

# Bylaws and Charter

## of the Fargo Moorhead Junior Derby

Revision Date: 12 December 2014

The undersigned, a majority of whom are citizens of the United States, desiring to form a Non-Profit Corporation under the Non-Profit Corporation Law of the State of North Dakota, do hereby certify:

### **ARTICLE I: NAME**

The name of the Corporation shall be the Fargo Moorhead Junior Derby.

### **ARTICLE II: OFFICES**

The principal office of the Corporation in the State of North Dakota shall be located in the City of Fargo. The Corporation may have such other offices, either within or without the State of North Dakota, as the Board of Directors may designate from time to time.

The registered office of the Corporation required by the Nonstock Corporation Law to be maintained in the State of North Dakota may be, but need not be, identical to the principal office in the State of North Dakota, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent.

### **ARTICLE III: PURPOSE**

The Fargo Moorhead Junior Derby has as its purpose the fostering of the international sport of Junior Roller Derby in the Fargo/Moorhead area. This may include flat-track or banked-track play, men's, women's, or co-educational play, and players up to the age of 18 years, but is not limited to these areas of the sport. Activities may include organizing leagues and teams to play the sport of Roller Derby; obtaining, building, and maintaining facilities dedicated primarily to the playing of Roller Derby; and obtaining the support of other organizations to facilitate these activities. Activities may further include additional functions that coincide with or support the primary purpose of the organization.

The Fargo Moorhead Junior Derby is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

### **ARTICLE IV: BOARD OF DIRECTORS**

#### Section 1. General Powers

The business and affairs of the Corporation shall be managed by its Board of Directors.

#### Section 2. Number, Tenure and Qualifications

The initial number of directors of the Corporation shall be five (5), except that the Board of Directors may, subject to any restrictions set forth in the Corporation's Articles of Incorporation, from time to time alter the number of directors then in office. In the event the initial directors increase the size of the Board, simultaneously with the election of such additional directors, the initial term of such additional directors (which shall be either one (1) year or two (2) years) shall be determined by lottery such that the terms of one-half of the entire number of directors shall expire in alternating years. Except as otherwise provided herein, each director shall serve a term of one (1) years to begin on the date of election. A majority of the directors shall have some positive experience that relates to running and maintaining businesses and organizations, profit or non-profit.

### Section 3. Manner of Selection

The initial directors shall be those listed in the Articles of Incorporation. Directors shall be nominated by at least one (1) director currently serving on the Board and shall be elected by secret ballot and by the affirmative vote of an adult (age 18 or over) member of the league in attendance at the Annual Meeting of the directors, or at such other meeting at which the election of directors is undertaken.

### Section 4. Compensation

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof.

This being a non-profit, volunteer-run corporation, at no time shall members of the Board of Directors, Officers, or any other leadership or membership be fiscally compensated for normal service to the corporation.

### Section 5. Annual Meeting and Regular Meetings

The Annual Meeting of the Board of Directors shall be held at 7:00 p.m. on the first Tuesday in August of each year at the Corporation's principal offices, or such other time and place fixed by the Board of Directors. Regular Meetings of the Board of Directors shall be held at such times and places fixed by the Board of Directors, pursuant to prior notice either by resolution adopted at the last meeting of the Board of Directors or in accordance with the provisions of Section 6 of this Article II. All such meetings shall be open to attendance by the general public, including all league members.

### Section 6. Special Meetings

Special Meetings of the Board of Directors may be called by or at the request of the President or any one (1) director. The person or persons authorized to call Special Meetings of the Board of Directors may fix the time and place, within the State of New Mexico, as the time and place for holding any Special Meeting of the Board of Directors called by them.

### Section 7. Notice

Notice stating the place, day, and hour of any annual or special meeting shall be delivered not less than ten (10) nor more than fifty (50) days before the meeting date, by or at the direction of the President, the Board of Directors, or other persons calling the meeting, to each director. Notice may be (i) oral unless prohibited by the Bylaws; or (ii) written. Notice may be communicated in person, by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication, or by mail or private carrier and, if these forms of personal notice are impracticable, notice may be communicated by newspaper or general circulation in the area where published, or by radio, television or other form of public

broadcast. If mailed, such notice is effective when deposited in the United States mail, addressed to the director at his or her home or business address, with postage whereon prepaid. Oral notice is effective when communicated. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. If notice is communicated by any other means, it is effective when received.

Whenever any notice is required to be given to any director of the Corporation under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of any law, a waiver thereof in writing, signed at any time, whether before or after the time of the meeting, by the director entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting and objects thereto to the transaction of any business because the meeting is not lawfully called or convened.

#### Section 8. Quorum

A majority of the number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Although less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. Responsibility of this quorum falls to the Secretary.

#### Section 9. Removal

Any director may be removed from office by the affirmative vote of a majority of the directors then in office, or by a vote of the adult member of the league.

#### Section 10. Vacancies

The Board of Directors may fill any vacancy in the board by the affirmative vote of a majority of its directors then in office, although less than a quorum. In the event the vacancy was created by the removal of the director in question by membership vote, the league membership shall be able to veto the selected replacement by majority vote, provided that the membership has a proposed replacement who is acceptable to the remaining directors. In the event no successor can be found who is acceptable to both the directors and the membership, the position shall remain unfilled until the following regular election. Each person so elected to fill a vacancy shall be elected to serve until his or her successor is elected.

#### Section 11. Presumption of Assent

A director of the Corporation who is present at a meeting of the Board of Directors or a committee thereof at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director files a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who votes in favor of such action.

#### Section 12. Committees

The Board of Directors may designate one or more committees. Unless otherwise provided herein, each committee shall have a chairperson who shall be a member of the Board. The Board shall establish the number of persons who serve as members of each committee.

Committee members (other than the Chairperson) need not be members of the Board or officers of the Corporation and shall be chosen by the President, subject to the approval of the Board. Each committee member shall serve a one (1) year term or until his or her successor is appointed by the President or until such committee member shall resign. Each

committee shall be responsible to the Board. Any director or officer of the league may attend any meeting of any committee without voice, except as provided otherwise herein.

#### Section 13. Unanimous Consent Without Meeting

Any action required or permitted by the Articles of Incorporation or Bylaws or any provision of law to be taken by the Board of Directors at a meeting or by resolution may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors then in office.

#### Section 14. Compensation

Directors shall receive no salaries for their services but, by resolution of the Board, may receive an amount sufficient to defray their expenses for attendance at meetings and in performance of such other services as may be required of them by the Board.

#### Section 15. Special Committees

Special Committees may be appointed by the President or the Board of Directors to perform such duties and have such authority as may be assigned to them by the Board of Directors. Any director or officer of the league may attend any meeting of any such committee without voice, except as provided otherwise herein.

#### Section 16. Subsidiary Organizations

Subsidiary organizations may be created by the majority vote of the board of directors. Any such subsidiary organizations shall be initially organized by the board of directors. Any changes to organization structure, purpose, location, policy, or any other activities for which the LCRDA is legally liable shall be approved by the board of directors.

### **ARTICLE V: OFFICERS**

#### Section 1. Number

The principal officers of the Corporation shall be a President, one (1) or more Vice-Presidents, a Secretary, and a Treasurer. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary and the offices of President and Vice-President.

#### Section 2. Election and Term of Office

The Corporation's officers shall be elected by the majority vote of adult Members at the annual meeting of the Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be held. Each officer shall hold office for a term of one (1) year, commencing on the day of his or her election, or until his or her successor shall have been duly elected and shall have qualified, or until his or her death or resignation or until he or she shall have been removed from office in the manner hereinafter provided. No officer may serve more than four (4) consecutive one (1) year terms.

#### Section 3. Removal

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, or by a majority vote of 3/4 of the adult Members of the league.

#### Section 4. Vacancies

A vacancy in any principal office, because of death, resignation, removal, disqualification, or otherwise, shall be filled by the Board of Directors for the unexpired portion of the term. In the event the vacancy was created by the removal of the officer in question by membership

vote, the league membership shall be able to veto the selected replacement by majority vote, provided that the membership has a proposed replacement who is acceptable to the board of directors. Since the position of each officer is vital to the day-to-day operations of the league, in the event no successor can be found who is acceptable to both the directors and the membership, the directors shall fill the vacancy without reference to membership preferences.

#### Section 5. The President

The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. The President shall, when present, preside at all meetings of the Board of Directors. The President may, with the Secretary or any other proper officer of the Corporation thereunder authorized by the Board of Directors, sign any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by the Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incidental to the office of the President and such other duties as may be prescribed by the Board of Directors from time to time. The President shall be an ex-officio member of all the Corporation's committees.

#### Section 6. The Vice-Presidents

In case of the absence or disability of the President, the Vice-Presidents, in the order of their priority (the first Vice-President shall be designated as the President-Elect), shall perform the duties of the President, and shall also perform such other duties as may be required by the Board of Directors.

#### Section 7. The Secretary

The Secretary shall: (a) keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; (b) be custodian of the corporation records; (c) prepare and serve all notices of meetings required to be served under these Bylaws; and (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board of Directors. Must keep and all attendance of all meetings and practices. The Secretary position shall my held my an adult (18 years or older).

#### Section 8. The Treasurer

If required by the Board of Directors, the Treasurer will give a bond for the faithful discharge of his or her duties and any such bond shall remain in the custody of the President. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; shall sign all checks made by the Corporation, except when the Board of Directors shall otherwise direct, but any check in an amount in excess of Five Hundred Dollars (\$500.00) shall be signed jointly by the Treasurer and by such other person designated by the Board; receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these Bylaws and (b) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board of Directors.

### **ARTICLE VI: CONTRACTS, LOANS, CHECKS AND DEPOSITS**

#### Section 1. Contracts

The Board of Directors may authorize any officer or officers, agent, or agents, to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authorization may be general or confined to specific instances.

#### Section 2. Loans

No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Board of Directors. Such authorization may be general or confined to specific instances.

#### Section 3. Checks, Drafts, Etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents, of the Corporation and in such manner as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

#### Section 4. Deposits

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as may be selected by or under the authority of the Board of Directors.

#### Section 5. Taxable Activities

The corporation will distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The corporation will not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The corporation will not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The corporation will not make any investments in a manner as to subject it to tax under section 4944 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The corporation will not make any taxable expenditures as defined in section 4945 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

#### Section 6. Conflicts of Interest

This corporation shall maintain as Appendix A to these bylaws a conflict of interest policy consistent with the Internal Revenue Service's recommended Conflict of Interest Policy for 501(c)3 Exempt Organizations, and shall comply with this Conflict of Interest Policy at all times when determining or dealing with any conflict of interest. This policy shall be maintained and amended using the procedures set forth in these bylaws.

### **ARTICLE VII: INDEMNIFICATION**

#### Section 1. Certain Definitions

All capitalized terms used in this Article VII and not otherwise hereinafter defined in this Section 1 shall have the meanings set forth in Section 181.0103 of the Statute. The following capitalized terms (including any plural forms thereof) used in this Article VII shall be defined as follows:

(a) "Affiliate" shall include, without limitation, any corporation, partnership, joint venture, employee benefit plan, trust or other enterprise that, directly or indirectly through

one or more intermediaries, controls or is controlled by, or is under common control with, the Corporation.

(b) "Authority" shall mean the entity selected pursuant to Section 4 of this Article VII by the director or officer to determine his or her right to indemnification.

(c) "Board-Appointed Committee" shall mean a committee duly appointed by the Board of Directors and consisting solely of two (2) or more directors not at the time parties to the subject Proceeding or any related Proceeding.

(d) "Board of Directors" shall mean the entire then elected and serving Board of Directors of the Corporation, including all members thereof who are Parties to the subject Proceeding or any related Proceeding, unless specifically stated otherwise herein.

(e) "Breach of Duty" shall mean a director's or officer's breach or failure to perform his or her duties to the Corporation and his or her breach or failure to perform those duties constitute any of the following:

(i) a willful failure to deal fairly with the Corporation in connection with a matter in which the director or officer has a material conflict of interest;

(ii) a violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful;

(iii) a transaction from which the director or officer derived an improper personal profit; and

(iv) willful misconduct.

(f) "Controlled Subsidiary" shall mean any subsidiary of the Corporation, at least 80% of the outstanding voting stock of which is owned directly or indirectly by the Corporation.

(g) "Corporation" as used herein and as defined in the Statute and incorporated by reference into the definitions of certain other capitalized terms used herein, shall mean this Corporation, including, without limitation, any successor corporation or entity to this Corporation by way of merger, consolidation or acquisition of all or substantially all of the assets of this Corporation.

(h) "Director" or "Officer" shall mean any of the following: (i) a natural person who is or was at the time of the events giving rise to the Proceeding a director or officer of the Corporation; (ii) a natural person who, while a director or officer of the Corporation, is or at the time of the events giving rise to the Proceeding was serving at the Corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; however, it shall be conclusively presumed that any Director or Officer serving as a director or officer, partner, trustee, or member of an Affiliate shall be serving at the request of the Corporation; or (iii) a natural person who, while a director or officer of the Corporation, is or was serving an employee benefit plan because his or her duties to the Corporation also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan. "Director" or "Officer" shall include the estate, heirs, personal representatives, administrators, guardians and conservators of any deceased or former "Director" or "Officer."

(i) "Disinterested Quorum" shall mean a quorum of the Board of Directors consisting of Directors who are not Parties to the subject Proceeding or any related Proceeding.

(j) "Expenses" shall include fees, costs, charges, disbursement, attorneys' fees, and other expenses incurred in connection with a Proceeding.

(k) "Liability" shall include the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employee benefit plan, and reasonable expenses.

(l) "Party" shall mean a natural person who was or is, or is threatened to be made, a named defendant or respondent in a Proceeding, or any Director or Officer who is or was a witness in a Proceeding at a time when he or she has not otherwise been formally named a Party thereto.

(m) "Proceeding" shall mean (i) any threatened, pending or completed action, suit, claim, litigation, investigation, arbitration or proceeding, whether civil, criminal, administrative or investigative, formal or informal, predicated on foreign, federal, state or local law, rule or regulation brought by or in the right of the Corporation or by any other person or by any governmental or administrative authority; (ii) all proceedings brought before an Authority or otherwise to enforce rights hereunder; (iii) any appeal from a Proceeding; and (iv) any proceeding in which the Director or Officer is a plaintiff or petitioner because he or she is a Director or Officer; provided, however, that any such Proceeding under this subsection (iv) must be authorized by a majority vote of a Disinterested Quorum.

(n) "Statute" shall mean Sections 181.0103 through 181.1701, inclusive, of the Wisconsin Nonstock Corporation Law, Chapter 181 of the Wisconsin Statutes, as the same shall then be in effect, including any amendments thereto, but, in the case of any such amendment, only to the extent such amendment permits or requires the Corporation to provide broader indemnification rights than the Statute permitted or required the Corporation to provide prior to such amendment.

## Section 2. Mandatory Indemnification.

(a) The Corporation shall indemnify a Director or Officer, to the extent he or she has been successful on the merits or otherwise in the defense of a Proceeding, for all reasonable expenses incurred in connection with the defense of the Proceeding if the Director or Officer was a party thereto because he or she is or was at the time of the events upon which the Proceeding was based a Director or Officer of the Corporation.

(b) In all cases not included in Section 2(a) of this Article VII, the Corporation shall indemnify a Director or Officer against Expenses and Liabilities incurred by the Director or Officer in a Proceeding to which the Director or Officer was a party because he or she is or was at the time of the event upon which the Proceeding was based a Director or Officer of the Corporation, unless liability was incurred because the Director or Officer engaged in conduct constituting a Breach of Duty.

## Section 3. Procedural Requirements.

(a) A Director or Officer who seeks indemnification under Section 2 of this Article VII shall make a written request therefor to the Treasurer of the Corporation or, if the party seeking indemnification is the Treasurer, to the President of the Corporation.

(b) Within ninety (90) days of the Corporation's receipt of such request, as provided in Section 3(a) of this Article VII, a Disinterested Quorum or, if a Disinterested Quorum cannot be obtained, a Board-Appointed Committee shall meet to determine, by a majority vote thereof, whether the Director or Officer requesting indemnification is entitled to such indemnification pursuant to the requirements of Section 2 of this Article VII. Upon approval of such request, indemnification by the Corporation of the requested amount of Liabilities shall be paid to the Director or Officer immediately (net of any Expenses previously advanced pursuant to Section 5 of this Article VII).

(c) In the event that, pursuant to Section 3(b) of this Article VII, the Disinterested Quorum or the Board-Appointed Committee, as the case may be, denies the Director's or Officer's request for indemnification, or in the event that neither a Disinterested Quorum nor a Board-Appointed Committee can be obtained, the Board of Directors shall immediately authorize by resolution that an Authority, appointed as provided in Section 4 of this Article VII, determine whether the Director's or Officer's conduct constituted a Breach of Duty and, therefore, whether indemnification should be denied hereunder.

(d)

(i) If the Board of Directors does not authorize an Authority to determine the Director's or Officer's right to indemnification hereunder within such 60-day period and/or

(ii) if indemnification of the requested amount of Liabilities is paid by the Corporation, then it shall be conclusively presumed for all purposes that a Disinterested Quorum has affirmatively determined that the Director or Officer did not engage in conduct constituting a Breach of Duty and, in the case of subsection

(i) above (but not subsection)

(ii) indemnification by the Corporation of the requested amount of Liabilities shall be paid to the Director or Officer immediately.

#### Section 4. Determination of Indemnification.

(a) If the Board of Directors authorizes an Authority to determine a Director's or Officer's right to indemnification pursuant to Section 3 of this Article VII, then the Director or Officer requesting indemnification shall have the absolute discretionary authority to select one of the following as such Authority:

(i) An independent legal counsel selected by majority vote of a Disinterested Quorum, or, if a Disinterested Quorum cannot be obtained, by majority vote of a Board-Appointed Committee, or, if a Disinterested Quorum or a Board-Appointed Committee cannot be obtained, by a majority vote of the full Board of Directors, including Directors who are parties to the same or related Proceedings; or

(ii) A panel of three (3) arbitrators selected from panels of arbitrators of the local American Arbitration Association, provided that: (A) one arbitrator shall be selected by such Director or Officer, the second arbitration shall be selected by a majority vote of those Directors entitled under subsection (i) of this Section 4 to select independent legal counsel, and the third arbitrator shall be selected by the two previously-selected arbitrators; and (B) in all other respects, such panel shall be governed by the American Arbitration Association's then existing Commercial Arbitration Rules; or

(iii) The affirmative vote or unanimous written consent of the members of the Corporation if there are members having voting rights at the time. However, membership rights owned by or voted under the control of persons who at the time of the vote or consent are parties to the same or related Proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination; or

(iv) A court of competent jurisdiction upon application by the Director or Officer for an initial determination of entitlement to indemnification or for review by the court of an adverse determination under Sections 3 and 4 of this Article VII.

Indemnification shall be ordered if the court determines that the Director or Officer is entitled to indemnification under Section 2 or 3 or that the Director or Officer is fairly

and reasonably entitled to indemnification in view of all of the relevant circumstances.

(b) If any such determination by the selected Authority, there shall exist a rebuttable presumption that the Director's or Officer's conduct did not constitute a Breach of Duty and that indemnification against the requested amount of Liabilities is required. The burden of rebutting such a presumption by clear and convincing evidence shall be on the Corporation or such other party asserting that such indemnification should not be allowed.

Furthermore, the termination of a Proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the Director or Officer is not required under Section 2 or 3 of this Article VII.

(c) The Authority shall make its determination within sixty (60) days of being selected and shall submit a written opinion of its conclusion simultaneously to both the Corporation and the Director or Officer.

(d) If the Authority determines that indemnification is required hereunder, the Corporation shall pay the entire requested amount of Liabilities (net of any Expenses previously advanced pursuant to Section 5), including interest owed at a reasonable rate, as determined by the Authority, within ten (10) days of receipt of the Authority's opinion; provided that, if it is determined by the Authority that a Director or Officer is entitled to indemnification against Liabilities incurred in connection with some claims, issues or matters, but not as to other claims, issues or matters, involved in the subject Proceeding, the Corporation shall be required to pay (as set forth above) only the amount of such requested Liabilities as the Authority shall deem appropriate in light of the circumstances of such Proceeding.

(e) The determination by the Authority that indemnification is required hereunder shall be binding upon the Corporation regardless of any prior determination that the Director or Officer engaged in a Breach of Duty.

(f) All Expenses incurred in the determination process under this Section 4 by either the Corporation or the Director or Officer, including, without limitation, all Expenses of the selected Authority, shall be paid by the Corporation.

#### Section 5. Allowance of Expenses as Incurred.

(a) The Corporation shall pay or reimburse, from time to time, or at any time within ten (10) days after the receipt of the Director's or Officer's written request therefor, the reasonable Expenses incurred by a Director or Officer who is a party to a Proceeding, as those Expenses are incurred, provided that the Director or Officer satisfies the following conditions:

(i) The Director or Officer furnishes to the Corporation an executed written affirmation of his or her good-faith belief that he or she has not engaged in conduct which constitutes a Breach of duty; and

(ii) The Director or Officer furnishes to the Corporation an unsecured written agreement, executed by the Director or Officer personally or on his or her behalf, to repay any advances made under this Section 5 to the extent it is ultimately determined that the Director or Officer is not entitled to be indemnified by the Corporation for such Expenses pursuant to Sections 2, 3 and 4 of this Article VII.

(b) If the Director or Officer must repay any previously advanced Expenses pursuant to this Section 5, such Director or Officer shall not be required to pay interest on such amounts.

#### Section 6. Indemnification and Allowances of Expenses of Certain Others.

(a) The Corporation shall indemnify an individual who is or was a director or officer of any Controlled Subsidiary (who is not or was not otherwise serving as a Director or Officer) against all Liabilities, and shall advance the reasonable Expenses incurred by such director or officer in a Proceeding, but only to the extent such Proceeding is based on acts or omissions alleged to have occurred after the Controlled Subsidiary has become a subsidiary of the Corporation and, otherwise, to the same extent hereunder as if such director or officer incurred such Liabilities because he or she was a Director or Officer, or if such director or officer is a party thereto because he or she is or was a director or officer of the Controlled Subsidiary.

(b) The Board of Directors may, in its sole and absolute discretion, as it deems appropriate, and pursuant to a majority vote thereof, indemnify an individual who is or was a director or officer of an Affiliate (who is not otherwise serving as a Director or Officer or a director or officer of a Controlled Subsidiary) against all Liabilities, and shall advance the reasonable Expenses incurred by such director or officer in a Proceeding to the same extent hereunder as if such director or officer incurred such Liabilities because he or she was a Director or Officer, or if such director or officer is a Party thereto because he or she is or was a director or officer of the Affiliate.

(c) The Board of Directors may, in its sole and absolute discretion, as it deems appropriate, and pursuant to a majority vote thereof, indemnify against the Liabilities incurred by, and/or provide for the advance or allowance of reasonable Expenses of, an employee or authorized agent of the Corporation acting within the scope of his or her duties as such and who is not otherwise a Director or Officer.

#### Section 7. Insurance

The Corporation may purchase and maintain insurance on behalf of a Director or Officer or any individual who is or was an employee or authorized agent of the Corporation, or to reimburse itself, against any Liability asserted or incurred, and expenses incurred, by such Director or Officer or individual in connection with a Proceeding brought against such Director or Officer or individual in his or her capacity as such or arising from his or her status as such, regardless of whether the Corporation is required or permitted to indemnify against any such Liability or to reimburse for any such Expenses incurred under this Article VII.

#### Section 8. Severability

If any provision of this Article VII shall be deemed invalid or inoperative, or if a court of competent jurisdiction determines that any of the provisions of this Article VII contravene public policy, this Article VII shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such provisions which are invalid or inoperative or which contravene public policy shall be deemed, without further action or deed by or on behalf of the Corporation, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable; it being understood that it is the Corporation's intention to provide the Directors and Officers with the broadest possible protection against personal liability allowable under the Statute.

#### Section 9. Nonexclusivity of Article VII

The rights of a Director or Officer (or any other person) granted under this Article VII shall not be deemed exclusive of any other rights to indemnification against Liabilities or allowance of Expenses which the Director or Officer (or such other person) may be entitled to under any written agreement, Board resolution, or otherwise, including, without limitation, under the Statute. Nothing contained in this Article VII shall be deemed to limit the Corporation's obligations to indemnify against Liabilities or allow Expenses to a Director or Officer under the Statute.

## Section 10. Amendment; Effective Date

(a) This Article VII may only be altered, amended or repealed by the affirmative vote of a majority of the Directors of the Corporation represented at a meeting at which a quorum is present and entitled to vote.

(b) This Article VII shall be deemed to be a contract between the Corporation and each previous, current or future Director and Officer. The provisions of this Article VII shall apply to all Proceedings commenced after the date hereof, whether arising from any action taken or any failure to act before or after such date, and any repeal or other limitation of this Article VII or any repeal or limitation of the Statute or any other applicable law shall not limit any rights of indemnification against Liabilities or allowance of Expenses then existing or arising out of events, acts or omissions occurring prior to such repeal or limitation, including, without limitation, the right to indemnification against Liabilities or allowance of Expenses for Proceedings commenced after such repeal or limitation to enforce this Article VII with regard to acts, omissions or events arising prior to such repeal or limitation.

## **ARTICLE VIII: AMENDMENTS**

### Section 1. Board of Directors

The Board of Directors may from time to time, by vote of a majority of its members, adopt, amend or repeal any or all of the Bylaws of this Corporation.

### Section 2. Implied Amendments

Any action taken or authorized by the Board of Directors which would be inconsistent with the Bylaws then in effect, but which is taken or authorized by affirmative vote of not less than the number of members or the number of directors required to amend the Bylaws so that the Bylaws would be consistent with such action, shall be given the same effect as though the Bylaws had been temporarily amended or suspended as far, but only as far, as is necessary to permit the specific action so taken or authorized.

## **ARTICLE IX: CORPORATE SEAL**

The Corporation shall have no seal.

## **ARTICLE X: DISSOLUTION**

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

## **Appendix A : Conflict of Interest Policy**

### **Article I: Purpose**

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

### **Article II: Definitions**

## 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. Financial Interest

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

An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,

A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization 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 have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article III: Procedures**

### 1. Duty to Disclose

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

### 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, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists by majority vote.

### 3. Procedures for Addressing the Conflict of Interest

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

The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the governing board or committee shall determine whether the Organization 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.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization'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.

#### 4. Violations of the Conflicts of Interest Policy

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

If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take

appropriate disciplinary and corrective action.

#### **Article IV: Records of Proceedings**

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

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 governing board's or committee's decision as to whether a conflict of interest in fact existed.

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.

#### **Article V: Compensation**

A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

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

No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **Article VI: 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:

Has received a copy of the conflicts of interest policy,

Has read and understands the policy,

Has agreed to comply with the policy,

and

Understands the Organization 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 VII: Periodic Reviews**

To ensure the Organization 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:

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

Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization'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.

**Article VIII: Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization 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.