

# **CONFLICT OF INTEREST POLICY AND AGREEMENT**

## **ARTICLE I**

### **PURPOSES**

It is important for Le D.I.V.E. Association's directors, officers, and coordinators to be aware that both real and apparent conflicts of interest or dualities of interest sometimes occur in the course of conducting the affairs of the association and that the appearance of conflict can be troublesome even if there is in fact no conflict whatsoever. Conflicts occur because the many persons associated with the Association should be expected to have, and do in fact generally have multiple interests and affiliations and various positions of responsibility within the community. In these situations a person will sometimes owe identical duties of loyalty to two or more associations. The purpose of the conflict of interest policy is to protect the Association's tax-exempt interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Association or might result in a possible excess benefit transaction. The policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Conflicts are undesirable because they potentially or eventually place the interests of others ahead of the Association's obligations to its educational purposes and to the public interest. Conflicts are also undesirable because they often reflect adversely upon the person involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. However, the long-range best interests of the Association do not require the termination of all association with persons who may have real or apparent conflicts that are harmless to all individuals or entities involved.

Each member of the board of directors and the coordinators of the Association has a duty of loyalty to the corporation. In addition, directors of the corporation shall avoid acts of self-dealing which may adversely affect the tax-exempt status of the

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Association or cause there to arise any sanction or penalty by a governmental authority.

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

## **ARTICLE II**

### **DEFINITIONS**

#### **2.1 Interested Person**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

#### **2.2 Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (a) An ownership or investment interest in any entity with which the Association has a transaction or arrangement,
- (b) A compensation arrangement with the Association or with any entity or individual with which the Association has a transaction or arrangement, or
- (c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Association is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may

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have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

### **ARTICLE III**

#### **PROCEDURES**

##### **3.1 Duty to Disclose**

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

##### **3.2 Determining Whether a Conflict of Interest Exists**

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

##### **3.3 Procedures for Addressing the Conflict of Interest**

- (a) An interested person may make a presentation at the Board of Directors, but after the presentation, she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (b) The President shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (c) After exercising due diligence, the Board of Directors shall determine whether the corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors

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shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

### **3.4 Violations of the Conflicts of Interest Policy**

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

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

## **ARTICLE IV**

### **RECORDS OF PROCEEDINGS**

#### **4.1 Minutes**

The minutes of the Board of Directors meeting shall contain:

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

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

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## ARTICLE V

### ANNUAL STATEMENTS

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

- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,
- (c) Has agreed to comply with the policy, and
- (e) Understands that the corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## ARTICLE VI

### PERIODIC REVIEWS

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

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management corporations conform to the corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

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## **ARTICLE VII**

### **USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in Article VII, the corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

### **CERTIFICATE OF ADOPTION OF CONFLICT OF INTEREST POLICY AND AGREEMENT**

I do hereby certify that the above stated Conflict of Interest Policy and Agreement for Le D.I.V.E. Association were approved and adopted by the Board of Directors on Thursday, September 12, 2013 and constitute a complete copy of the Conflict of Interest Policy of the Association.

President \_\_\_\_signed\_\_\_\_\_

Secretary\_\_\_\_signed\_\_\_\_\_

Date: 13 October 2013