

**BY-LAWS OF  
DOWNERS GROVE DOWNTOWN MANAGEMENT CORPORATION  
AS ADOPTED MARCH 7, 2019**

**ARTICLE I  
NAME**

1.1 **Name.** The name of this corporation shall be Downtown Downers Grove, Inc. (hereinafter referred to as the "Corporation"), which is also known as the Downers Grove Downtown Management Corporation.

**ARTICLE II  
PURPOSES AND POWERS**

2.1 **Purposes.** This Corporation is organized for the purpose of promoting the development and expansion of business and the increased valuation of real property within the Special Service Area Number Two (as defined herein) in Downers Grove, Illinois. In furtherance of such purposes, the Corporation shall engage in, but shall not be limited to, the following activities:

- a. Consulting with the Village, Downers Grove Economic Development Corporation, Chamber 630, and other organizations regarding downtown business and real property matters, including, but not limited to, (i) the implementation of the Downers Grove Central Business District Master Plan and the Downtown Management Corporation Strategic Plan; and (ii) developing and implementing promotional and advertising campaigns which will benefit the Members of the Corporation (as herein defined);
- b. Participating in the scheduling of civic and cultural events within Special Service Area Number Two;
- c. Establishing uniform operating guidelines for merchants within Special Service Area Number Two;
- d. Enhancing the physical environment of the public areas surrounding the business and real property locations of the Members;
- e. Assisting Members in providing physical improvements to their real properties;
- f. Identifying tenants which may enhance the overall business mix within Special Service Area Number Two;
- g. Consulting with the Village regarding the continuation of Special Service Area Number Two prior to its expiration in 2020;
- h. Working toward creating a retail shopping and service business environment which will increase retail activity within Special Service Area Number Two; and
- i. Encouraging a spirit of cooperation and the maintenance of high business and real property standards among its Members.

2.2 **Not-For-Profit Organization.** All of the assets and earnings of the Corporation shall be used exclusively to (a) promote the development and expansion of businesses, and/or (b) increase the value of real property, located within Special Service Area Number Two.

2.3 **Powers.** The Corporation shall have such powers as are necessary to carry out any and all of its purposes and shall also have such powers as are now or may hereinafter be granted pursuant to the Illinois General Not-For-Profit Corporation Act of 1986, as amended (the "Act").

**ARTICLE III**  
**PLACE OF BUSINESS**

3.1 **Principal Office.** The Board of Directors shall determine the location of the principal office of the Corporation and may change the location from time to time as it determines. The principal office of the Corporation shall be located within Special Service Area Number Two.

3.2 **Registered Agent.** The Corporation shall have and shall continuously maintain a registered agent and registered office in Illinois. The registered agent and registered office shall be appointed by and may be replaced by the Board of Directors from time to time.

**ARTICLE IV**  
**DEFINED TERMS**

4.1 **Special Service Area Number Two.** “Special Service Area Number Two” shall mean that area established pursuant to Ordinance #3984, dated October 27, 1997, as amended, adopted by the Village Council of the Village of Downers Grove, DuPage County, Illinois, entitled “An Ordinance Amending Special Service Area Number Two” (Downers Grove Downtown Special Service Area) of the Village of Downers Grove, said ordinance amending Ordinance #3974 adopted September 15, 1997, entitled An Ordinance Establishing Special Service Area Number Two and incorporated herein by reference.

4.2 **Member.** “Member” shall mean any Property Owner or Business Owner. “Members” shall mean all of the Property Owners and Business Owners.

4.3 **Property Owner.** “Property Owner” shall mean the holder of legal title to a parcel of real property located within Special Service Area Number Two other than a parking spot. Notwithstanding the previous sentence, whenever a real property subject to an installment sales contract, the Property Owner shall be deemed to be the installment contract purchaser. If a trust (other than a land trust) is the legal holder of title to any such real property, the trustee of such trust shall be deemed to be the Property Owner. If a land trust is the legal holder of title to any such real property, the beneficial owners of the land trust, collectively, shall be deemed to be the Property Owner. In no event shall a land trust afford any Owner an additional vote as defined herein.

4.4 **Business Owner.** “Business Owner” shall mean the owner of a business or profession that leases or owns real property other than a residential real property within Special Service Area Number Two.

4.5 **Residential Property Owner.** “Residential Property Owner” means a Property Owner who owns a residential real property located within Special Service Area Number Two.

4.6 **Business Property Owner.** “Business Property Owner” means a Property Owner who owns a commercial real property located within Special Service Area Number Two.

4.7 **Voting Directors.** “Voting Directors” shall mean, collectively, the Business Owners, Residential Property Owners, and Business Property Owners serving on the Board of Directors.

4.8 **Village.** Village shall refer to the Village of Downers Grove, Illinois.

## **ARTICLE V** **MEMBERS**

**5.1 Classes of Members.** There shall be three (3) classes of Members, namely Residential Property Owners, Business Property Owners, and Business Owners. Any person who qualifies as both a Property Owner and a Business Owner shall be deemed to be a member of each class and shall be entitled to vote as a member of each class.

**5.2 Representative to Notices.** Each Member that is not an individual shall appoint a representative to receive notices from the Corporation and vote on behalf of that Member. No fractional votes shall be permitted. Such designation shall be in writing and shall be filed with the Secretary of the Corporation together with such representative's address, telephone number and email address. Notices shall be sent to the representative at the address, telephone number, or email address provided to the Corporation. Each Member shall be responsible to inform the Secretary of any changes to its representative's contact information. Until a Member notifies the Corporation of a change in its representative designation, the representative on the Corporation's records shall continue to receive each notice required herein for that Member. The Corporation has the right to rely upon the accuracy of the information provided by a Member and/or its representative. If a Member fails to designate a representative, notice shall be sent to the legal title holder as listed on public records with no further notice obligation to that Member.

**5.3 Voting Rights.**

- a. Each Business Owner shall be entitled to one vote.
- b. Each Residential Property Owner be entitled to one vote.
- c. Each Business Property Owner is entitled to one vote.

## **ARTICLE VI** **MEETINGS OF MEMBERS**

**6.1 Annual Meeting.** The annual meeting of the Members shall be held in September of each fiscal year on a date and at an hour and place within the Village fixed by the Board of Directors. The election of the Board of Directors shall take place at such annual meeting as well as any other business that may properly be brought before the meeting.

**6.2 Special Meetings.** A special meeting of the Members may be called at any time by (a) a majority of the Board of Directors; (b) the written request of 10% of the Residential Property Owners, (c) the written request of 10% of the of the Business Property Owners, or (d) the written request of 10% of the Business Owners. No business shall be transacted at a special meeting other than the business stated in the notice of such special meeting.

**6.3 Notice of Meeting.**

- a. Written notice stating 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, shall be

delivered by regular or electronic mail not less than ten (10) nor more than sixty (60) days prior to the date of the meeting.

b. Whenever any notice is required to be given under these By-Laws or under the provisions of 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, shall be deemed equivalent to giving of such notice.

c. Attendance at any meetings shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

d. Neither the business to be transacted at nor the purpose of any regular or special meeting need be specified in any written waiver of notice.

6.4 **Quorum.** A quorum for the transaction of business at any annual or special meeting shall be present whenever (a) 10% of the Residential Property Owners, (b) 10% of the Business Property Owners, and (c) 10% of the Business Owners, either in person or by proxy, are present at said meeting after due notice being given.

6.5 **Proxies.** Each Member may authorize another person to vote for such Member by proxy, but no proxy shall be valid after eleven (11) months from the date of its execution.

6.6 **Manner of Acting.** If a quorum is present at a meeting, the affirmative vote of a majority of the Members present, either in person or by proxy, shall be the act of the Members unless the Articles of Incorporation or these By-Laws provide otherwise.

## **ARTICLE VII** **BOARD OF DIRECTORS**

7.1 **Powers and Duties.** The Board of Directors shall be charged with full power, duties, and responsibilities for the operation and maintenance of the Corporation, and to fulfill its aims and purposes. The powers of the Board of Directors include, but are not limited to, the power to:

- a. Employ an Executive Director and any other staff deemed necessary to carry out the purposes of the Corporation;
- b. Approve an annual budget, including, but not limited to, expenditures for program expenses such as marketing and promotion, maintenance and improvements, and design assistance; personal expenses; debt service; professional support expenses; and other expenses associated with the daily operation of the Corporation;
- c. Implement the programs of the Corporation; and
- d. Enter into necessary contracts, including, but not limited to, contracts with the Village for the receipt of Special Service Area revenues and for the provision of any service necessary to effectuate the Corporation's purposes.

7.2 **Number, Election Term of Office.** The Board of Directors shall be composed of fourteen (14) Directors composed of the following members:

- a. Three (3) Residential Property Owners selected by the Residential Property Owners at an annual meeting;
- b. Three (3) Business Property Owners selected by the Business Property Owners at an annual meeting;
- c. Three (3) Business Owners elected by the Business Owners at an annual meeting, with the stipulation that not more than one Business Owner may also be a Property Owner.
- d. Five (5) ex officio directors composed of (i) the Village Manager, (ii) the President of the Downers Grove Economic Development Corporation, (iii) the President of Chamber 630, (iv) the Village's Director of Public Works, and (v) the Village Council's liaison to the Corporation, or their respective designees.

Except during the initial transition period beginning upon the adoption of these By-Laws, each Voting Director shall be elected for a three (3) year term of office. The Directors of each class shall be on staggered terms as determined by the Board of Directors. No person other than a person serving as an ex-officio director may serve more than three (3) consecutive terms. However, a person may serve more than three (3) terms so long as the person does not serve more than three (3) terms consecutively.

Upon the adoption of these By-Laws, the Board of Directors shall adopt a resolution whereby each existing director shall serve out his or her entire term as elected and all future directors shall be elected to staggered terms as determined by the Board of Directors so that one Business Owner, one Business Property Owner, and one Residential Property Owner shall be elected to the Board of Directors each year as soon as practicable.

7.3 **Meetings of Directors.** Regular meetings of the Board of Directors shall be held monthly within the Village at such time and place as designated by (a) the Chairman's announcement at the preceding Board of Director's meeting, (b) written or electronic notice to each Director given not less than three (3) business days prior to the meeting, or (c) resolution of the Board of Directors describing the time and place for regular meetings. Special meetings of the Board of Directors may be called by (a) the Chairman at his or her discretion, or (b) by a majority of the Voting Directors. Attendance by a Director at any meeting shall constitute a waiver of notice of such meeting, except when a Director attends a meeting with the expressed purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

7.4 **Quorum.** A majority of the Voting Directors shall constitute a quorum for the purpose of conducting business.

7.5 **Manner of Action.** The act of a majority of the Voting Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Any action required to be taken at a meeting of the Board of Directors may be taken without a meeting whenever a consent setting forth the action to be taken shall be signed by all Voting Directors. Any such consent signed by all Voting Directors shall have the same effect as a unanimous vote and may be stated as such.

7.6 **Compensation.** No member of the Board of Directors shall receive compensation for his or her service. Directors may be reimbursed by the Corporation for *bona fide* expenses (a) incurred with respect to Corporation's activities, and (b) specifically authorized by the Board of Directors.

7.7 **Voting Rights.** Each Voting Director shall be entitled to one (1) vote.

7.8 **Resignation, Removal.** The office of any Voting Director shall be deemed vacant when (a) he or she no longer qualifies as an eligible Member of his or her respective class in the Corporation, or (b) when he or she has three (3) or more or more unexcused absences from meetings within a rolling twelve (12) month period. Absences which are determined to be excused (e.g., death in a family, illness, or weather crisis) shall not count toward the three (3) absence limit. The Board of Directors shall determine which absences are excused on a case-by-case basis.

7.9 **Vacancies.** A vacancy of a Business Owner on the Board of Directors shall be filled by a Business Owner unanimously appointed by the remaining Business Owners acting as Voting Directors. A vacancy of a Residential Property Owner on the Board of Directors shall be filled by a Residential Property Owner unanimously appointed by the remaining Residential Property Owners acting as Voting Directors. A vacancy of a Business Property Owner on the Board of Directors shall be filled by a Business Property Owner unanimously appointed by the remaining Business Property Owners acting as Voting Directors. A Voting Director so appointed shall complete the remainder of the term of the Voting Director whose position was vacated.

## **ARTICLE VIII** **ELECTION OF DIRECTORS AND OFFICERS**

8.1 **Nominating Committee.** At least ninety (90) days prior to the Annual Meeting, a Nominating Committee shall be appointed by a majority of the Voting Directors from among the members of the Board of Directors. No member of the Nominating Committee shall be eligible to stand for the election that is the subject of the nomination process. The Nominating Committee shall be comprised of (a) one (1) Residential Property Owner; (b) one (1) Business Property Owner; and (c) one (1) Business Owner; The Executive Director shall advise and consult the committee during the deliberation process, but shall not be a voting member of the committee. The Chairman shall appoint the Chairperson of the Nominating Committee.

### **8.2 Nominating Process.**

Upon creation of the Nominating Committee, the Executive Director shall immediately notify the Corporation's membership of the creation of the Nominating Committee. Any Business Owner, Residential Property Owner or Business Property Owner may be nominated by written nominations submitted no later than thirty (30) days in advance of annual meeting by a Member in good standing. All nominations shall be submitted to the Nominating Committee along with a written petition bearing at least sixteen (16) signatures of Members in good standing. All petitions shall be submitted thirty (30) days in advance of the annual meeting. The Nominating Committee shall meet prior to the Annual Meeting and certify all nominations to be submitted for election at the Annual Meeting. In the event of that an insufficient number of petitions are submitted, the Nominating Committee shall be empowered to determine a slate to be presented to the Members at the annual meeting.

8.3 **Voting.** Unless passed by unanimous declaration, voting for Directors other than *ex officio* Directors shall occur at the Annual Meeting by class and by secret written ballot.

8.4 **Tallying Votes.** All votes at an annual meeting shall be tallied by a committee composed of (a) the Executive Director; (b) the Corporation's legal counsel; and (c) one (1) ex officio Director

appointed by the Chairman. After the votes are tallied, the Chairman shall immediately certify the results of the election at the annual meeting and submit the results to the Secretary.

8.5 **Election of Officers.** Upon the Secretary's certification and notice of the election results as set forth in Section 8.4 of this Article, and at least ten (10) days prior to the next regular Board of Directors meeting following the Annual Meeting of Members, the Nominating Committee created pursuant to Section 8.1 of this Article shall convene to nominate candidates for the offices of Chairman, Vice Chairman, Secretary, and Treasurer from the ranks of the newly constituted Board of Directors. The slate of officer candidates nominated by the Nominating Committee shall be announced and placed into nomination at the next regular Board of Directors meeting. At said Meeting, the new Board of Directors shall be installed and convened to nominate and elect Officers. Nominations for any office may be made and seconded by any Voting Directors in addition to the slate nominated by the Nominating Committee. Where there is a contest for a given office, the voting shall be by secret ballot and the results tallied and announced at the meeting by the Executive Director. The election shall be by majority vote of the Voting Directors. All Officers shall be installed upon their election is certified by the Executive Director at said Meeting.

## **ARTICLE IX** **OFFICERS**

9.1 **Term of Officers.** The Board of Directors shall annually elect a Chairman, Vice Chairman, Secretary and Treasurer to serve for a one-year term. Each officer shall be a Voting Director. Vacancies may be filled at any meeting by a majority vote of the Voting Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her death, resignation or removal.

9.2 **Chairman.** The Chairman shall act as chief executive officer of the Corporation, and shall administer all of the general business and affairs of the Corporation. He or she shall preside at all meetings of the Corporation and the Board of Directors and shall perform all duties incidental to his or her office and such other duties as the Board of Directors may from time to time authorize. The authority of the Chairman shall be subject at all times to the control and direction of the Board of Directors. The Chairman may sign, with the Secretary or any other Officer of the Corporation thereunto authorized by the Board of Directors, instruments which the Board of Directors has authorized to be executed.

9.3 **Vice Chairman.** The Vice Chairman shall act in the absence, disability or refusal to act of the Chairman. The Vice Chairman shall have all the powers and perform all the duties of the Chairman when acting on his or her behalf. He or she shall have such other duties as may be directed by the Chairman or the Board of Directors.

9.4 **Treasurer.** The Treasurer, or the Executive Director as designated by the Treasurer, shall be the principal accounting and financial officer of the Corporation. He or she shall:

- a. Have charge of and be responsible for the maintenance of adequate books of account for the Corporation;
- b. Have charge and custody of all funds and securities of the Corporation, and be responsible therefore and for the receipt and disbursement thereof, and

c. Perform all the duties incidental to the office of treasurer and such other duties as from time to time may be assigned to him or her by the Chairman or by the Board of Directors.

If required by the Board of Directors, the Treasurer shall give a fidelity bond, at the expense of the Corporation, for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors may determine.

9.5 **Secretary.** The Secretary shall:

- a. Be responsible for the recording of the minutes of meeting of the Members and each meeting of the Board of Directors in one or more books provided for that purpose;
- b. See that all notices are duly sent in accordance with the provisions of these By-Laws or as required by law;
- c. Be custodian of the corporate records and of the seal of the Corporation, if applicable;
- d. Keep a register of the post office address of each representative; and
- e. Perform all duties incidental to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chairman or by the Board of Directors.

9.6 **Removal.** Any officer may be removed by a majority vote of the Voting Directors. Such removal shall be without prejudice to the contract rights, if any, of the person so removed.

## **ARTICLE X EXECUTIVE DIRECTOR**

10.1 **Executive Director.** The Executive Director of the Corporation shall serve as an advisor to the Board of Directors and attend all meetings of the Board of Directors. The Executive Director shall be responsible for the day to day operations of the Corporation and implementation of the corporate policies and directives subject at all times to the control and direction of the Board of Directors. The Executive Director shall receive a salary and benefits in amounts deemed to be appropriate by the Board of Directors.

## **ARTICLE XI COMMITTEES**

11.1 **Creation of Committees.** The Board of Directors may create such committees as it may determine to be helpful in conducting the affairs of the Corporation. All members of the committee shall be Members. Each committee shall have at least one Voting Director who shall preside over all meetings of said committee. All committee members shall serve at the pleasure of the Board of Directors.

11.2 **Quorum.** A majority of the members appointed to each committee shall constitute a quorum for the purpose of the transaction of business at any meeting of such committee

## **ARTICLE XII FISCAL MATTERS**

12.1 **Contracts.** The Board of Directors may authorize any officer, officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the

Corporation, and such authority may be general or confined to specific instances. For the purpose of these By-Laws it shall be beneficial and preferred if such contracts are entered into with Business Owners and/or Property Owners.

12.2 **Loans.** No loan shall be contracted for or on behalf of the Corporation, no pledge of the credit of the Corporation shall be made, and no evidences of indebtedness shall be issued in the name of the Corporation unless authorized by the Board of Directors.

12.3 **Check and Drafts.** All checks, drafts, or other orders for the payment of money, or all notes or other evidences of indebtedness issued in the name of the Corporation or to the Corporation, shall be signed and endorsed by such officer or officers, agents or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In addition, any check or drafts in excess of \$1,000.00 shall contain the signature of at least one officer and the Executive Director in order to be negotiable.

12.4 **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 located in Special Service Area Number Two as the Board of Directors may select.

### **ARTICLE XIII** **FISCAL YEAR**

13.1 **FISCAL YEAR** The fiscal year of the Corporation shall end on April 30 of each year.

### **ARTICLE XIV** **INDEMNIFICATION**

14.1 **Standard.** The Corporation shall indemnify to the fullest extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of the Corporation, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding, by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

14.2 **Procedure.** Any indemnification (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct. Such determination may be made by:

- a. the Board of Directors by a majority vote of a quorum consisting of Voting Directors who were not parties to such action, suit or proceeding; or

b. if such a quorum is not obtainable, then by a majority of a quorum of disinterested Voting Directors, if such determination is made upon the advice of independent legal counsel in a written opinion.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the person to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation.

At the discretion of the Board of Directors, the Corporation may purchase and maintain a Director and Officer Liability Policy insuring the Corporation and its individual Directors and Officers against the costs of defending a claim or paying a settlement or decision.

The right of a Director or Officer to indemnification by the Corporation shall be in addition to, and not exclusive of, all other rights to indemnification to which he or she otherwise may be entitled, including any rights to indemnification under the terms of the Director and Officer Liability Policy.

## **ARTICLE XV AMENDMENTS**

### **15.1 Amendments to the Articles of Incorporation or the By-Laws of the Corporation.**

- a. Amendments to the Articles of Incorporation or the By-Laws of the Corporation necessary to comply with the statutory requirements or qualifications, including but not limited to the Internal Revenue Code of 1986, as amended from time to time, and the Illinois Compiled Statutes, as amended from time to time, shall require majority approval of the Voting Directors. Any amendment shall be effective at the time of said approval. No amendment shall be subject to review by the Members.
- b. In all other circumstances, the Articles of Incorporation or the By-Laws of the Corporation may only be altered, amended, restated or repealed by the approval of at least seventy-five percent (75%) of the Voting Directors. Any amendment adopted shall be effective forty-five (45) days after it is passed. If, within the forty-five (45) days of an action taken by the Board in accordance with this provision, fifty-one percent (51%) of each of the three classes of Members vote to deny said Board action at a special election called in accordance with these By-Laws, then the action taken by the Board shall be overturned and the Board shall be prohibited from voting on a substantially same action for at least one (1) year.

## **ARTICLE XVI DISSOLUTION AND WITHDRAWAL**

16.1 [Reserved.]

16.2 **Distribution of Assets.** Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of the Corporation, dispose of

all the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization, or organizations, organized and operated exclusively for charitable, education, religious or scientific purposes or shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, exclusively for such purposes or to such organizations, as said court shall determine, which are organized and operated exclusively for such purposes. Notwithstanding anything in this section to the contrary, all funds received from the Village remaining upon dissolution of the Corporation, if any, shall be returned to the taxpayers who paid said funds.

## **ARTICLE XVII** **EXECUTIVE COMMITTEE**

17.1 Executive Committee shall consist of the Chairman of the Board, Vice Chairman of the Board, Secretary, and Treasurer.

17.2 The Executive Committee may refer matters to a proper committee or to the Board.

17.3 A majority of the members of the Executive Committee shall constitute a quorum for purposes of conducting an Executive Committee meeting.

17.4 Annually, the Executive Committee serving during the time of consideration shall review and make a report to the Board of Directors of the Executive Director's performance in keeping with the job description and official duties.

17.5 The Executive Committee shall cause an annual review of all books and accounts and such review shall be presented to the Board. Such review shall be conducted by a Certified Public Accountant.

## **ARTICLE XVIII** **CONFLICT OF INTEREST POLICY & ANNUAL STATEMENT**

**18.1 Purpose.** The purpose of this Board conflict of interest policy is to protect DMC's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or director of DMC 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 conflicts of interest applicable to nonprofit and charitable organizations. This policy is also intended to identify "independent" directors.

### **18.2 Definitions.**

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

**b. Financial interest** means a person has a financial interest if the person has, directly or indirectly, through business, investment, or family;

- i. An ownership or investment interest in any entity with which DMC has a transaction or arrangement.
- ii. A compensation agreement with DMC or with any entity or individual with which DMC has a transaction or arrangement, or
- iii. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which DMC 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. A person who has a financial interest may have a conflict of interest only if the Board of Executive Committee decides that a conflict of interest exists, in accordance with this policy.

**c. Independent Director** means a director shall be considered “independent” for the purposes of this policy if he or she is “independent” as defined in the instructions for the IRS 990 form or, until such definition is available, the director:-

- i. does not directly or indirectly have a significant business relationship with DMC, which might affect independence in decision-making;
- ii. is not employed as an executive of another corporation where any of DMC’s executive officers or employees serve on that corporation’s compensation committee; and
- iii. does not have an immediate family member who is an executive officer or employee of DMC or who holds a position that has a significant financial relationship with DMC.

**18.5 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 Executive Committee.

**18.6 Recusal of Self.** Any director may recuse himself or herself at any time from involvement in any decision or discussion in which the director believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.

**18.7 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 Board or Executive Committee meeting while the determination of a conflict of interest is discussed and

voted upon. The remaining Board or Executive Committee members shall decide if a conflict of interest exists.

### **18.8 Procedures for Addressing the Conflict of Interest.**

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

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

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

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or Executive Committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in DMC'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.

### **18.9 Violations of the Conflicts of Interest Policy.**

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

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

**18.10 Minutes.** The minutes of the Board and all committees with board delegated powers shall contain:

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

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

### **18.11 Compensation.**

- a. A Business Owner serving on the Board of Directors who receives compensation, directly or indirectly, from the Corporation for goods or services is precluded from voting on matters pertaining to that Member's compensation.
- b. A Member serving on any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for goods or services is precluded from voting on matters pertaining to that Member's compensation.
- c. No Business Owner serving on the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**18.12 Annual Statements.** Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflict of interest policy;
- b. Has read and understands the policy;  
Has received a copy of the conflict of interest policy;
- c. Has agreed to comply with the policy; and
- d. Understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Each voting member of the Board shall annually sign a statement which declares whether such person is an independent director.

If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.

The Executive Committee shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for effective oversight.

**18.13 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 (if reasonably available), and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, 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 or impermissible private benefit or in an excess benefit transaction.

**18.14 Outside Experts.** When conducting the periodic reviews as provided for in Article VII, DMC may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

## Exhibits

18.15 Director and Officer Annual Conflict of Interest Statement

**DIRECTOR AND OFFICER ANNUAL CONFLICT OF INTEREST STATEMENT**

1. Name: \_\_\_\_\_ Date: \_\_\_\_\_

2. Position:  
Are you a voting Director? Yes No  
Are you an Officer? Yes No  
If you are an Officer, which Officer position to do you hold? \_\_\_\_\_

3. I affirm the following:  
I have received a copy of the DMC Conflict of Interest Policy. \_\_\_\_\_ (Initial)  
I have read and understand the policy. \_\_\_\_\_ (Initial)  
I agree to comply with the policy. \_\_\_\_\_ (Initial)  
I understand that DMC is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes. \_\_\_\_\_ (Initial)

4. Disclosures:  
a. Do you have a financial interest (current or potential), including a compensation arrangement, as defined in the Conflict of Interest policy with DMC? Yes No

i. If yes, please describe it: \_\_\_\_\_  
ii. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No

b. In the past, have you had a financial interest, including a compensation agreement, as defined in the Conflict of Interest policy with DMC? Yes No

i. If yes, please describe it, including when (approximately): \_\_\_\_\_  
ii. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy? Yes No

5. Are you an independent director, as defined in the Conflict of Interest policy? Yes No

a. If you are not independent, why? \_\_\_\_\_

\_\_\_\_\_  
Signature of Director Date: \_\_\_\_\_

Date of Review by Executive Committee: \_\_\_\_\_