

## **FOUNTAIN HOUSE**

### **CONFLICT OF INTEREST AND DISCLOSURE POLICY**

As a publicly supported charitable organization, Fountain House ("FH") has a special obligation to uphold the public trust. Every director, officer, committee member and staff member of FH shares responsibility to ensure that FH satisfies all legal requirements and operates in accordance with its charitable mission. The directors, officers, committee members and staff members of FH seek to conduct the affairs of FH in a manner that avoids impermissible private benefit, or the appearance of such private benefit. This obligation requires that any individual who has authority to make such decisions on behalf of FH, such as director, officer, committee member or staff member, take steps to inform the Board of Directors of any personal interest he or she might have in a transaction or contract between FH and a third party.

Since its founding, FH has attracted people who are active in the larger community to become involved with FH. The directors, officers, committee members and staff members of FH may also volunteer significant time and energy to assist other social service, advocacy, civic or political organizations. Therefore, it is important that FH develop policies and procedures that address the possibility or appearance of improper conflicts of interest. At the same time, FH considers volunteer work extremely important to the long-term health of the community. Therefore, FH believes that it is appropriate for directors, officers, committee members and staff members to support community organizations with their experience, insight and energy while remaining committed to full disclosure of such relationships.

This conflict of interest policy requires directors, officers, committee members and staff members to disclose advisory, employment, volunteer or financial relationships with other organizations on the attached Disclosure Statement. Disclosure of such relationships not only highlights the risks of conflicts of interest, but also encourages heightened vigilance on the part of FH's directors, officers, committee members and staff members as well as the public to insure that an impermissible conflict of interest does not arise.

#### **Duty of Loyalty and Intermediate Sanctions**

Under the New York Not-For-Profit Corporation Law, directors and officers have a duty of loyalty to FH obligating them to make decisions for the benefit of FH with undivided commitment to FH and without regard to personal interests. Furthermore as a public charity, FH is subject to the "intermediate sanctions" provisions of the Internal Revenue Code. Intermediate sanctions impose penalty taxes on any director, officer, committee member or staff member, among others, who engages in an "excess benefit transaction" with FH. An excess benefit transaction is any transaction with FH in which one or more directors, officers or other insiders receive an economic benefit that exceeds the value of the services, property or payment FH receives in return. Directors, officers, committee members and staff therefore may not use their positions within FH to unfairly further their own financial interests or otherwise derive personal advantage.

While the duty of loyalty and intermediate sanctions do not preclude FH from entering into contracts and transactions with its directors, officers, committee members and staff, the Audit Committee of the Board of Directors should be informed of any potential conflict of interest and authorize such transactions only after determining that they are both reasonable and in the best interests of FH.

### **Conflict of Interest**

Although the circumstances establishing a conflict of interest under the duty of loyalty and intermediate sanctions do intersect, the two sets of law also differ in significant respects. For that reason, the Conflict of Interest and Disclosure Policy, which is designed to ensure that all duties and obligations with respect to conflict situations are met, adopts a definition of "conflict of interest" that is a synthesis of the situations addressed by both the duty of loyalty and intermediate sanctions.

A conflict of interest will arise whenever FH considers entering into a contract or transaction (including a compensation arrangement) with any individual or entity that has a substantial influence over the affairs of FH or has authority to make decisions on its behalf. Such "interested persons" include, but are not limited to, the following individuals:

- (i) directors and officers of FH;
- (ii) members of a committee of the Board of Directors;
- (iii) staff members responsible for the day-to-day management and operation of FH;
- (iv) a founder of FH
- (v) a substantial contributor to FH;
- (vi) a family member of any director, officer, committee member, employee, founder or substantial contributor;
- (vii) an entity of which any director, officer, committee member, employee, substantial contributor or an intermediate family member of any such individual is a director, trustee, officer, committee member or staff member; and
- (viii) an entity in which directors, officers, committee members, substantial contributors and family members have a substantial financial interest through either ownership or managerial control.

While such transactions are not *per se* prohibited, certain disclosures and decision-making procedures must be followed to ensure that the duty of loyalty is upheld and that interested persons do not receive an excessive benefit.

With respect to transactions involving compensation of an interested person, a conflict of interest additionally will exist where a director or committee member approving the compensation arrangement stands in any one of the following relationships with such interested person:

- (i) the director or committee member also is an interested person with respect to the transaction or a family member of such director or committee member;
- (ii) the director or committee member is in an employment relationship subject to the direction or control of the interested person;
- (iii) the director or committee member receives compensation or other payments subject to the approval of the interested person;
- (iv) the interested person in return has or will approve a transaction that will provide an economic benefit to the director or committee member; or
- (v) the director or committee member has a material financial interest affected by the transaction.

### **Disclosures**

Whenever any director, officer, committee member or staff member of FH becomes aware that FH is considering (or has considered) a transaction that potentially creates a conflict of interest, he or she is obligated to notify the Audit Committee and to disclose all material facts relating to his or her interest in the transaction. The Audit Committee will determine whether an actual conflict of interest exists and take action that the Committee deems appropriate. The interested person may not be present when the Committee makes its determination other than to answer questions. If no conflict of interest is found to exist, the minutes of the meeting must record the basis of the Committee's determination.

### **Withdrawal and Abstention**

If the Audit Committee determines that a transaction would create a conflict of interest, the transaction must be approved in advance by only those Committee members who do not have a conflict with respect to the transaction. Any interested person therefore must recuse him- or herself from consideration of the transaction. He or she may not vote on the transaction or be present when the vote is taken. He or she furthermore may not be present during any discussion of the transaction other than to answer questions. Interested persons, however, may be counted for the purpose of determining whether a quorum exists at the meeting even though they are temporarily absent while the transaction is considered.

If a transaction involves an organization with which a director, officer, committee member or staff member was previously affiliated and the Board determines that the transaction does not directly involve such director, officer, committee member or staff member's personal interest, or the interests of his or her family members, such director, officer, committee member or staff member may not participate in consideration of the transaction and may not vote on the transaction. Such individual, however, may be present for the consideration of or vote on the transaction.

## **Comparability Data**

In determining whether the transaction or arrangement is in FH's best interests, the Audit Committee will review available information regarding the cost or benefit of comparable transactions or arrangements, if any, and may investigate whether FH should and is able to obtain with reasonable efforts a more advantageous transaction or arrangement that would not give rise to a conflict of interest. The Committee may appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

## **Documentation**

The minutes of any meeting at which a conflict of interest transaction is considered must reflect that the interested person made adequate disclosures, withdrew from consideration of the transaction and abstained from voting. The minutes therefore must detail the terms of the transaction, the date the transaction was approved, the Audit Committee members present during the debate and who voted on the transaction, any data the Committee relied upon in determining that the transaction is reasonable and in the best interests of FH, how such comparability data was obtained, the disclosures made by the interested person, and whether the interested person otherwise participated in any discussions or proceedings (*i.e.*, to answer questions). As with all minutes, the minutes documenting a conflict of interest transaction must be reviewed and approved by the Committee at its next meeting.

## **Relationships with Grant Applicants**

Directors and members of any committee with the authority to nominate or select grantees are additionally required to disclose any relationship between themselves and any grant applicant under consideration and/or any special interest they may have in an applicant or the particular project proposed. Such directors and committee members may participate in discussions of the application (unless, under the particular circumstances, the Audit Committee decides otherwise) and may vote on the applicant only if their votes do not affect the outcome of the Committee's decision. There is no prejudice against the applicant nor is an applicant disqualified due to any such disclosure.

## **Annual Statements**

Each director, officer, committee member and staff member must sign annually a statement which affirms that such person: (a) has received a copy of this Conflict of Interest and Disclosure Policy, (b) has read and understands this Policy, and (c) has agreed to comply with this Policy.

Each director, officer, committee member and staff member additionally must complete and submit to the Secretary a disclosure statement naming (1) all entities in which the individual or a member of his or her immediate family holds a position as director, trustee, officer, committee member, advisory committee member, advisory director, advisor, staff member or key volunteer (*i.e.*, a volunteer with management or operational responsibilities) and (2) all entities that do or may do business with FH and in which the individual or a member of his or her immediate

family has a substantial financial interest (i.e., ownership interest or managerial control). The Audit Committee and the President of FH will review the information and periodically distribute reports to all directors, officers, committee members and staff members.

### **Periodic Reviews**

To ensure that FH operates in a manner consistent with its charitable purposes and its federal tax exemption, the Audit Committee of the Board of Directors will conduct periodic reviews, in appropriate cases, to determine whether compensation and benefits arrangements and other transactions are reasonable and the result of arms-length negotiation.

### **Violations of the Conflict of Interest and Disclosure Policy**

If the Board of Directors or a committee has reasonable cause to believe that an interested person has failed to disclose an actual or possible conflict of interest, it will inform the interested person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose. If, after hearing the response and making such further investigation as may be warranted in the circumstances, the Committee determines that the interested person has in fact failed to disclose an actual or possible conflict of interest, it will take appropriate action which may include recommendation to the Board for removal from the Board or termination of employment, as well as reconsideration of whether the transaction or arrangement was in the best interests of and fair and reasonable to FH as the time it was undertaken. If it is determined that the transaction was not fair and reasonable to FH, FH, in its discretion, may avoid the contract and/or require the interested person to restore FH to the financial position it would have been in if such person had been dealing under the highest fiduciary standard. Where the latter remedy is employed, the interested person will be required to make payments of cash or property to FH in amounts equal to the value of the excess benefit he or she received plus interest. Any interested person who violates this Policy also may be liable for taxes imposed under the federal intermediate sanctions regulations.

## **FOUNTAIN HOUSE**

### **Conflict of Interest and Disclosure Policy**

This Conflict of Interest and Disclosure Policy is designed to assist directors, officers, committee members and staff members of Fountain House ("FH") in meeting their ongoing responsibility to disclose business or personal interests that may create a conflict of interest. Below is an acknowledgment stating that you have received a copy of FH's Conflict of Interest and Disclosure Policy, have read it and understand it, and agree to comply with it. The attached Disclosure Statement requests a list of (1) all entities in which you or a member of your immediate family holds a position as director, trustee, officer, committee member, advisory committee member, advisory director, advisor, staff member or key volunteer (i.e., a volunteer with management or operational responsibilities) and (2) all entities that do or may do business with FH and in which you or a member of your immediate family has a substantial financial interest ( i.e., ownership interest or managerial control). Please complete the Acknowledgement and Disclosure Statement, and return the signed statements to the Secretary.

### **Acknowledgment**

I hereby acknowledge that I have received a copy of the Fountain House Conflict of Interest and Disclosure Policy and that I have read it and understand it. I hereby agree to abide by and comply with the procedures contained in the Conflict of Interest and Disclosure Policy.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

# FOUNTAIN HOUSE

## Disclosure Statement

In the space below, please list (1) all entities in which you or a member of your immediate family holds a position as director, trustee, officer, committee member, advisory committee member, advisory director, advisor, staff member or key volunteer (i.e., a volunteer with management or operational responsibilities) and (2) all entities that do or may do business with Fountain House ("FH") and in which you or a member of your immediate family has a substantial financial interest (i.e., ownership interest or managerial control).

(1) All entities in which you or a member of your immediate family holds a position as director, trustee, officer, committee member, advisory committee member, advisory director, advisor, staff member or key volunteer (i.e., a volunteer with management or operational responsibilities).

(list name of family member (if relevant), name of entity and position held)

(2) All entities that do or may do business with FH and in which you or a member of your immediate family has a substantial financial interest (i.e., ownership interest or managerial control):

(list name of family member (if relevant), name of entity and nature of interest)

The above information is correct and complete to the best of my knowledge.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_