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# Community Foundation

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of St. Clair County

## GIFT ACCEPTANCE POLICY

(Board Updated & Approved January 22, 2019, updated for additions approved March 19, 2019)

The Community Foundation of St. Clair County considers accepting gifts of any amount in the form of cash, stock, real estate, personal property, partnership interests or other assets, including gifts through trusts, estates or insurance policies. Gifts in other forms will be reviewed and approved in accordance with this Gift Acceptance Policy.

The Foundation has the responsibility to ensure that any gifts it receives support its mission in the community. Accordingly, the Foundation reserves the right to refuse any gift that it believes is not in the best interests of the Foundation and the community it serves.

On behalf of the Foundation, appropriate staff may accept gifts of cash, checks, and marketable securities. These gifts will be processed as outlined by our Statement on Internal Controls.

Gifts may be used to support an existing fund or project/program or may be used to create a new endowed or non-endowed fund. Fund minimums are as follows:

- \$25,000 is required to establish a new Community Priorities Fund, Field of Interest Fund, Donor Designated Fund, or Agency Designated Fund;
- \$10,000 for new donor advised funds; and
- \$50,000 for new scholarship funds and all scholarship funds must be endowed.

The Foundation's Spending Policy details when a Fund can begin making grants or awards (unless the donor and Foundation agree to other provisions). In the event that a Fund does not reach the established fund minimum threshold within five years, the Foundation reserves the right to roll the assets into a closely related or general purpose fund that approximates the donor's original intent. In these instances, the Foundation will make good faith efforts to continue recognizing and promoting the fund's original name. For scholarship fund donors who cannot meet the \$50,000 minimum, the Foundation will create generic high school specific funds, and for those scholarship fund gifts of \$10,000+, the donor's name will stay attached to the Fund.

On the Foundation's behalf, the President and Vice President will have the authority to negotiate with donors, assemble documentation, consult with advisors and/or our standing committees, and execute Fund agreements, using our standard fund agreement templates.

Donors may create one or more of the following types of funds at the Foundation as separately explained on our website:

- a. Community Priorities (Unrestricted)
- b. Donor Advised
- c. Field of Interest

- d. Agency Endowment
- e. Donor Designated
- f. Scholarship

The Foundation will make every effort to resolve any issues presented in connection with a gift in a manner which fulfills the desires of the donor and is acceptable to the Foundation.

The Foundation maintains a program of investments for all funds, and in accordance with its Investment Policy, as amended from time to time, reserves the right to make any or all investment decisions regarding gifts. In making a gift to the Foundation, the donor gives up all rights, title and interest to the assets contributed. In particular, the donor relinquishes the right to choose investments and investment managers, brokers, or to veto the Foundation's investment choices for the contributed assets. However, from time to time, donors and/or their representatives may have a desire to recommend specific investments, strategies, brokers or fund managers. These recommendations may result from donors who would like their funds to be managed by a particular broker, financial representative or institution. In accordance with IRS regulations governing donor-advised funds, the Foundation will have final determination for all investments. Any and all recommendations from donors pertaining to the investment of their gifts shall be considered advisory only, including a recommendation as to a particular broker, manager or institution. These investment recommendations will be considered in accordance with the Foundation's Investment Policy - Addendum on Donor Investment Recommendations, as amended from time to time.

It is the Foundation's policy to sell any property it receives other than cash and to reinvest the proceeds pursuant to its investment program. If assets offered the Foundation are illiquid and cannot readily be sold, acceptance of the gift may depend on whether, in the judgment of the Board, a buyer is likely to be found within a reasonable period of time.

If the donor requests that the Foundation retain specific assets, the Board must decide whether acceptance and retention of the specific assets serves the mission of the Foundation and complies with laws concerning Excess Business Holdings.

#### **Individual Retirement Account Qualified Charitable Distributions**

The Community Foundation accepts a Qualified Charitable Distribution (QCD) directly from an Individual Retirement Account (IRA) administrator. QCDs should include a statement of purpose and identify the specific qualified fund(s) to which the contribution is being made or a list of qualified charities for distribution.

- A. Donors may establish a Designated Fund (Non-Advised), and select charities in advance that will receive annual grants from the fund, either for a term-of-years or in perpetuity.
- B. Donors may not maintain any advisory capacity over the fund once it is established. (i.e. A Donor may not add or remove selected charities, or change the distribution plan.)
- C. Donors may pass the gift through the Foundation directly to select charities.
  - a. Donor is responsible for providing a list of qualified charities and specifying the grant amount(s).
  - b. A 1% fee will be charged for gifts Donors choose to pass through the Foundation directly to select charities.

- D. In the rare circumstance that a QCD is received without prior notification from a Donor, staff will work diligently to connect with donor and determine the direction for the funds within 14 days of receipt. Should no direction for the QCD funds be given by a Donor within 14 days, the Foundation's undesignated gifts policy will be followed. (See Miscellaneous Gifts Section 2)

QCDs do not qualify for a charitable tax deduction. It is the responsibility of the donor to report the QCD as a normal distribution on IRS Form 1099-R. Donors should consult with their tax advisor with any questions about the tax treatment of this transfer.

## **Real Estate**

This policy is intended to clarify and enhance the Foundation's current gift acceptance policy as it relates specifically to gifts of real estate.

### **I. Authority to Negotiate**

- a. The President of the Foundation shall have the authority to handle inquiries regarding potential gifts of real estate. This authority shall include initial negotiations with donors, assembling documentation, retaining appraisers, surveyors, realtors and/or other technical consultants.
- b. The President shall keep the Foundation's Executive Committee apprised of any ongoing discussions over the potential acceptance of real estate.

### **II. Evaluation of Potential Gifts**

- a. Property and Report Form: Upon initial inquiry, potential donors will be asked to provide all necessary information to the Foundation with appropriate maps and documentation so that the proposed gift may be fully evaluated.
- b. Liens, Mortgages and Encumbrances: Property which is subject to liens, unpaid mortgages, deeds of trust, judgment liens, unpaid taxes or assessment, mechanics' liens or other encumbrances will be accepted only in exceptional circumstances and upon advice from the Foundation's legal counsel. If accepted, property which is subject to encumbrances will be evaluated as a "bargain sale" which is an arrangement whereby a donor offers property to the Foundation for an amount less than its current fair market value.
- c. Field Evaluation: Following an offer of a gift of real estate, a member of the Foundation staff or a representative will visit the property. A representative may be a local realtor or other person as appropriate. The purpose of the visit will be to determine the nature and type of the property and to identify any potential problems not evident from initially supplied information that would hinder or prevent the Foundation's sale of the property.
- d. Staff Evaluation: Once the field evaluation is complete, Foundation Staff will determine the appropriate category for further evaluation of the real estate. Real estate will be reviewed under these three categories of ultimate disposition:
  - 1) Immediately sell the property, as is the typical practice of the Foundation to liquidate gifts upon receipt.
  - 2) Mission related purpose, such as real estate that is kept as Farmland or property like Studio 1219.
  - 3) Long-term preservation of the land, this type of property would be property owned by Blue Water Land Fund. For example, the Blue Water Riverwalk.
- e. Market Evaluation: Whenever practical, arrangements will be made to have a realtor analyze the property to evaluate the existence of a market for such property.

- f. Expense Budget: The Foundation staff will prepare a budget outlining all of the projected expenses associated with the acceptance of all proposed real estate gifts.

### III. Responsibilities of the Donor

- a. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income and gift tax purposes.
- b. The donor must obtain at their expense, an environmental audit satisfactory to the Foundation. No property will be accepted if there is a likelihood of any liability which could attach to the Foundation as a result of its taking title to the property.
- c. The donor must furnish the Foundation with evidence of title which shows that title to the property is vested in the donor, unencumbered except for current real estate taxes and assessments, which would not create any economic burden on the Foundation, and that there are no easements or restrictions of record which would adversely affect the marketability of the property
- d. It is the donor's responsibility to prepare the deed and other instruments which are necessary to transfer the property to the Foundation. All proposed transfer instruments must be reviewed and approved by the Foundation's legal counsel prior to acceptance by the Foundation.
- e. Prior to acceptance of the property, the Foundation and the donor must agree in writing on arrangements for paying expenses associated with the property, such as commissions, real estate taxes and assessments, utilities, insurance, and maintenance costs. Generally, the Foundation will not advance funds for the payment of such expenses.
- f. Donors will be encouraged to discuss contemplated bequests of real estate before finalizing their wills. Property that is bequeathed to the Foundation will be evaluated in accordance with this policy and procedures like all other gifts of real estate.

### IV. Procedure for Accepting Real Estate

- a. After the requirements of this policy have been satisfied, the President of the Foundation shall forward all such relevant material to the Foundation's Executive Committee for a decision on accepting or rejecting the proposed gift. Decisions on accepting gifts with a value greater than \$500,000 will require the majority approval of the Foundation's Board of Trustees.
- b. Decisions on gifts with values less than \$500,000 may be made by a majority vote of the Executive Committee.
- c. Prior to or upon transfer of title to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which will specify that there are no restrictions on the Foundation's right to use or convey the property.
- d. The Foundation will not seek exemption from real estate taxes for real estate unless such real estate is to be used exclusively by the Foundation for the Foundation's charitable purpose.

### V. Marketing and Sale of Real Estate

- a. After accepting a real estate gift the Foundation's Executive Committee may sell the property at their discretion. Should the Executive Committee wish to hold onto the property, they will be required to obtain the approval of a majority of the Trustees then in office.
- b. As a general practice the Foundation will sell all property received as a gift, unless the gift compliments or supports a related Foundation initiative such as Housing or Downtown Development. In such cases if the value of the property is less than \$500,000

the Foundation's Executive Committee shall have the authority to hold or sell the property.

- c. The sell or hold decision for gifts with values exceeding \$500,000 will require the approval of a majority of the Trustees then in office.
- d. In those instances where the Executive Committee or the Trustees vote to sell the property, it is anticipated that the sale price will equal or exceed the appraised value of the property. However, the terms of each individual sale will take into account current market conditions, availability of financing and other factors. Any offer that is below 70% of the appraised value will require the approval of the Foundation's Board of Trustees. All other offers may be accepted by the Foundation's Executive Committee.

#### VI. What the Foundation will not do

- a. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other services on behalf of the donor.
- b. The Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.

#### VII. Checklist

- a. Exact legal name of donor and federal identification number
- b. Description of property (copy of deed)
- c. Description of any buildings or other structures located on the land
- d. Boundary survey of property with location of all structures, easements, and encumbrances appearing on the face of the survey
- e. Information regarding existing zoning status
- f. Information on all ingress/egress for the property
- g. Description of prior use of the property
- h. Name and address of all tenants, lessees or occupants of the property, together with a copy of the lease, or if there is no written lease, a statement of the terms under which the occupant possesses the property.
- i. Description of use of surrounding property, with specific disclosure of any storage tanks or potential environmental factors affecting the property
- j. Phase I environmental report on the property, including environmental report on any structures located on the property
- k. Evidence of title, such as title examination and report, title insurance commitment, or schedule describing any liens, encumbrances, or title matters affecting the property
- l. Copy of appraisal showing fair market value of the property current within sixty days
- m. Disclosure of amount of existing real estate taxes, insurance premiums, and assessments attributable to the property
- n. Discussion with donor regarding any special arrangements for donor's fund or other sources to address ongoing expenses for taxes, insurance, assessments, maintenance, grass cutting, security, utilities and similar items

#### **Planned Estate Gifts including Life Insurance (Legacy Society Gifts)**

The Foundation accepts bequests from donors who have directed in their wills that certain assets be transferred to the Foundation. Such bequests may be added to existing funds or create new endowment funds provided fund minimums are met. The Foundation will make every attempt to honor the wishes of the donor as expressed, but reserves the right of refusal as necessary and appropriate. Foundation staff is authorized to solicit planned estate gifts, including life insurance policies. The Foundation will work closely with donors and confer with financial advisors, at the request of the donors, to realize these gifts and has available sample bequest language for restricted and unrestricted gifts. The Foundation's Legacy Society exists to assist the Foundation in identifying these potential donors, understanding the charitable intent of

such gifts, and appropriately recognizing these donors unless they wish to remain anonymous. The Foundation may not be named as Executor for a donor in his/her will and will not serve if named.

Life insurance policies may be used as follows:

- Existing policies-
  - Irrevocably assigning the policy, making the Community Foundation the Owner and Beneficiary.
  - Name the Community Foundation as primary beneficiary or the contingent or successor beneficiary to receive the proceeds if the primary beneficiary predeceases the donor.
- New Policies –
  - Donor(s) purchase a new policy and name the Community Foundation as the owner and beneficiary.

Prior to accepting a policy requiring ongoing premium payments, the Foundation shall obtain a written agreement with the donor regarding how such premiums will be paid. The Foundation will not assume delinquent premium payments.

When the Foundation is named the owner and beneficiary of a policy, it will retain the original policy in its office.

Ultimate Use: At the death of the donor, insurance proceeds, if \$25,000 or greater, will be used to establish a permanent named fund. If the donor does not provide recommendations during his/her lifetime as to the eventual purpose of the Fund, or if the face value of the policy is less than \$25,000, it will be deemed for unrestricted purposes of the Foundation and allocated in a similar manner to undesignated miscellaneous gifts below.

### **Publicly Traded Securities**

Gifts of publicly traded securities listed on the New York, America or NASDAQ exchanges may be used to support any existing fund or to establish any type of new named endowment fund. Additional securities or cash gifts can be added to a Fund at any time.

Gifts of securities will be accepted at fair market value. Fair market value is defined as the trade value of the shares at market close on the date of the gift.

The Community Foundation reserves the right to hold or sell the stock and deposit the proceeds in the Donor(s) established Fund.

### **Non-Public Securities**

This policy section provides guidance as to the limited and rare circumstances under which the Community Foundation may accept gifts of Non-Public Securities. Non-Public Securities include corporate stock or interests in other forms of closely-held businesses for which there is no public market and which are subject to restrictions on transfer.

Generally, the Community Foundation sells donated securities immediately following receipt and reinvests the net proceeds in marketable securities in accordance with the investment strategy adopted and regularly reviewed by the Community Foundation's Board. The Community Foundation's investment policy does not include an allocation to Non-Public Securities because those securities are not subject to review by the Foundation's investment advisers and cannot be sold promptly following receipt. An ad hoc committee of the Community Foundation Finance and Investment Committee must review all offers of gifts of Non-Public Securities on a case-by-case basis and, in its discretion, will recommend

acceptance or declination of any proposed gift. If the ad hoc committee recommends acceptance of the gift, the full Community Foundation Board also must approve receipt.

The Community Foundation will place a donor's gift of Non-Public Securities in a segregated fund and will sell those securities as soon as possible. Indeed, the Community Foundation will accept gifts of Non-Public Securities only if appears reasonably certain that those securities can be sold within a reasonable period. While the Community Foundation holds any Non-Public Securities, ownership of the Non-Public Securities must not impose financial or other burdens on the Community Foundation.

#### Donor Responsibilities

The donor must comply with all Internal Revenue Service and State of Michigan requirements associated with a donation of Non-Public Securities as well as any requirements the Community Foundation establishes from time to time, including this policy.

Donor, at donor's expense, will:

- Provide the Community Foundation with all organizational and related documents for the underlying business, including any agreements restricting ownership or transfer of the Non-Public Securities.
- Provide the Community Foundation with financial information reasonably requested by the ad hoc committee, Community Foundation staff or the Foundation Board, including any valuation of the proposed gift;
- Advise the Community Foundation about any state or federal registration or restrictions affecting the Non-Public Securities; and
- Provide all instruments required for transfer of the securities to the Community Foundation, including any required consents from other holders of such Non-Public Securities.

If the Community Foundation agrees to accept a gift of Non-Public Securities, donor will agree to:

- Cause preparation at donor's expense of a complete IRS Form 8283 describing, among other things, the gift and its value as set forth in a qualified appraisal;
- Confirm in writing that donor has placed no restrictions on the Community Foundation's right to use, convey or dispose of the gift except for any restrictions reviewed and approved by the Community Foundation's board;
- Provide the Community Foundation at least annually or more frequently at the Foundation's request with all information about the condition of the company that is provided to other owners and/or that the Foundation may request from time to time, including, without limitation, confirmation of liability insurance coverage of the business represented by the Non-Public Securities;
- Make additional annual contributions sufficient to cover any unrelated business income tax or other taxes, fees or costs imposed on the Community Foundation as a consequence of its ownership;
- Pay the Community Foundation's usual administrative fee by an additional annual donation if the donated Non-Public Securities do not generate sufficient funds to pay that fee or there is not sufficient cash held in the fund to cover such fees;
- Make any required capital contributions or other amounts required of owners of the Non-Public Securities;
- Assist the Community Foundation in relinquishing its ownership of any donated Non-Public Securities if the Foundation, in its discretion, determines to abandon, disclaim or otherwise give up any interest in those securities; and

- Indemnify the Community Foundation and hold it harmless from any liability associated with ownership of the donated Non-Public Securities, including any liability arising if the Issuer files for bankruptcy or otherwise becomes unable to satisfy its obligations as they are due.

#### Community Foundation Procedures

The Community Foundation will not pay for legal assistance, appraisals or other assistance on behalf of a donor.

The Community Foundation cannot establish or corroborate the value of any donated Non-Public Securities for purposes of substantiating the donor's income tax compliance.

The Community Foundation does not accept gifts of general partnership interests due to potential unlimited liability and because participation in non-charitable activities as a general partner may jeopardize the Community Foundation's tax-exempt status.

In the proper case, the Community Foundation may accept interests in a limited partnership or limited liability company, but the Community Foundation first must be certain that the Community Foundation will not incur undue tax or other liabilities due to the allocations among partners or members or due to the nature of the business conducted.

If and when the Community Foundation sells any donated Non-Public Securities, the Community Foundation will not make any warranties or representations or enter into any indemnity agreements under the sale.

The Community Foundation will advise the donor if the Community Foundation sells or otherwise disposes of any Non-Public Securities within two years of receipt of the gift. The Community Foundation is required to file with the IRS Form 8282 reporting the actual proceeds and other facts about the sale of Non-Public Securities. The Community Foundation will provide a copy of such report to the donor.

The Community Foundation, in the discretion of its Board, may abandon, disclaim or otherwise relinquish any gift of Non-Public Securities at any time.

#### Special Note Regarding Gifts of Non-Public Securities to Donor Advised Funds

Under the Pension Protection Act of 2006, the private foundation excess business holdings rules apply to all donor advised funds at community foundations. Those rules are complex, and the Community Foundation's ad hoc committee and Board must be satisfied of compliance before any such gifts are accepted for a donor advised fund.

In general (and subject to exceptions), the holdings of a donor advised fund in a business enterprise, together with the holdings of the persons who are "disqualified persons" with respect to that fund, may not exceed 20% of the voting stock or profits interest in a business or in an entity. In addition, the gift of any interest in an entity in which an interest is owned by a donor or advisor to the DAF, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest, shall be referred to the Community Foundation's counsel for an opinion on the possible application of Code Section 4943.

If the Community Foundation accepts gifts that constitute excess business holdings, it shall have five years to divest holdings that are above the permitted amount.



### **Miscellaneous Gifts**

Gifts received by the Foundation that do not contain any evidence as to the donor's wishes will be processed in the following manner:

1. Gifts from a donor known to have an endowment fund with the Foundation will be held until the donor is contacted to determine the intent of their gift. If contact with the donor cannot be made with reasonable effort, or if the donor does not have a preference, the gift will be credited to the Foundation's Community Investment Fund (except as noted below).
2. Undesignated gifts will be equally allocated between the Community Investment Fund (for general charitable granting purposes) and the Acheson Community Foundation Endowment Fund (benefiting Foundation operations and long-term sustainability). From time-to-time, the Foundation's Board may allocate the gift to another fund, such as the Foundation's Programs and Services Fund (for immediate operations).
3. All gift acknowledgement letters will clearly inform the donor of how their gift was allocated. Such letters do not need to seek permission from the donor, but will rather simply state how we have allocated the donor's gift. If a donor subsequently requests that their gift be transferred to a different fund or purpose, a simple request in writing will be sufficient to consider each request on a case-by-case basis.
4. In compliance with IRS guidelines for gift receipts, gift acknowledgement letters for all gifts will include:
  - a. Name of the donor and Foundation organization receipting gift;
  - b. Amount of cash contribution or for non-cash contributions, a description but not value of the gift;
  - c. Statement that the Foundation did not provide goods or services in whole or in partial consideration in exchange for their donation, or a good faith estimate of the value of goods and services, if any, provided; and
  - d. Statement that the Foundation has exclusive legal control over the contributed assets (owns and manages all Funds).

### **Other Gifts**

Any gifts not covered by this policy will be considered on a case by case basis.

### **DISCLAIMER**

The Community Foundation is not engaged in rendering legal or tax advisory service for advice and assistance in specific cases. The services of an attorney, CPA or other professional advisor should be obtained.