

## **Conflict of Interest Policy of Purple Martin Association of the Dakotas**

The undersigned natural persons of the age of eighteen (18) years or more, acting as incorporators of a nonprofit corporation organized under North Dakota Century Code, Chapter 10-33, adopt the following Conflict of Interest Policy. The undersigned, a majority of whom are citizens of the United States, do hereby agree:

### **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**

Section 1: Arm's length: A transaction between parties having adverse (or opposing) interests; where none of the participants are in a position to exercise substantial influence over the transaction because of business or family relationship(s) with more than one of the parties.

Section 2: Compensation: All forms of income from working, including salary or wages; deferred compensation; retirement benefits, whether in the form of a qualified or non-qualified employee plan (for example: pensions or annuities); fringe benefits (for example: personal vehicle, meals, lodging, personal and family educational benefits, low interest loans, payment of personal travel, entertainment, or other expenses, athletic or country club membership, and personal use of your property); and bonuses.

Section 3: Conflict of interest policy: A conflict of interest arises when a person in a position of authority over an organization, such as a director, officer, or manager, may benefit personally from a decision he or she could make. A conflict of interest policy consists of a set of procedures to follow to avoid the possibility that those in positions of authority over an organization may receive an inappropriate benefit.

Section 4: Family: Includes an individual's spouse, ancestors, children, grandchildren, great grandchildren, siblings (whether by whole or half blood), and the spouses of children, grandchildren, great grandchildren, and siblings.

Section 5: Financial Interest: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- A. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- B. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or

- C. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the 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.

Section 6: 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 above, is an interested person.

Section 7: Joint ventures: A legal agreement in which the parties jointly undertake a transaction for mutual profit. Generally, each person contributes assets and shares risks. Like a partnership, joint ventures can involve any type of business transaction and the "persons" involved can be individuals, groups of individuals, companies, or corporations.

Section 8: Relationship: A relationship between you and the recipient organization includes the following situations:

- A. You control the organization or it controls you through common officers, directors, or trustees, or through authority to approve budgets or expenditures.
- B. You and the organization were created at approximately the same time and by the same persons.
- C. You and the organization operate in a coordinated manner with respect to facilities, programs, employees, or other activities.
- D. Persons who exercise substantial influence over you also exercise substantial influence over the other organization.

### **Article III Procedures**

Section 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.

Section 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 or 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.

Section 3: Procedures for Addressing the Conflict of Interest

- A. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he or 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 governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- C. After exercising due diligence, the 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.
- D. 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.

#### Section 4: Violations of the Conflicts of Interest Policy

- A. 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.
- B. 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:

- 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 governing board's or committee's decision as to whether a conflict of interest in fact existed.
- B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

### **Article V Compensation**

- A. 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.

- B. 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.
- C. 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:

- A. Has received a copy of the conflicts of interest policy,
- B. Has read and understands the policy,
- C. Has agreed to comply with the policy, and
- D. Understands the 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:

- A. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- B. Whether partnerships, joint ventures, and arrangements with management organizations conform to the 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.

**Article IX**  
**Incorporator**

The name and address of each initial trustee of the Organization is as follows:

Perry D. Vogel  
703 Barley Ct  
Grand Forks, ND 58201-8066

Paul W. Mammenga  
12345 396th Ave  
Columbia, SD 57433-7100

"Each named incorporator has read the foregoing Conflict of Interest Policies, know the contents, and shall adopt policies and conduct activities in agreement with the statements made therein. In witness whereof, each incorporator has hereunto subscribed their name and date."

Signature:	Date:	Signature:	Date:
/s/ Perry D. Vogel	7/18/12	/s/ Paul W. Mammenga	7/15/12

For questions or additional information, contact Perry D. Vogel by e-mail at [pvogel@gra.midco.net](mailto:pvogel@gra.midco.net) or telephone at (218)791-3689 about these Conflict of Interest Policies.

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Return this completed section to:

Purple Martin Association of the Dakotas  
703 Barley Ct  
Grand Forks, ND 58201-8066  
-or-  
[pmad@midco.net](mailto:pmad@midco.net)

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In witness whereof, such person has hereunto subscribed their name and date."

Signature:	Type or print name of signer:	Date: