TOK COMMUNITY UMBRELLA CORPORATION
CONFLICT OF INTEREST POLICY

Adopted at meeting on April 14, 2011

With respect to conflicts of interest by members of the Board of Directors, the Tok Community Umbrella Corporation will whenever possible follow the guidelines of Alaska Statute 38.06.035.

Under those guidelines, effective action to carry out a transaction or pass a motion requires the affirmative vote of a majority of the board members. It is not sufficient to have merely a majority of members present or a majority of members voting; it must be a majority of total board membership. A member may not act upon a matter in which the relationship of the member of the board with any person or corporation creates a conflict of interest.

Where it is not possible to act due to these constraints, the rule of necessity will apply.

What is the rule of necessity?

If a member of a town or city board has a conflict of interest, that member will be disqualified from acting on that board matter. In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum or some other number of members required to take a valid affirmative vote. (If the number for a quorum is **not** set by law, a quorum is generally a majority of the board members.) In these instances, the board can use what is called the rule of necessity to permit the participation of the disqualified members in order to allow the board to act.

The rule of necessity is not a law written and passed by the Legislature. Rather, the rule of necessity was developed because judges applied it in their court decisions.

How does the rule of necessity work?

The rule of necessity works in the following way:

1. It can only be used if a board is **unable** to act on a matter because it lacks the number of members required to take a valid official vote, solely because members are disqualified by the conflict law from acting. Example: A five member board has a meeting and all members are present. Three of the five members have conflicts. Three members are the quorum necessary

for a decision. The two members without conflicts do not make a quorum. The board cannot act. The rule of necessity will permit all members to participate. Example: A five member board has a meeting and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The Rule of Necessity may not be used because there is a quorum of the board which is able to act. Because one member of the board is absent does not permit use of the Rule of Necessity. Example: A five member board has a meeting and all members are present. One member has a conflict and is disqualified. The vote is a two to two tie. The rule of necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on. Stated differently, a tie vote will maintain the status quo. Example: All five members of a five member board are present. A quorum is three. However, one agenda item requires four votes, rather than the usual simple majority, for an affirmative decision. Two of the board members have conflicts. Although a quorum is available, the required four votes needed for this particular matter cannot be obtained without the participation of one or both of the members who have conflicts. The rule of necessity may be invoked and all five members may participate.

- The rule of necessity should be invoked by one or more of the otherwise disqualified members, upon advice from town or city counsel or the State Ethics Commission.
- If it is proper for the rule of necessity to be used, it should be clearly indicated in the minutes of the meeting that the board was unable to obtain a quorum due to disqualification of members and, as a last resort, that **all** those disqualified may now participate under the authority of the rule of necessity. Each disqualified member who wishes to participate under the rule of necessity must first disclose publicly the facts that created the conflict.

2. Note: Invoking the rule of necessity does not require previously disqualified members to participate; it merely **permits** their participation.

The rule of necessity may only be used as a last resort. Every effort must be made to find another board capable under the law of acting in place of the board that could not obtain a quorum.