PAYMENT; TAXATION. Patronage dividends may be distributed in cash, merchandise credits, qualified or non-qualified written notices of allocation (as such terms are defined in 26 U.S.C. § 1388), other property, or any combination of the above as determined from time to time by the Board. Any patronage dividend distributed as a qualified or non-qualified written notice of allocation must be designated as such by the Board in accordance with 26 U.S.C. § 1388. The Cooperative will redeem any qualified or non-qualified written notice of allocation with merchandise credits in full and complete satisfaction of such allocation. Merchandise credits distributed in payment of patronage dividends or in redemption of qualified or non-qualified written notices of allocation may be used, upon such terms and conditions as may be designated by the Board, at any of the Cooperative’s physical or online retail locations or any other place designated by the Board. Each member, by such act or membership alone, consents that the amount of any distribution with respect to his or her patronage which is made in the form of a qualified written notice of allocation will be taken into account as part of the member’s taxable income at its stated dollar amount in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in which the member receives such qualified written notice of allocation.

11.5 UNCLAIMED DIVIDENDS. Unless it has taken specific action to the contrary, the Board will be conclusively presumed to have exercised its discretion under the Act to cause the expiration and reversion to the Cooperative of any patronage dividend that was paid in the form of a qualified or non-qualified written notice of allocation or in merchandise credits, to the extent it has not been used or redeemed on or before 180 days following declaration of the patronage dividend. The Cooperative may, in its discretion, treat any written communication that it receives from a member regarding his or her unredeemed patronage dividend as a request for payment of the patronage dividend in cash, whether or not the member has explicitly made such a request.

11.6 DEDUCTIBILITY. If any part of the Cooperative’s annual earnings or income to be distributed and paid to members as patronage dividends would not be deductible from the Cooperative’s gross income as a patronage dividend (under applicable provisions of 26 U.S.C. §§ 1381–1388, inclusive, or any other applicable revenue statute or regulation), the declaration and payment of such patronage dividends will to such extent be deemed to have been made out of annual earnings that do so qualify as deductible, whether or not the dividend resolution of the Board made specific reference to the source of earnings out of which the patronage dividend was declared or payable.

11.7 TAX CONSENT NOTIFICATION FOR PATRONAGE EARNINGS. The IRS generally requires each Member receiving a patronage earning to include that amount as taxable gross income in the year it was received. There is an exception for consumer purchases, so patronage earnings to consumer Members are generally not taxable as long as the purchase is for consumer goods and not to be used for business or commercial purposes.

11.8 FIXED ASSETS FUND. The management, financing, and accounting for the fixed assets or physical properties of the Cooperative will be handled through the fixed assets fund. The Board of Directors has complete authority in handling the fund. This fund will handle all physical plant expansion.

11.9 INTERNAL CAPITAL ACCOUNTS. The Cooperative shall have a system of Internal Capital Accounts as equity accounts to reflect the allocation of net worth among the Consumer and Investor Members and to determine the redemption value of Ownership Shares and Written Notices of Allocation.

11.10 INDIVIDUAL CAPITAL ACCOUNTS. The Cooperative will maintain for each Worker Member an Individual Capital Account that reflects the value of the Member's relative equity in the Corporation.

11.10.1 INDIVIDUAL CAPITAL ACCOUNTS GENERALLY. The balance in any Individual Capital Account results from and is increased by: (a) The initial Membership Fee, plus any other paid-in capital from or on behalf of the Member in excess of the Membership Fee, and (b) the amount of any Written Notices of Allocation issued to the Member. The balance in any Individual Capital Account is decreased by: (a) Any losses allocated to the Individual Capital Accounts, and (b) the redemption, in cash or notes of indebtedness, of a Written Notice of Allocation previously issued to the Member and recorded in the Member's Individual Capital Account.

11.11 ALLOCATION BETWEEN ACCOUNTS AND DIVIDENDS. In years when a patronage dividend is paid, twenty percent (20%) of the Patronage Dividend will be distributed to members and the other eighty percent (80%) will be distributed to the Individual Capital Accounts and Internal Capital Accounts of Owners.

## ARTICLE XII.

### FISCAL YEAR

12.1 FISCAL YEAR. The fiscal year begins on the 1st day of January each year and will end on the 31st day of December each year.

12.2 AUDIT. The Board of Directors must require the production of an annual certified audit by a certified public accountant following the 2019 fiscal year end and every year thereafter. A copy of such audit will be given to all voting members of the Cooperative at the next annual meeting.

## ARTICLE XIII.

OWNERSHIP OF PROPERTY

13.1 All assets of the Cooperative whether real, personal, intangible, or mixed, will be the sole property of the Cooperative and no Member will be deemed to own any interest therein at any time, including upon the dissolution of the Cooperative.<sup>285</sup>

## ARTICLE XIV.

AMENDMENTS

14.1 The Bylaws may be altered or amended by vote of two-thirds<sup>286</sup> of the members<sup>287</sup> cast at any regular or special meeting of the Cooperative, provided the notice of the proposed amendments has been mailed to each member of the Cooperative at least ten (10) days before the date of such meeting, or has been presented in writing at a previous regular or special meeting of the Cooperative.<sup>288</sup>

## ARTICLE XV.

NEUTRALITY

15.1 The Cooperative recognizes that it is the policy of the United States to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

15.2 The Cooperative shall adopt a neutral position in the event any labor organization seeks to represent employees of the Cooperative.

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285. The Kentucky Limited Cooperative Association Act does not contain an express statement to the effect that the members do not have an ownership interest in the cooperative's assets. The point, however, is addressed from the opposite perspective in KY. REV. STAT. ANN. § 272A.6-010 (West 2006), which defines a "member's interest" in the cooperative.

286. The default rule under the Kentucky Limited Cooperative Association Act for amendment of the bylaws requires a majority of the members, with particular rules governing the votes of investor members. *See* KY. REV. STAT. ANN. § 272A.4-050(2) (West 2006). It is permitted that the bylaws set a threshold higher than a majority, as has here been done. *See id.*; *see also* KY. REV. STAT. ANN. § 272A.1-080(8) (West 2006) ("No member or other person shall have a vested property right resulting from any provision of the organic rules which may not be modified by its amendment or as otherwise permitted by law.").

287. As a default rule that may be modified only in the articles of association, *see* KY. REV. STAT. ANN. § 272A.1-110(2)(h) (West 2006), the capacity to amend the bylaws is vested in the membership. *See* KY. REV. STAT. ANN. § 272A.4-020(1) (West 2006).

288. A procedure for proposing and acting upon revisions to the bylaws is set forth in KY. REV. STAT. ANN. §§ 272A.4-020, -030, -050 (West 2006).

15.3 Neutrality means that the Cooperative will not conduct itself or communicate in a negative, derogatory, or demeaning nature about any labor organization that seeks to represent employees of the Cooperative, including but not limited to comment on the motives, integrity, character, or performance of any labor organization or its officers and agents. The Cooperative shall not engage in conduct, threats, misrepresentations, or delaying tactics that might frustrate the desires of employees or interfere with employee efforts to select representation by a labor organization. The Cooperative shall not provide any support or assistance of any kind to any person or group which is opposed to the principles of this Article. In addition, neutrality means that the Cooperative and its agents will not conduct a campaign to oppose employee representation by a labor organization. Upon request, the Cooperative will advise its employees in writing and orally that it is not opposed to a labor organization being selected as their bargaining agent.

15.4 The Cooperative agrees to instruct its owners and agents (including Board Members and management) on the obligations and duties of this Article and to direct its agents to avoid any conduct or actions that are inconsistent with this Article.

## ARTICLE XVI.

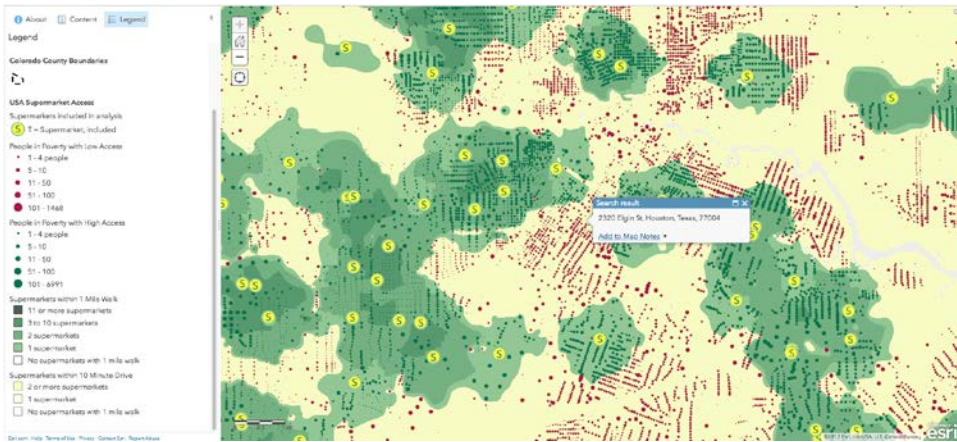
### ADOPTION

16.1 The following Bylaws of the Louisville Community Grocery, LCA (the “Cooperative”) were adopted by the organizers on \_\_\_\_\_.

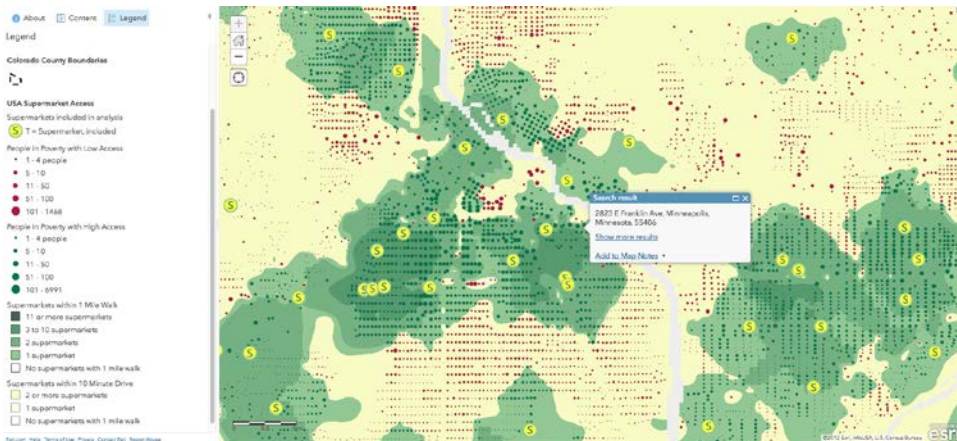
### VII. APPENDIX B

This Appendix shows the location of grocery cooperatives located in food deserts or mixed-income areas.

#### Nu Waters Cooperative



#### Seward Community Cooperative



### Renaissance Cooperative



### Nola Cooperative

