



## **GIFT ACCEPTANCE POLICY**

*The mission of the Community Foundation of Greater Fort Wayne Inc. is to serve as a community leader to improve the quality of life by building permanent endowments, promoting effective grantmaking, fostering philanthropy, stimulating community dialogue, and helping donors achieve their charitable goals.*

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## I. PURPOSE OF GIFT ACCEPTANCE POLICIES

This Gift Acceptance Policy has been established to ensure donor protection and avoidance of undue risk for the Community Foundation of Greater Fort Wayne Inc.'s (Community Foundation) assets. The purpose of this policy is to serve the best interest of the community, the donors to the Community Foundation, and the Community Foundation by providing guidelines for negotiating and accepting various types of gifts. These policies outline some of the basic facts about charitable giving and the types of gifts that donors may wish to consider.

Given the increasing complexity of IRS regulations, the volume of real estate and other property gifts, and state and federal environmental laws, the Community Foundation recognizes the value of carefully screening proposed gifts. The Community Foundation must provide expeditious yet thorough consideration of each gift. The Community Foundation board and staff must be able to assure that gifts accepted by the Community Foundation do not place other assets of the Community Foundation at risk, and that they can be easily converted into assets that fall within the Community Foundation's investment guidelines.

All gifts to the Community Foundation must conform with the mission and purpose of the Community Foundation. The purpose of the gift and the procedures for its administration shall, whenever possible, be defined by an application signed by the donor and fund agreement signed by both the executive director of the Community Foundation and the donor.

While these guidelines establish best practices, they are designed to provide flexibility as directed by the advancement committee and approved by the board of directors.

## II. RESTRICTIONS ON GIFTS

The Community Foundation will accept unrestricted gifts, and gifts for specific funds, provided that such gifts are not inconsistent with its stated mission, purpose, and priorities. All final decisions on the acceptance or refusal of a gift shall be made by the executive director in consultation with the governance committee. All funds established by a donor and held by the Community Foundation will be subject to approval by the program review committee.

## III. POLICIES AND GUIDELINES

### A. Disclosures to Donor and Donor's Interests

The Community Foundation staff will disclose to a prospective donor the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to the Community Foundation. In particular, the donor will be advised that all gifts are irrevocable, and items subject to variability (such as market value, investment return, and amount of income payments) should be discussed fully. It is the responsibility of the Community Foundation staff to keep detailed written notes (including all contacts with donor) to supplement written correspondence relating to each gift transaction in order to ensure documentation of donor intent and/or wishes. The role of the Community Foundation staff is to inform, serve, guide, or otherwise assist the donor in fulfilling his or her philanthropic wishes, but never to pressure or unduly persuade.

## **B. Legal Counsel**

For any but the simplest type of gift, the Community Foundation recommends that donors consult their attorneys, tax advisors, financial or estate planners. The Community Foundation shall consult with its legal counsel in appropriate matters pertaining to its asset development and shall consult legal counsel if contract language varies from the standard. The board of directors recognizes its fiduciary duty to protect the Community Foundation's assets and to provide guidance to its management.

Review by legal counsel is usually sought in connection with but not limited to:

1. Closely-held securities transfers that are subject to restrictions or buy-sell agreements.
2. Gifts involving contracts, such as those requiring the Community Foundation to assume a legal obligation.
3. Gifts of patents or intellectual property.
4. Transactions with potential conflict of interest that may invoke IRS sanctions.
5. Instances in which use of counsel is deemed appropriate by the executive director or the governance committee.

## **C. Conflict of Interest**

The Community Foundation serves as a reliable professional steward of assets entrusted to its care. The integrity and quality of the Community Foundation's relationship with its constituency determines the strength of the organization. The Community Foundation accepts its responsibility to perform to the highest standards in every activity:

1. Fair and equitable treatment of its donors, grantees, and applicants.
2. Prudent fiscal management of funds with complete financial reporting.
3. Maximum disclosure to the community of pertinent information about grants, policies, and procedures.
4. Continuous assessment of the cultural diversity of the community and funding decisions based on moral, ethical, and social attitudes.

The effectiveness of the Community Foundation is demonstrated by the quality of its governance, its adherence to the highest standards of service, and to the spirit of these ethical principles. Each person working on Community Foundation affairs is committed to being mindful of their personal conduct when dealing with these important matters. Each member of the board of directors, each volunteer, and every staff member signs a Conflict of Interest Statement annually (**See RESOURCES, Page 12**). This statement is intended to supplement, but not replace, any applicable state laws governing conflict of interest applicable to nonprofit and charitable foundations.

The Community Foundation has met all requirements of the National Standards for Community Foundation as set by the Council on Foundations (**See RESOURCES, page 12**), endorses the Model Standards of Practice of the Charitable Gift Planner promulgated by the Partnership for Philanthropic Planning (**See RESOURCES, page 12**), and the Donor Bill of Rights promulgated by the Association of Fundraising Executives (**See RESOURCES, page 12**).

## **D. Confidentiality**

All information concerning donors regardless of active, inactive, or prospective status shall be kept strictly confidential by the Community Foundation and its personnel, unless the donor grants permission to use selective information for purposes of referral, testimonial, or example at the discretion of authorized personnel. This permission must be documented in writing.

## **E. Authorization for Negotiation**

The executive director or designee is authorized to negotiate on behalf of the Community Foundation with any donor in respect to planned gift instruments that follow the format described in these policies. All such types of gifts shall be reviewed by legal counsel. Any real estate or interests in real property or hard-to-value assets of any kind must be approved by the governance committee. Any agreements which involve a legal obligation on the part of the Community Foundation or its agents which do not follow the forms described in these policies or, are special agreements of any kind, require the approval of the governance committee.

## **F. Standard Form Documents**

For administrative ease and convenience, the Community Foundation has developed standard forms of fund agreements and other documents relating to the Community Foundation's development program. All such standard forms have been reviewed by legal counsel, and approved by the governance committee. The Community Foundation will provide standard forms to a prospective donor and the donor's advisor upon request and encourages their use.

## **G. Reports**

When a donor establishes a fund within the Community Foundation, quarterly reports are provided that detail the activity in the fund for the period.

## **H. Valuation of Non-cash Gifts**

Valuation of non-cash gifts, the preparation and filing of Internal Revenue Form 8283, or other forms required for the purpose of obtaining a charitable income or estate tax deduction, will be the responsibility of the donor, or the donor's personal representation.

The Community Foundation will provide all donors with a gift acknowledgement letter. This information will assist the donor in the preparation of federal and state tax returns. The Internet link to the following publication can be found on page 12, RESOURCES: IRS Publication 561 *Determining the Value of Donated Property* and IRS Publication 526 *Charitable Contributions*.

## **I. Administrative Fees**

The board-approved administrative fee schedule will apply to all funds except in those instances where the governance committee approves a different fee. Administrative fees are subject to change.

## **J. Investment of Gifts**

### **1. In General**

It is the preference of the Community Foundation that, to the extent feasible, assets from current and future gifts will be commingled with other assets of the Community Foundation for investment purposes. All investments will be selected in conformance with investment policies established by the Community Foundation.

## **2. Sale of Assets**

All assets that are accepted as gifts are usually sold, but may be retained by the Community Foundation as long as such decisions to do so serve the interests of the Community Foundation.

## **3. Separate Investment of Fund Assets**

As donors establish a fund within the Community Foundation, they give up all right, title, and interest to the assets. As such, gifts may contain no material restriction that would prevent the funds from being considered as component funds of the Community Foundation under IRS rules. Except as noted in the investment policies, donors give up the right to choose investments and investment brokers and to veto investment choices for their gifts. The Community Foundation will endeavor to accommodate requests from donors for separate investment management of fund assets or for use of a particular investment broker or agent when the initial gift to establish the fund exceeds \$500,000<sup>1</sup>. However, the Community Foundation's Board of Directors must approve the addition of any new investment manager. The Community Foundation may apply additional administrative fees to separately-invested fund assets to cover the additional expenses associated with such investments.

Investment results will be reviewed by the investment committee for adequate investment performance. If performance is found to be inadequate or not within the Investment Policy, the manager may be terminated at the sole discretion of the Community Foundation and the donor(s) will be notified.

## **IV. TYPES OF FUNDS**

A minimum of \$10,000<sup>1</sup> is required to create any new endowment fund with the exception of scholarship funds. Scholarship endowment fund creation requires a minimum of \$100,000<sup>1</sup>. This minimum guideline may be waived by the executive director in circumstances where it is deemed appropriate (such as anticipation that subsequent gifts will be made to the fund by donors or others in amounts sufficient to warrant the creation of the fund). Distributions from an endowment fund will be made in accordance with the Community Foundation's Spending Policy or as noted in the fund agreement. Funds can be created as an endowment or nonpermanent fund. Pursuant to Indiana law, the Community Foundation may invade the principal or the historic gift value with respect to endowed funds. The Community Foundation offers the following types of funds to meet the needs of donors:

### **A. Discretionary Endowment Funds**

Discretionary endowment funds give the Community Foundation the flexibility to respond to new programs, emergency needs, and innovative activities. The Community Foundation has the discretion to make grants to the most appropriate charitable program.

### **B. Field of Interest Endowment Funds**

With a field of interest endowment fund, the donor specifies an area of interest which can be either broadly or narrowly defined. The Community Foundation has the discretion to make grants to the most appropriate charitable programs within the donor's interest area.

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<sup>1</sup> Amounts may change from time to time.

### **C. Advised Endowment and Nonpermanent Funds**

With an advised endowment or nonpermanent fund, the donor reserves the right to make periodic grant recommendations to the Community Foundation's Board of Directors. As required by IRS regulations, an advisor's grant recommendation is not binding on the Community Foundation, which retains final authority to determine distributions from the fund. The recommendations are verified to ensure the recipient organization is approved by the IRS as a 501(c)(3) charitable agency. Donors may name their children, or others, as successor advisors. Once all successor advisors, if any, are deceased, the fund becomes part of the general unrestricted endowment fund, a field of interest endowment fund depending upon donor intent or another type of fund provided a fund agreement is in place. The Community Foundation prefers to allow successor advisors for a fund for only one generation beyond the life of the original donor.

### **D. Agency Endowment Funds**

An agency endowment fund holds assets for a charitable 501(c)(3) organization and may be created by a nonprofit organization as a way to plan for the future. This type of fund is most appropriate for agencies that have moved past the grassroots level. An agency may take annual distributions of income in accordance with the Spending Policy of the Community Foundation.

### **E. Agency Nonpermanent Funds**

An agency nonpermanent fund holds assets for a charitable 501(c)(3) organization and may be created by a nonprofit organization as a way to plan for the future. This type of fund is most appropriate for agencies who wish to take advantage of the Community Foundation's investment strategy, wish to commence a capital campaign, or want to establish a rainy day fund. An agency may take distributions from this fund in \$2,500 increments and all assets in the fund are available for distribution.

### **F. Scholarship Endowment Funds**

Scholarship endowment funds may be established by individuals, families, companies, or organizations to provide financial assistance to students for tuition expenses at K-12 private or parochial schools, or for accredited colleges or universities, and other accredited educational organizations. Scholarship endowment funds are often used to memorialize a loved one or honor a special person.

### **G. Designated Endowment Funds**

A designated endowment fund allows a donor to select charitable organizations that will receive ongoing annual financial assistance from this perpetual endowment fund. Donors often support organizations that they have been involved with during their lifetimes.

### **H. Supporting Organizations**

Supporting organizations of the Community Foundation are established by donors as separately incorporated nonprofit corporations with separate governance and tax-exempt status. A supporting organization of the Community Foundation is a grantmaking organization that avoids the burdens of private foundation tax status by being operated, supervised, controlled by the Community Foundation. This requirement can be met in part if at least a majority of the board of directors of the supporting organization is appointed by the Community Foundation Board of Directors. A supporting organization may be created if the initial gift amount is at least \$1 million<sup>1</sup>.

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<sup>1</sup> Amount may change from time to time

## V. GIFTS TO THE COMMUNITY FOUNDATION

### A. Outright Gifts

This is a simple, convenient way to donate money to the Community Foundation, and receive maximum tax advantages. Checks should be made payable to Community Foundation of Greater Fort Wayne Inc.

### B. Securities

Gifts of securities include publicly-traded stocks, mutual funds, Treasury Bills, bonds, and closely-held securities. Gifts of securities allow the donor a charitable deduction for the fair market value of the gift, as determined under IRS rules. It is the donor's responsibility to obtain any necessary appraisals of securities. Donors should understand that securities donated to the Community Foundation will, in all likelihood, be sold.

#### 1. Publicly-Traded Securities

##### a. Transferring of Securities:

- If held by the donor's stockbroker or banker, securities are to be **transferred** directly to the Community Foundation's account. The donor's broker must be particularly careful **not** to sell the securities **until** they are in the Community Foundation's account or the donor will incur capital gains. The donor's broker should call the Community Foundation Finance Department to obtain the correct DTC information.
- If held by the donor, a stock power for each certificate being contributed must be completed.

##### b. Valuation of Gift:

The value is calculated by using the average of the high and low price on the date of the gift.

##### c. Date of Gift:

- The day the transfer of ownership actually takes place (when the stock is received into the Community Foundation's account).
- The day the Community Foundation receives the hand-delivered certificate and stock power.
- The day the certificate and stock power are postmarked (if mailed).

#### 2. Closely-Held Gifts

Gifts of closely-held business interests such as C Corporations, LLPs, and LLCs are evaluated on a case-by-case basis and are subject to governance committee approval.

These gifts must be reviewed prior to acceptance to determine that:

- a. There are no restrictions on the security that would prevent the Community Foundation from ultimately converting those assets to cash.
- b. The security is marketable, and the security will not generate any undesirable tax consequences for the Community Foundation.

In addition, before acceptance of closely-held business interests, the attached **Closely-Held Stock Acceptance Checklist (Appendix A)** must be completed and submitted, along with all supporting documentation to the governance committee for approval. Such gifts may require six to eight weeks to prepare for acceptance.

### **C. Business Holdings**

Notwithstanding any other provision hereof, the Community Foundation shall not accept any gift of an interest in a business enterprise for a Donor Advised Fund that would subject the Community Foundation to tax under Section 4943 of the Internal Revenue Code, concerning “excess business holdings.” Any proposed gift that would result in the Donor Advised Fund holding:

1. a 20% or greater interest in a business or in a entity, or
2. any interest in an entity in which any interest is owned by a donor or advisor to the Donor Advised Fund, by a family member or any such person, or by an entity in which any of the forgoing persons has an interest,

shall be referred to the Community Foundation’s legal counsel for an opinion on the possible application of Code Section 4943.

### **D. Deferred Gifts**

Deferred gifts encompass all forms of gifts in which benefits do not fully accrue to the Community Foundation until some future time; such as the death of the donor or other income beneficiaries, or the expiration of a predetermined period of time. Deferred gifts include Charitable Gift Annuities (see separate CGA policies and procedures document), Charitable Trusts, Life Estate Agreements, life insurance policies, retirement accounts, and bequests. Deferred Gifts are evaluated on a case-by-case basis and are subject to governance committee approval.

#### **1. Charitable Gift Annuity**

A charitable gift annuity is a contract under which the Community Foundation, in return for a transfer of cash or marketable securities, agrees to pay a fixed amount of money to one or two individuals for their lifetimes. The contributed property, given irrevocably, becomes a part of the Community Foundation’s assets, and the payments are a general obligation of the Community Foundation. The annuity is backed by the Community Foundation’s entire assets, not just by the property contributed. Unlike a trust, annuity payments continue for the life/lives of the annuitant(s), and not only as long as assets remain in the charitable gift annuity fund.

With an immediate charitable gift annuity, the annuitant(s) start(s) receiving payments at the end of the payment period immediately following the contribution unless otherwise stated in writing. With a deferred charitable annuity, the annuitant(s) start(s) receiving payments at a future time, the date chosen by the donor, which must be more than one year after the date of the contribution.

#### **2. Charitable Trusts**

Three types of charitable trusts include charitable remainder unitrusts, charitable remainder annuity trusts, and charitable lead trusts. In each instance, a trust is formed and a trustee appointed to administer the trust. While the Community Foundation is pleased to work with donors and their professional advisors in creating a trust, the Community Foundation cannot serve as a trustee or provide legal advice regarding the creation or administration of a trust. The donor will be responsible for all expenses related to establishment of the trust.

##### **a. Charitable Remainder Unitrusts**

Under a charitable remainder unitrust, the donor irrevocably transfers money, securities or other property to a trustee selected by the donor. The trustee pays the donor (or one or more income beneficiaries designated by the donor) a fixed

percentage of the net fair market value of the trust's assets, as determined each year. The payments are made for the life or lives of the income beneficiaries or for a fixed period of years not to exceed twenty years. Upon termination of the income beneficiary's interest, the assets of the unitrust are transferred to the Community Foundation.

b. Charitable Remainder Annuity Trust

A charitable remainder annuity trust is similar to a unitrust, except that the income beneficiary receives a fixed dollar amount not less than annually from the trust.

c. Charitable Lead Trust

Under a charitable lead trust, the Community Foundation is given an income interest in the trust assets for a period of years or the lives of one or more individuals, at the end of which time the assets of the trust are distributed to noncharitable beneficiaries designated by the donor. A charitable lead trust could be in unitrust or an annuity trust format.

3. **Life Estate Agreement**

Gifts of real estate are evaluated on a case-by-case basis and are subject to governance committee approval.

A donor may contribute a personal residence or farm to the Community Foundation, subject to pertinent items on the attached **Real Estate Acceptance Checklist (Appendix B)** and retain the right to occupy the property until death. Prior to the acceptance of real estate, the Community Foundation shall require an initial environmental review of the property to ensure that the property has no environmental or other issues. In the event that the initial inspection reveals a potential problem as outlined on the checklist, the Community Foundation shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall generally be an expense of the donor. When the Community Foundation receives such a gift, expenses for maintenance, real estate taxes, and any property indebtedness are the responsibility of the donor until the time it passes to the Community Foundation. Upon the donor's death, the Community Foundation will own the entire interest in the property. The net proceeds of the estate must not leave the Community Foundation.

4. **Life Insurance**

The donor must make the Community Foundation both *owner* and *beneficiary* of the insurance policy in order for the IRS to regard the transaction as a charitable gift. Indiana Code 27-8-18 passed in 1992 allows a charity to own life insurance on an individual. The Community Foundation will determine on a case-by-case basis if the policy should be kept in force or cashed in. Prior to accepting an insurance policy requiring ongoing premium payments, the Community Foundation will obtain a written agreement with the donor regarding how such premiums will be paid. Under no circumstances will "split dollar" life insurance arrangements be considered as a gift.

5. **Retirement Plan Beneficiary Designation**

Donors and supporters of the Community Foundation are encouraged to name the Community Foundation of Greater Fort Wayne as beneficiary of their retirement plan. Such designations will not be recorded as gifts to the Community Foundation until such times as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of the gift may be recorded at the time the gift becomes irrevocable.

## **6. Bequests**

Donors and supporters of the Community Foundation are encouraged to make bequests to the Community Foundation through their wills and trusts. Such bequests will not be recorded as gifts until such time as the gift is irrevocable. When the gift is irrevocable, but is not due until a future date, the present value of the gift may be recorded at the time the gift becomes irrevocable.

## **E. Real Estate**

Real estate gifts are evaluated on a case-by-case basis and are subject to governance committee approval. Prior to the acceptance of real estate, the Community Foundation shall require an initial environmental review of the property to ensure that the property has no environmental or other issues, as outlined on the Real Estate Acceptance Checklist (Appendix H). In the event that the initial inspection reveals a potential problem, the Community Foundation shall retain a qualified inspection firm to conduct an environmental audit. The cost of the environmental audit shall generally be an expense of the donor. Before acceptance of real estate, the attached **Real Estate Acceptance Checklist (Appendix B)** must be completed and submitted, along with all supporting documentation to the governance committee for approval. Such gifts may require lead-time of six to eight weeks to prepare for acceptance.

## **F. Tangible Personal Property**

Tangible personal property is property that can be held physically. Examples are art, furniture, livestock, automobiles, and jewelry. The Community Foundation and the donor must comply with Treasury regulations for obtaining and reporting qualified appraisals. Tangible property is evaluated on a case-by-case basis and is subject to governance committee approval.

### **Considerations include the following:**

1. Is the property useful for the purpose of the Community Foundation?
2. Is the property marketable?
3. Are there any undue restrictions on the use, display, or sale of the property?
4. Are there any public relations issues related to acceptance of the property?
5. Are there carrying costs, such as insurance, lease space, maintenance to preserve value, costs of sale, or appraisal that would create a negative cash flow for the Community Foundation?

## **VI. CHANGES TO GIFT ACCEPTANCE POLICY**

These policies and guidelines have been reviewed and accepted by the Community Foundation of Greater Fort Wayne Advancement Committee and ratified by the Community Foundation of Greater Fort Wayne Board of Directors. Any substantive changes to these policies and guidelines must be approved by the advancement committee and ratified by the board of directors.

*Board Originally Adopted on 08-14-06*

*Board Last Revised on 11-12-09*

*Advancement Committee Originally Recommended on 10-13-09*

*Advancement Committee Last Revised Recommendations on 10-13-09*

## **RESOURCES**

### **National Standards for Community Foundations:**

[www.cof.org/files/Documents/Community\\_Foundations/National\\_Standards/NationalStandards.pdf](http://www.cof.org/files/Documents/Community_Foundations/National_Standards/NationalStandards.pdf)

### **Model Standards of Practice of the Charitable Gift Planner:**

[www.ncpg.org/join/ModelStandards.pdf](http://www.ncpg.org/join/ModelStandards.pdf)

### **Donor Bill of Rights:**

<http://www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=3359>

### **IRS Publication 561 Determining the Value of Donated Property:**

[www.irs.gov/publications/p561/index.html](http://www.irs.gov/publications/p561/index.html)

### **IRS Publication 526 Charitable Contributions:**

[www.irs.gov/publications/p526/index.html](http://www.irs.gov/publications/p526/index.html)

## APPENDIX A

### Closely-Held Securities Acceptance Checklist Governance Committee Approved 8-7-06

**Donor is responsible to complete the following:**

1. \_\_\_\_\_ Provide written communication of intent of gift.
2. \_\_\_\_\_ After discussion of the gift with Community Foundation legal counsel, obtain information about the company, including some or all of the following:
  - proof of business entity or business structure,
  - a description of the nature of the company's business and its prospects for profitability,
  - the company's audited financial statements for the three most recent fiscal years,
  - copies of the company's Articles of Incorporation, Bylaws, and corporate minutes and securities books, or appropriate agreement,
  - review of the company's most recent income tax returns,
  - a review of any existing or potential environmental issues involving the company and its assets,
  - an opinion letter from the company's attorney concerning legal existence, authority, subsidiaries, litigation, and other such matters reasonably requested by the Community Foundation,
  - a recent appraisal of the company,
  - whether there has been any market in the company's securities in the last three years,
  - the number of outstanding shares of securities/units and who owns them,
  - information regarding the condition of the business and whether there are factions among shareholders or disputes within the company,
  - whether there are any procedures for valuing the securities on a periodic basis
  - whether the company pays any dividend, and if so, the amount currently being paid, and
  - assurance in writing that in accepting the proposed gift of securities the Community Foundation will not become a majority shareholder in the company, that the donor and the Community Foundation together will not have a controlling interest, and that the Community Foundation assumes no liability in receiving the securities.
3. \_\_\_\_\_ Agree, in writing, on arrangements for paying all expenses associated with the acceptance of the gift, including, but not limited to appraisal fees and attorney fees; and understanding that donor will pay for related expenses even if gift is not accepted.
4. \_\_\_\_\_ Prepare appropriate instruments which are necessary to transfer the securities to the Community Foundation. All proposed transfer instruments must be reviewed by the Community Foundation's legal counsel prior to acceptance by the Community Foundation.
5. \_\_\_\_\_ Provide assurance that the fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor.
6. \_\_\_\_\_ Provide documentation of any shareholder, buy-sell, or other agreements that impose any restriction or limitations upon the sale or transfer of the securities. Community Foundation legal counsel shall review such documentation.

- 7.\_\_\_\_\_ Obtain qualified appraisal complying with IRS regulations for the purpose of establishing the value of the gift for federal income tax purposes and for Community Foundation valuation purposes. (IRS regulations require an appraisal to be made between 60 days before the date of the gift and not later than the due date of the tax return on which the deduction is being claimed.) Advise the donor that the Community Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction. The IRS has stated that when valuing securities of closely-held corporations or the securities of corporations where market quotations are either lacking or too scarce to be recognized, all available financial data; as well as all relevant factors affecting the fair market value, should be considered. The following factors, although not all-inclusive, are considered fundamental key factors and require careful analysis in each case:
- the nature of the business and the history of the enterprise from its inception,
  - the economic outlook in general and the condition and outlook of the specific industry in particular,
  - the book value of the securities and the financial condition of the business,
  - the earning capacity of the company,
  - the dividend-paying capacity,
  - whether or not the enterprise has goodwill or other intangible value,
  - sales of the securities and the size of the block of securities to be valued, and
  - the market price of securities of corporations engaged in the same or similar line of business having their securities actively traded in a free and open market, either on an exchange or over-the-counter.
- 8.\_\_\_\_\_ Prior to transfer of the closely-held securities to the Community Foundation, the donor and the Community Foundation will sign a standard fund agreement, or other form of fund agreement that has been approved by legal counsel to the Community Foundation. The agreement must state the terms of the gift and specify that there are no material restrictions on the Community Foundation's right to use or convey the property. The Community Foundation will not guarantee or pre-arrange a sale or make any other agreement that might imply or cause a material restriction to be imposed upon the contribution.

**Community Foundation is responsible to complete the following:**

- 1.\_\_\_\_\_ Make determination if gift of closely-held securities is in the best interest of the Community Foundation. The Community Foundation may refuse any offered gift of closely-held securities that is not in the best interest of the Community Foundation.
- 2.\_\_\_\_\_ Engage corporate attorney to review and prepare papers as necessary.
- 3.\_\_\_\_\_ Research likelihood of selling the closely-held securities. If the closely-held securities are not readily marketable at the time of the gift but appears to have a reasonable prospect to be sold or converted into income-producing property in the future, the executive director and/or the governance committee may determine the length of time to hold the gift.
- 4.\_\_\_\_\_ Evaluate whether acceptance of the closely-held securities may result in adverse tax consequences, such as UBIT, to the Community Foundation.
- 5.\_\_\_\_\_ Obtain approval by Community Foundation Governance Committee to accept gift.
- 6.\_\_\_\_\_ Advise the donor that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within three years of receipt, the Community Foundation is required to file a separate report with the IRS on IRS Form 8282 and disclose facts about the disposition.

- 7.\_\_\_\_\_ Sell closely-held securities. In negotiating the sale of the closely-held securities, a fair market value (price per share) will be established at the time of sale. No warranty is given by the Community Foundation that the valuation will be acceptable to the IRS. In some cases, the Community Foundation may obtain an independent appraisal of the value of the securities prior to agreeing to a proposed sale of the securities. In many cases, upon the subsequent sale of closely-held securities, there will be a securities purchase agreement setting forth the proposed terms and conditions of sale. The Community Foundation cannot join in or participate in the issuance of warranties, representations, or indemnification agreements.
- 8.\_\_\_\_\_ If the Community Foundation disposes of the closely-held securities within three years of the date of the gift and the gift is valued at more than \$500 as documented on IRS Form 8283 by the donor, IRS Form 8282 must be filed within 125 days of date of disposition (See IRS Form 8282 instructions and IRS Form 8283 instructions).

## APPENDIX B

### Real Estate Acceptance Checklist Governance Committee Approved 6-19-06

#### Donor responsible to complete the following:

1. \_\_\_ Provide a written communication of intent of gift.
2. \_\_\_ Provide legal description of property, including description of any building or structures located on the land.
3. \_\_\_ Obtain completed boundary survey of property with location of all structures and easements appearing on the face of the survey.
4. \_\_\_ Agree, in writing, on arrangements for paying all expenses associated with the property, including, but not limited to:
  - taxes and assessments,
  - appraisal fees,
  - survey fees,
  - environmental evaluations,
  - insurance coverage (including title insurance),
  - maintenance costs,
  - realtor commissions,
  - legal fees; and
  - understanding that donor will pay for related expenses if gift is not accepted.
5. \_\_\_ Have qualified appraisal performed according to IRS guidelines for valuation of the gift for donor's tax purposes and for Community Foundation valuation purposes. Appraisal must be completed no more than 60 days before the date of the gift.
6. \_\_\_ Obtain General Warranty Deed (guarantees clear title).
7. \_\_\_ Obtain commitment to provide title insurance from an acceptable title insurance company showing status of title to property. Evidence of title showing property is owned free and clear—supply title search. If mortgage exists on property, must supply information (bargain sale rules apply to donor's deduction).
8. \_\_\_ Provide a qualified recent Phase I Environmental Assessment. Obtain Phase II sampling if any "recognized environmental conditions" were identified in Phase I.
9. \_\_\_ Provide information regarding existing zoning status.
10. \_\_\_ Prior to transfer of title, the donor and the Community Foundation will sign a standard fund agreement, or other form of fund agreement that has been approved by legal counsel to the Community Foundation. Agreement must state the terms of the gift and specify that there are no material restrictions on the Community Foundation's right to use or convey the property.

#### Community Foundation is responsible to complete the following:

1. \_\_\_ Physically observe the real estate.
2. \_\_\_ Engage corporate attorney to review and prepare papers as necessary.
3. \_\_\_ Obtain copy of leases, if any.
4. \_\_\_ Obtain assignment of leases, if any.
5. \_\_\_ Obtain copy of service or management contracts, if any.
6. \_\_\_ Research likelihood of selling property within one year.
7. \_\_\_ Evaluate whether acceptance may result in adverse tax consequences (UBIT, transfer tax).
8. \_\_\_ Obtain approval by Community Foundation Governance Committee to accept gift.
9. \_\_\_ Record deed with county clerk's office (fee to record deed).
10. \_\_\_ Obtain title, property, and liability insurance.
11. \_\_\_ Sign Form 8283 for donor's tax return.
12. \_\_\_ File Form 8282 within three years of the date of gift.
13. \_\_\_ If necessary, investigate listing property with a realtor and negotiate final sale. Donor should consult their professional advisor before donating property with a pre-existing sales contract, as it could have an impact on the tax treatment of the gift.

14.\_\_\_\_\_Cancel Community Foundation insurance coverage after property sells.