



ACF Revised Draft Gift Acceptance Policy – as of 12-15-23

Gift Acceptance Policy (Revised and Approved by Board of Trustees as of [insert date])

Introduction

The Albuquerque Community Foundation’s (“Foundation”) mission is to serve the Foundation’s community by mobilizing and stewarding resources to create equitable opportunity for all. Decisions regarding the establishment of new funds, grant distributions from any fund, and the investment of the Foundation’s assets are made in furtherance of its charitable Mission in the sole and absolute discretion of the Foundation.

The Foundation’s role in the community, national philanthropic best practices, and other influences have evolved since this Gift Acceptance Policy was last revised in 2011. That evolution, together with changes throughout the greater Albuquerque community, the community’s donor base, non-profits pursuing important missions to serve immediate community needs and to address root causes of challenges we face, necessitates modernization and improvement upon the Foundation’s prior thoughtful policy development work.

Importantly, this policy and the work associated with its development follows recent work by the Board of Trustees and staff of the Foundation to revisit the Foundation’s Mission, Vision and Values that help guide its work. Central to those efforts were seeking to ensure that the Foundation focuses on serving the entire greater Albuquerque area, geographically and demographically, and incorporating principles of diversity, equity and inclusion into the Foundation’s DNA through its governing documents. The goal of this work is to achieve what the philanthropic community refers to as “values-aligned philanthropy,” supporting values that include “fairness and equality, safety and opportunity for individuals and families, treating others as you would want to be treated, and the importance of core principles of democracy.” Council of Foundations, *Values-Aligned Philanthropy: Foundations Resisting Hate and Extremism*, 13 (August 2021).

The work described above and reflected in this policy continues to honor the fundamental “Purpose” of the Foundation as stated in Article I of the Foundation’s bylaws: “The Foundation will . . . [give] special attention to current and changing community needs.”

When we reference “other influences” as one of the drivers of the review and revision of this Gift Acceptance Policy, we refer to a range of developments, including without limitation, the rise of destructive, anti-democratic extremism, activities that cause harm in communities, hate speech and associated violence. The philanthropic community nationwide is aware of these trends and recognizes that it needs to confront those challenges. Consequently, certain revisions to this policy are designed to focus the Foundation’s and the community’s attention and efforts on these topics. Together with that focus, the Foundation will continue to support a wide array of the philanthropic interests shared by our donors and other supporters to enhance and improve peoples’ lives, provided those interests are not in conflict with the Foundation’s bylaws, Mission, Vision, Values and policies (collectively, “MVV”). We envision the Foundation will continue to be built by and for all people, working as a partner, ally, and catalyst to create and advance change for a better future for all in our community.

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In developing the revisions to this policy, Foundation staff, Committees and the Board of Trustees have investigated what the Council of Foundations, the Foundation's accrediting organization, and other Community Foundations and organizations supporting philanthropic work across the country have learned as they have considered revisions of comparable policies and practices as those addressed here. That said, the Foundation recognizes that while this new policy aligns with the Foundation's MVV, we will undoubtedly continue to learn about best practices and discover ways to improve this policy further as we implement these policy prescriptions.

We welcome the opportunity to discuss concerns that the Albuquerque community, whether existing donors, prospective donors, grantee non-profit organizations, and others, may have with the new policy. Notwithstanding the diligence and research behind the development of this revised policy, we expect that there will be viewpoints, concerns, and ideas that we have not considered fully. And we expect that some members of our community may have questions or concerns about how we implement the policy. We trust that with open and transparent communication and opportunities to learn from one another, most (if not all) concerns can be addressed so that the Foundation may continue its increasingly effective service to the entire community.

The Foundation seeks to enhance the quality of life for all people in the region and works from the knowledge and experience that we are better together. We believe a region that welcomes and engages all will be better able to meet challenges and opportunities for our future.

Of course, in the implementation of this policy and other Foundation governing documents, the Foundation will follow applicable federal, state, and local laws. Further, the Foundation will not intentionally provide support to organizations operating, in the Foundation's judgment, in violation of those same laws, including without limitation laws regarding discrimination based on, without limitation, race, religion, disability, sexual orientation, national origin (including Native Americans), immigration status, ethnicity, gender, or gender identity.

Purpose

The purpose of this policy is to serve the best interests of the community, the Foundation, and its donors and grantees by providing principles and guidelines for negotiating and accepting various types of gifts and addressing issues that may arise from donors' expressed intentions for possible beneficiaries of potential gifts. Given the increasing complexity of IRS regulations, the wide range of types of gifts offered to the Foundation, applicable state and federal laws, and the importance of ensuring that gifts align with the Foundation's MVV, the Foundation recognizes the need for carefully screening proposed gifts.

The purpose of any proposed gift must fall within the broad charitable purpose of the Foundation and be consistent with the Foundation's MVV. In addition, the Foundation Board and staff must be able to assure that gifts accepted by the Foundation do not place other assets of the Foundation at risk, and that they can be easily converted into assets that fall within the Foundation's investment guidelines. The Foundation must also determine whether it can administer the terms of the gift in accordance with the donor's wishes, subject to further evaluation as the Foundation administers accepted gifts. In that regard, as donors recommend grants from a fund, the Foundation intends to pursue, as necessary, greater due diligence than simply confirming a potential grantee organization is a valid non-profit tax exempt entity.

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Guiding Diversity, Equity and Inclusion, Anti-Hate and Anti-Racism Principles

Considering recent revelations that some percentage of philanthropic giving has, unwittingly or otherwise, ended up in organizations that foment hate, racism, white supremacy and other hateful activities, the Foundation reaffirms and adopts the following principles, the spirit of which should guide the day-to-day work of the Foundation staff as it works with donors, grantees, as well as potential donors and grantees:

- We honor the fundamental value and dignity of all individuals and seek to cultivate and facilitate relationships with donors seeking to advance charitable work in our community honoring those principles. Thus, the Foundation will not support a prospective donor's establishment of funds that, directly or indirectly, would be contrary to the Foundation's commitment to changing systems of oppression and harm to achieve equitable opportunity for all. In alignment with that commitment, the Foundation will not distribute funds to or otherwise support organizations that engage in or perpetuate hate or hateful activities. We define "hate" as enmity or malice based on one or more of the following actual or perceived characteristics of groups or individuals: race, religion, disability, sexual orientation, national origin, immigration status, ethnicity, gender, gender identity, or other characteristics. We define "hateful activities" as those that, in the Foundation's judgment, result in or incite violence, intimidation, harassment, or threats; defamatory, dehumanizing, or maligning speech; negative stereotyping; or other acts of marginalization. Depending on the circumstances, deception or misrepresentation about an organization's mission, positions, or services may be considered hateful activity. Please note that the Foundation may decline to support organizations that perpetuate hate or, independently, organizations that support or advocate hateful activities.
- The Foundation respects religious freedom and recognizes that our donor base supports a wide range of religious organizations, beliefs and views, which are commonly reflected in grant-making to churches, mosques, synagogues, temples and other faith-based organizations. The Foundation, however, will not accept a donor's grant recommendations to faith-based organizations where support of any such organization would constitute a breach of the immediately preceding principle regarding hate and/or hateful activities or where the charitable activities supported by a grant would require participation in, or agreement with, a religious activity that may be considered hateful as a condition for receiving services.

The Foundation will perform careful due diligence to appropriately assess proposed new funds, grant recommendations, and investment opportunities to ensure we make informed decisions consistent with this policy.

Foundation Rights and Responsibilities

Foundation staff should disclose to all prospective donors the benefits and liabilities that could reasonably be expected to influence the donor's decision to make a gift to the Foundation. In particular, donors should be made aware of:

- The Foundation's MVV;

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- The irrevocability of a gift;
- Prohibitions or limitations on donor restrictions;
- Items subject to variability (market value, investment return, and income yield);
- The Foundation’s responsibility to provide periodic financial statements on donor funds; and
- The Foundation’s responsibility to provide a donor bill of rights to donors (attached as “Appendix C”).
- The Foundation’s authority to make **final** decisions regarding grant-making from any donor advised fund or other grant-making any donor may propose. The Foundation has the sole discretion in this regard, notwithstanding any advice or request it may receive from a donor. In that regard, the Foundation reserves the right to conduct any due diligence it determines appropriate in its sole discretion prior to making any final decision regarding any proposed grants, even in circumstances where grants may have been made previously to that proposed grantee organization.
- The existence of the variance power the Foundation retains, and the Foundation’s ability to exercise that power where a donor’s intent or asserted rights are contrary to the Foundation’s MVV.

Subject to applicable Foundation document retention policies, Staff should maintain a written record of pertinent communications with donors. The role of Foundation staff shall be, wherever reasonably possible, to inform, guide and assist a donor in fulfilling his, her or its philanthropic wishes, but never to pressure or unduly influence a donor.

The Foundation relies, in part, on the IRS to regulate the charitable status of organizations, but if the Foundation becomes aware of a public charity that does not align with the Foundation’s beliefs as stated above and as captured more generally in the Foundation’s MVV as they may evolve over time, the Foundation may exercise its variance powers in any fund agreement to ensure that funds and donations are managed in accordance with these principles. Moreover, as part of any due diligence or other reviews, the Foundation may consult nationally recognized resources and independent consultants to identify and update information regarding potentially hateful activities and organizations.

As noted above, in the implementation of this policy and other Foundation governing documents, the Foundation will follow applicable federal, state, and local laws. Further, the Foundation will not intentionally provide support to organizations operating, in the Foundation’s judgment, in violation of those same laws, including without limitation laws regarding discrimination on the basis of, without limitation, race, religion, disability, sexual orientation, national origin (including Native Americans), ethnicity, gender, or gender identity.

Procedures regarding Fund Establishment and Distribution

The Foundation will review proposed gifts or new funds to ensure the fund and the prospective’s donor’s intent is consistent with the Foundation’s MVV, including this Gift Acceptance Policy and the Grantmaking Policy. Staff may flag any potential fund or gift deemed potentially inconsistent with the Foundation’s MVV. Staff may conduct any appropriate initial due diligence regarding the donor’s expressed intent regarding potential grantee organization(s) and leadership and make a determination if further investigation is warranted before accepting any gift or establishing any fund that may conflict with the Foundation’s MVV. If a potential conflict arises between the proposed gift and the Foundation’s MVV, all information regarding the proposed gift or fund may

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be provided to the Foundation's Gift Acceptance Committee for advice or input. Should the Committee recommend rejection of the proposed fund, and should Staff also recommend rejection or denial of a new fund or grant, that recommendation shall be forwarded to the Foundation's Executive Committee for further consideration.

On review of the recommendation, the Foundation's Executive Committee has the authority to approve or decline the establishment of a new fund, and if the Executive Committee determines that the Foundation decline or reject the proposed fund, that decision is final. Staff will communicate the decision and reason for the decision to the donor or potential donor. This policy and related policies will be given to potential donors as the fund establishment process is initiated.

For any gift or proposed fund that is declined, that decision is without prejudice to consideration of a potential future gift.

Rights and Responsibilities of the Donor

- If a Donor does not have independent legal and/or tax counsel and financial advisors, the Foundation will strongly encourage to secure such advice in all matters pertaining to a gift to the Foundation.
- Donors will be required to establish a value for gifts of real assets and to provide, at the donor's expense, a qualified appraisal required by the IRS in the case of gifts of tangible personal property valued in excess of \$5,000. The Foundation will inform the donor that the IRS requires the filing of Form 8283 to be attached to the donor's tax return for gifts of tangible personal property valued at more than \$500 and the preparation of this form by donor's accountant is the donor's responsibility. The Foundation will not appraise or assign a value to the gift.
- Generally, costs associated with the acceptance of a gift such as attorney fees, accounting fees, other professional fees as well as other costs to establish a gift such as appraisal, escrow, evaluation, and environmental assessment fees will be borne by the donor.
- **It will be the responsibility of the donor and donor's legal counsel to review and inform themselves regarding the terms and conditions of any agreement the Foundation may propose to govern the terms of the proposed gift, as well as the Foundation's MVV, including without limitation, this policy, and the Foundation's Anti-Hate and Grantmaking Policies and Procedures, or successor policies.** Foundation staff will make themselves available to answer questions and discuss the terms and conditions of the proposed agreement to ensure the parties are aligned in their intent and that the agreement appropriately and clearly documents that intent.

Gift Acceptance Committee

The Foundation shall maintain a Gift Acceptance Committee ("GAC") to assist in the administration of this policy, as provided. The composition of the GAC will be determined by the Foundation's Board Chair, in consultation with the Foundation's President/CEO, and will consist of five (5) people, at least two of whom shall be members of the Executive Committee and at least two of whom shall be members of the Advancement Committee. The GAC will meet on an as-needed basis, in person, via telephone or via e-mail to review the details of unique, potentially

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controversial, or complex gifts, or other gifts that require close consideration. The GAC will bear the following responsibilities, when staff makes an initial determination that a potential gift may not be consistent with the Foundation's MVV:

- Review staff recommendations regarding whether to accept a specific gift;
- Determine whether a specific gift is consistent with the Foundation's MVV;
- Collaborate with staff regarding steps to be taken in the Foundation's acceptance/rejection process for any particular proposed gift;
- Advise staff how to protect the Foundation from any possible repercussions; and
- Recommend to the Foundation's Executive Committee whether or not to accept a gift. A decision to accept a gift is final. In the event the Executive Committee determines a gift is not or may not be consistent with the Foundation's MVV, the Executive Committee will then present that recommendation to the full Board of Trustees for a final decision. However, in the event of a necessarily time-sensitive decision on a particular proposed gift, the Executive Committee may exercise its authority under the bylaws to act on behalf of the full Board of Trustees between Board meetings, and make a final decision.

Gifts requiring review by the GAC will be handled promptly. Foundation staff will deliver to GAC members a staff recommendation, together with all information necessary to make a decision. If a gift is not accepted, staff shall notify the donor. All gift reviews, including any and all information provided to GAC and Board members will be handled with the utmost confidentiality.

Form of Gifts to the Foundation

Gifts requiring Review

- Tangible personal property that is not readily marketable
- Real estate
- Closely-held stock, limited partnership and limited liability company interests
- Gifts of oil, gas and mineral interests and other types of assets carrying their own challenges
- Life insurance policies requiring future premium payments by the Foundation
- Charitable trusts
- Gifts of personal property for use in Foundation offices
- Gifts that may implicate or be inconsistent with the Foundation's MVV

Gifts not requiring Review

- Cash or cash equivalents
- Checks
- Marketable securities
- Life insurance policies except as noted above
- Gifts that clearly align with the Foundation's MVV

Gifts Declined

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The Foundation reserves the right to refuse any gift it believes is not in the best interests of the community, the donor (in the judgment of the Foundation), or the Foundation. In addition, the Foundation will not knowingly accept a charitable gift from a donor who:

1. Has a clear and obvious insufficient mental capacity to make a rational decision;
2. Has insufficient input from competent financial legal and or personal counsel; or
3. Whose intent conflicts with the Foundation's MVV.

Investment of Gifts

It is the policy of the Foundation to convert all non-cash gifts to cash as soon as reasonably possible, subject to compliance with the terms of this policy. The Foundation reserves the right to make all investment decisions regarding gifts in accordance with its Investment Policy.

The sale of gifts of publicly traded stocks can be authorized by the President & CEO or CFO as soon as it is practicable upon receipt of the gift.

In making a gift to the Foundation, donors give up all rights, title, and interest to the assets contributed. In particular, donors give up the right to choose investments and investment managers, brokers, or to veto investment choices for their gifts.

Additionally, when the size of a fund warrants separate investment consideration, the Foundation may consider requests from donors for separate investment of fund assets, or use of a particular investment manager, broker or agent in accordance with the Investment Policy, and may consult with donors on investment options for such funds.

Holding Gifts

Any accepted gifts of real estate, closely-held stock, limited partnership and limited liability company interests and gifts of oil, gas and mineral interests and other types of assets carrying their own challenges shall be held in the Foundation's wholly owned subsidiary, ACF Holdings, LLC until sold or otherwise liquidated.

Unrelated Business Income Tax

Certain assets, including mortgaged real estate and interests in S Corporation, limited partnerships, and limited liability companies can subject the Foundation to Unrelated Business Income Tax (UBIT). The Foundation may incur additional costs for accounting services to determine the amount of any UBIT and report it to the IRS. The Foundation staff will consult with its accounting firm and provide any tax advice to the GAC prior to staff's recommendation to accepting gifts that may generate UBIT. The Foundation will not ordinarily accept real property that is encumbered by mortgage indebtedness unless satisfactory arrangements can be made with regard to UBIT the Foundation may incur.

Acknowledgment

Donors shall receive acknowledgement from the Foundation of the gift in accordance with federal regulations.

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Publicity/Confidentiality

No public media exposure with respect to a donor's gift will be generated without the consent of the donor. Foundation staff shall maintain strict control over files and information received from or about donors or prospective donors to maintain confidentiality of such information.

Undesignated Gifts

Undesignated gifts or bequests shall be allocated 50% to the operating reserve account to the extent such reserve is less than nine (9) months current operating budget, and 50% to the Foundation's Administrative Endowment. Once the operating reserve account exceeds nine (9) months current operating budget, any undesignated gift or bequest shall be allocated 50% to the Impact Fund (unrestricted) and 50% to the Foundation's Administrative Endowment.

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Appendix A

Gifts Requiring Review by The Gift Acceptance Committee

In addition to circumstances described in this policy regarding the necessity of GAC review, particularly including potential funds or gifts to the Foundation that may be inconsistent with the Foundation's Mission, Vision, Values and policies, the following types of gifts shall require review by the GAC:

I. Tangible Personal Property

General. The Foundation accepts gifts of personal tangible property (e.g., artwork, coin collections, jewelry, boats, airplanes, automobiles, furniture) only if: (i) the Foundation determines that the property will be used in furtherance of the Foundation's exempt purposes or (ii) the Foundation will be able to sell the property. If the property is to be sold, the Foundation will accept the gift only if it has sufficient value to justify the expenditure or resources required for such sale. The Foundation may accept gifts of personal tangible property in any amount to any existing fund. Gifts of tangible personal property to establish a new component fund at the Foundation must meet the applicable minimum funding requirement.

Appraisal. Each gift of personal tangible property for which the donor expects a charitable deduction exceeding \$5,000 must be appraised in accordance with federal tax law. The donor will be responsible for obtaining and paying for such appraisal.

Procedures for Accepting Personal Tangible Property. The following procedures apply to all proposed gifts of personal tangible property:

- The Foundation will review all prior appraisals and authentication documents, if any, relating to the property.
- If the property is to be sold, the Foundation will ascertain the market for such property and estimate the costs to be incurred in connection with the sale as well as the costs of holding the property prior to sale.
- All costs incurred by the Foundation in connection with the holding and sale of the property shall be charged against the sale proceeds, with the balance being credited to the fund to which the property has been contributed.

II. Real Estate

General. This policy applies to all gifts of real property, including outright gifts of residential and commercial property and farmland; bargain-sale transactions; and gifts of remainder interests in which the donor retains a life estate. The Foundation does not accept gifts of time shares.

Gifts of real property must be reviewed by the GAC. Subject to the GAC's approval, the Foundation may accept gifts of real property to any fund. Gifts to establish a new component fund at the Foundation must meet the applicable minimum funding requirement. In deciding whether to accept real property gifts the Foundation will:

- Determine whether the real estate gift is an acceptable minimum value.

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- Confirm that the donor has legal capacity and is entitled to convey the property through copies of deed, title report, etc., provided by donor. In addition,
- Determine whether, if property is encumbered by debt, the debt is of a level that will not unduly burden the Foundation or adversely affect the marketability of the property. The Foundation will consider encumbered property for acceptance only if the evaluation convincingly demonstrates that the property can be sold at a price that substantially exceeds the aggregate amount of encumbrances and any costs associated with satisfying them.
- Perform a market and financial analysis prior to acceptance of the gift to determine whether the gift is a financially sound acquisition.
- Weigh the Foundation's ability to manage the property for the time necessary to sell the property. For example, income producing property may subject the Foundation to unrelated business income tax and/or other types of expenses, including but not limited to, upkeep of land, maintenance of buildings and management of property.
- Evaluate whether any restrictions on the gift desired by donor will jeopardize the classification of such gift as charitable.
 - Depending on the complexity and value of the property being donated, the staff should discuss an appropriate fee/gift arrangement with the donor to help cover the overhead costs of accepting the gift. This may include realtor commissions, title work, closing costs, legal fees, property taxes, insurance, environmental assessments, and any agreed remediation or reclamation work.
 - Should the proposed real estate gift prove to be acceptable, Foundation staff shall develop appropriate gift arrangements with the donor. The arrangements will be subject to the approval of the GAC.

Appraisal. Each gift of real property giving rise to a charitable deduction of more than \$5,000 must be appraised in accordance with applicable federal laws and regulations, including without limitation IRS regulations. The donor will be responsible for obtaining and paying for such appraisal.

Distributions. Distributions from a component fund that consists entirely of real property are limited to the net income generated by the property less fees assessed by the Foundation and any unrelated business tax imposed thereon.

Liquidation. The Foundation will generally seek to sell real property as soon as possible and generally will not accept gifts that cannot be liquidated within three years.

Procedures for Accepting Gifts of Real Property. Donors will provide the information and documents requested in the Real Property Donation Checklist and the Real Property Inquiry Form at the earliest possible time prior to the acceptance of the gift. Copies of the checklist and form are appended to this policy at Appendix B. The Foundation may request additional information or documents when necessary for its evaluation of the proposed gift.

Whenever possible, a member of the Foundation staff, along with an authorized representative or members of the GAC will visit the property to determine its nature and type and to identify any potential problems not evident from information supplied by the donor that might hinder or prevent the Foundation's sale of the property or otherwise expose the Foundation to unacceptable risks or liabilities.

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Environmental Assessment. If the property type warrants, Donor will provide, at its expense, at least a Phase I Environmental Report with disclosure of any environmental problems or statement that none exists.

Other Considerations for accepting Real Estate Gifts.

1. The Foundation must weigh carefully whether or not it has the desire and ability to manage the property for whatever length of time is necessary to consummate the sale after title passes to the Foundation. If the property produces income, the Foundation must consider the amount of income it receives against the ongoing costs of the encumbrances and management and maintenance of the property.

Disposition of property: Generally, the Foundation will sell property as quickly as possible after the gift is completed, subject to at least the following considerations:

- a. The Foundation should consider its investment objectives before selling.
- b. The Foundation should avoid selling property at a distressed price, a price below market value, or below the value the donor identified to the IRS as the value of the charitable contribution. A sale on that basis within a three year period after the donation may jeopardize the donor's charitable contribution deduction and might also negatively impact market values in the area.

III. Closely-Held Stock, Limited Partnership (LP), General Partnership, and Limited Liability Company (LLC) Interests

A. Closely-Held Stock and S Corporation Stock.

General. Gifts of closely-held and S corporation stock must be reviewed by the GAC and the Foundation's Investment Committee. Subject to the Committees' approvals, the Foundation may accept gifts of closely-held or S corporation stock in any amount to any existing fund. Gifts to establish a new component fund at the Foundation must meet the applicable minimum funding requirement. The Foundation may accept gifts of stock in closely-held or S corporations that generate unrelated business income only if certain agreements are reached with the donor and/or the corporation. These include an agreement by the donor that the taxes on the unrelated business income and the Foundation's associated administrative expenses (e.g., accounting and tax return preparation) will be charged against the fund holding the contributed stock. Further, the donor should agree to contribute additional cash to the fund to pay the foregoing taxes and administrative expenses to the extent there is insufficient cash in the subject fund balance to cover such taxes and expenses.

Appraisal. Each gift of closely-held or S corporation stock giving rise to a charitable deduction of more than \$5,000 must be appraised in accordance with federal tax law. The donor will be responsible for obtaining such appraisal.

Distributions. Distributions from a component fund that consists entirely of closely-held or S corporation stock are limited to the income generated by the securities less fees assessed by the Foundation and any unrelated business tax imposed thereon.

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Liquidation. The Foundation will generally seek to redeem or sell closely-held or S corporation stock contributed as soon as possible and generally will not accept gifts that cannot be liquidated within three years.

Procedures for Accepting Gifts of Closely-Held or S Corporation Stock. The following procedures apply to all proposed gifts of S corporation stock:

- The Foundation will review corporate governing documents to determine the rights and obligations associated with the stock and whether or not the Foundation should undertake such obligations in light of such rights.
- The Foundation will review the corporation's most recent tax returns and the donor's most recent K-1 to determine the nature of the income associated with the stock (e.g., unrelated business income, active versus passive business).
- All proposed transfer documents must conform to the Foundation's form or be approved by the Foundation's counsel.
- As a condition for the Foundation's acceptance of the gift, a written agreement between the donor and the Foundation should be in place that provides for the payment of administrative expenses and unrelated business income taxes generated by the stock to the extent there is insufficient cash in the fund to which the stock has been donated to cover such expenses and taxes. The agreement should also require the donor to indemnify the Foundation against all liabilities incurred by the donor on account of the stock up to the date of the gift.
- The donor shall provide the Foundation with all documents which outline, discuss or relate to the duties and liabilities which shareholders have, including Shareholder Agreements.

B. General Partnership Interests.

The Foundation generally does not accept gifts of general partnership interests due to the unlimited liability of general partners.

C. Limited Partnership Interests.

General. Gifts of limited partnership interests must be reviewed by the GAC. Subject to the Committee's approval, the Foundation may accept gifts of limited partnership interests in any amount to any existing fund. Gifts to establish a new component fund at the Foundation must meet the applicable minimum funding requirement. The Foundation reserves the right to carefully screen all proposed gifts of limited partnership interests to ensure that they place no undue risk upon the Foundation.

The Foundation generally does not accept gifts of interests in partnerships that carry on active business. Interests in passive, investment-type limited partnerships such as those holding real estate, stocks, and bonds, are preferred.

The Foundation may accept gifts of limited partnership interests that generate unrelated business income only if certain agreements are reached with the donor. These include an agreement by the donor that the taxes on the unrelated business income and the Foundation's associated administrative expenses (e.g., accounting and tax return preparation) will be charged against the

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fund holding the partnership interest. Further, the donor would have to agree to contribute additional cash to the fund to pay the foregoing taxes and administrative expenses to the extent there is insufficient cash in the subject fund balance to cover such taxes and expenses.

Appraisal. Each gift of limited partnership interest must be appraised in accordance with federal tax law. The donor will be responsible for obtaining such an appraisal.

Distributions. Distributions from a component fund that consists entirely of limited partnership interests are limited to the income distributed to the Foundation by the partnership less fees assessed by the Foundation and any unrelated business income taxes imposed thereon.

Liquidation. The Foundation will generally seek to redeem or sell limited partnership interests contributed to it within three years.

Procedures for Accepting Limited Partnership Interests. The following procedures apply to all proposed gifts of limited partnership interests:

- The Foundation will review the partnership governing documents to determine the rights and obligations associated with the limited partnership interest and whether or not the Foundation should undertake such obligations in light of such rights. If required, the donor should be asked to obtain the other partners' consent to the gift as a condition to the Foundation's accepting the gift.
- The Foundation will review the donor's most recent K-1 and the partnership's tax returns to determine the nature of the income associated with the limited partnership interest (e.g., unrelated business income, active versus passive business).
- All proposed transfer documents must conform to the Foundation's form or be approved by the Foundation's counsel.
- As a condition for the Foundation's acceptance of the gift, a written agreement between the donor and the Foundation income should be in place that provides for the payment of administrative expenses and unrelated business taxes generated by the interest to the extent there is insufficient cash in the fund to which the interest has been donated to cover such expenses and taxes. The agreement should also require the donor to indemnify the Foundation against all liabilities incurred by the donor on account of the limited partnership interest up to the date of the gift.

D. Limited Liability Company Interests

The same considerations given to gifts of limited partnership interests apply to gifts of interests in limited liability companies.

IV. Treatment of Excess Business Holdings

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rule now applies to donor advised funds as if they were private foundations. That is, the holdings of a donor advised fund in a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed any of the following:

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- Twenty percent of the voting stock of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or the beneficial interest of a trust or similar entity

Ownership of unincorporated businesses that are not substantially related to the fund's purposes is also prohibited.

Donor advised funds receiving gifts of interest in a business enterprise after the date of the PPA's enactment (August 17, 2006) will have five years to divest holdings that are above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. Funds that currently hold such assets will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969.

The Foundation will identify and monitor any new gifts to donor advised funds of any interest qualifying as an "excess business holding" under PPA.

V. Definitions

A. Business enterprise

A business enterprise is the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services. Specifically excluded are:

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity
- Income from dividends, interest, royalties and from the sale of capital assets
- Income from leases unless the income would be taxed as unrelated business income
- "Functionally-related" business and program-related investments
- Businesses that derive at least 95% of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the affect of excluding gifts of interest in most family limited partnerships, and other types of holding company arrangements.

B. Disqualified person

Donors and persons appointed or designated by donors are disqualified persons if they have or reasonably expect to have advisory privileges with respect to the donor-advised fund by virtue of their status as donors. Members of donors' and advisors' families are also disqualified, but the section does not define "family" and does not cross-reference either section 4958 or 4946 for the definition. Finally, the term includes 35% controlled entities as defined in section 4958(f)(3).

C. Oil Gas and Mineral Interests

The Foundation will accept oil, gas, or mineral property interest, where appropriate. The following steps will be performed to evaluate the gift:

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1. A qualified appraisal must be provided to the Foundation and the surface rights must have a substantial value.
2. A report of income generated for the last three years must be provided to the Foundation for review.
3. The Foundation must have adequate opportunity to review all documentation, which includes a review by the Foundation's legal counsel.
4. An environmental review must be performed to determine whether there is any environmental liability associated with the asset.

Oil, gas, and mineral interests shall be sold as soon as practical upon receipt unless the income generated from holding the interest is deemed sufficient to justify holding them.

D. Life Insurance Policies

The Foundation will accept outright gifts of life insurance policies, including whole life and universal life policies, which meet the following criteria:

1. The policy is a life insurance policy which is either paid-up, or if not paid-up as of the date of gift has:
 - a. A minimum face value of \$50,000;
 - b. Is a policy issued by an insurance company rated A+ or above by A.M. Best Company, or a comparable rating from Moody's Standard & Poors; and
 - c. Requires a written pledge of a charitable contribution from the donor to the Foundation in a total amount which equals or exceeds the total premiums due. The written pledge also will acknowledge the absolute ownership by the Foundation of the policy given and acknowledge the resulting rights of the Foundation to cash-in the policy, or exercise any other rights of ownership.
2. There is no outstanding loan against the policy,
3. The Foundation will be made the policy's owner and primary beneficiary.
4. When premium payments can no longer be made because there is insufficient value in the policy to keep it in force, or because the Foundation chooses to discontinue premium payments, the policy will be surrendered.

E. Charitable Trusts

A charitable trust is a planned gift that provides an income interest in assets for certain beneficiaries for a period of time and a remainder interest to other beneficiaries at the end of the income interest period. There are several types of charitable trusts. For a basic unitrust, the donor receives one or more yearly payments equaling a fixed percentage of the value of the asset. The value is determined each year. For a basic annuity trust, the donor receives a yearly fixed payment based on the value of the asset at the time the trust is signed.

A charitable lead trust is a trust where the Foundation would receive payments of a fixed percentage of the underlying assets for a specified time, after which the asset is transferred back to the donor or the donor's heirs.

The Foundation will not prepare charitable remainder trust documents. Any document prepared by the donor's attorney must be reviewed by the Foundation's legal counsel.

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If the donor intends to establish an endowment fund through a charitable trust, the donor must provide the Foundation with the exact guidelines for how the Foundation should administer the fund.

Charitable trusts require special tax treatment and consideration different from other gift funds. The administrative requirements are substantial, and to provide donors with the highest level of performance, the Foundation has partnered with an independent trust company to provide customized services to meet the unique needs of its charitable trust donors.

The Foundation shall not be named as trustee of a charitable remainder trust. Furthermore, trustee/management fees will be paid by the trust, and not the Foundation. No exceptions will be made, except as to those trusts existing prior to the adoption of these policies and procedures.

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Appendix B – Real Property Donation Checklist and Real Property Inquiry Form

Real Property Donation Checklist

1. Exact legal name of donor and federal identification number.
2. Description of property (copy of deed).
3. Description of any buildings or other structures located on the land.
4. Boundary survey of property with location of all structures, easements, and encumbrances appearing on the face of the survey.
5. Information regarding existing zoning status.
6. Information on all ingress/egress for the property.
7. Description of prior use of the property.
8. Description of use of surrounding property, with specific disclosure of any storage tanks or potential environmental factors affecting the property.
9. Disclosure of any contemplated or anticipated condemnations, right-of-ways or other actions by municipalities that may affect the subject property.
10. Phase I environmental report on the property, including environmental report on any structures located on the real estate.
11. Evidence of title, such as title examination and report, title insurance commitment, or schedule describing any liens, encumbrances, or title matters affecting the property.
12. Copy of appraisal showing the fair market value of the property current within sixty days.
13. Disclosure of amount of existing real estate taxes, insurance premiums, and assessments attributable to the property.
14. Discussion with proposed 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.

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Real Property Inquiry Form

I. General Information

| | |
|---|---------------------------|
| Owner(s) | Phone |
| Address | |
| Property Location | |
| Land area (acres or square feet) | |
| Building area (sq. ft. each floor) | |
| Zoning | |
| Replacement cost of building | |
| Current property insurance coverage | |
| Date of acquisition/form of acquisition | |
| Current cost basis (includes improvements) | |
| Principal balance of mortgage | Current fair market value |
| Assessed value for real estate taxes | |
| Real estate taxes | |
| Land value | Building value |
| Most recent appraisal (date) | Appraised value |
| Appraiser | |
| Occupancy status after transfer of title to charity | |
| Unimproved (no buildings) | |
| Unoccupied (building, but no occupant) | |
| Occupied (building with occupants) | |

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Please indicate by checking “yes” your awareness of any condition or problem which may affect the title or marketability of the property. Use Section VII to provide additional information.

| | | | |
|-------------|--|------------|-----------|
| II. | Title/Zoning | Yes | No |
| | A. Title | _____ | _____ |
| | B. Zoning variances, violations or special permits | _____ | _____ |
| | C. Zoning violations | _____ | _____ |
| | D. Restrictions or easements | _____ | _____ |
| | E. Survey available | _____ | _____ |
| III. | Condition of Building | Yes | No |
| | A. Foundations/slab | _____ | _____ |
| | B. Basement water/dampness/sump pump | _____ | _____ |
| | C. Roof leaks | _____ | _____ |
| | D. General structural | _____ | _____ |
| | E. UFFI (formaldehyde insulation) | _____ | _____ |
| | F. Asbestos | _____ | _____ |
| | G. Lead paints | _____ | _____ |
| | H. Termites/ants/pests | _____ | _____ |
| | I. Swimming pool | _____ | _____ |
| | J. Radon | _____ | _____ |
| | K. Building systems | _____ | _____ |
| | 1. Plumbing | _____ | _____ |
| | 2. Electrical | _____ | _____ |
| | 3. Heating | _____ | _____ |
| | 4. Air conditioning | _____ | _____ |
| | 5. Hot water | _____ | _____ |
| | 6. Water supply | _____ | _____ |
| | 7. Sewage; type | _____ | _____ |
| | 8. Other fixtures | _____ | _____ |
| IV. | Rental/Condominium/Cooperative | | |
| | A. Building systems | _____ | _____ |
| | 1. Leases | _____ | _____ |
| | 2. Rental arrears | _____ | _____ |
| | 3. Last month's rent/security deposit | _____ | _____ |
| | B. Common area fees in arrears | _____ | _____ |
| | C. Building or sanitary code violations | _____ | _____ |
| | D. Operating/capital budget | _____ | _____ |
| V. | Environmental | Yes | No |
| | A. History of property | | |
| | 1. Property has prior or current use for industrial, commercial, agricultural, manufacturing, waste disposal or any other non-residential purposes | _____ | _____ |
| | B. Condition of property | | |

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- 1. Stressed or denuded vegetation or unusual barren areas _____
- 2. Discoloration, oil sheens, or foul/unusual odors in water _____
- 3. Storage drums _____
- 4. Above or underground storage tanks; vent or filler pipes _____
- 5. Evidence of oil or other chemicals in soil _____
- 6. Evidence of PCBs _____
- 7. Evidence of toxic air emissions _____
- C. Adjacent properties
 - 1. Properties adjacent or close to subject have conditions requiring “yes” answer to any questions in (A) and (B) above _____
- D. Flood plain/wetlands/drainage _____
- E. Endangered plants or wildlife _____

Are you aware of any other information concerning any part of the land or buildings which might affect the decision of a buyer or affect value of property or affect use by buyer? _____

VI. Property Expense Budget

To hold this property as a Foundation asset, the following income and expenses are anticipated:

- | | | | |
|----|---------------------------------------|---------------|-------|
| A. | Income | Annual | |
| | 1. Rent | | _____ |
| | 2. Other | | _____ |
| B. | Expenses | | _____ |
| | 1. <u>Real estate taxes:</u> | | |
| | First payment due _____ (date) _____ | | |
| | Second payment due _____ (date) _____ | | |
| | 2. <u>Utilities:</u> | | |
| | Gas | | _____ |
| | Oil | | _____ |
| | Electric | | _____ |
| | Water/sewer | | _____ |
| | Other | | _____ |
| | 3. <u>Services:</u> | | |
| | Caretaker/property manager | | _____ |
| | Landscaping | | _____ |
| | Heating/cooling service contract | | _____ |
| | Snow removal | | _____ |
| | Pool services | | _____ |

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| | |
|----------------------------------|-------|
| Common area charge (condominium) | _____ |
| Security | _____ |
| Other | _____ |
| 4. Maintenance/Repairs | _____ |
| 5. Insurance | _____ |
| Total Expenses | |
| Net Income (Loss) | |

VII. Additional Information on Sections II through VII:

VIII.

Acknowledgments

Owner(s)/Donor(s) hereby acknowledge that the information set forth above is true and accurate to the best of my (our) knowledge

| | |
|-------|------------|
| _____ | Date _____ |
| Owner | |
| _____ | Date _____ |
| Owner | |

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Appendix C

Albuquerque Community Foundation Donor Bill of Rights

PHILANTHROPY is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the public, and that donors and prospective donors can have full confidence in the Albuquerque Community Foundation, we declare that all donors have these rights:

| | |
|---|---|
| <p>I. To be informed of the Foundation's bylaws, Mission, Vision, and Values, and to be informed of the way the Foundation intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.</p> <p>II. To be informed of the identity of those serving on the Foundation's Board of Trustees, and to expect the Board to exercise prudent judgment in its stewardship responsibilities.</p> <p>III. To have access to the Foundation's most recent financial statements.</p> <p>IV. To be assured their gifts will be used for the purposes for which they were given, provided those purposes are consistent with the Foundation's bylaws, Mission, Vision and Values.</p> <p>V. To receive prompt acknowledgment and appropriate recognition for all gifts.</p> | <p>VI. To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.</p> <p>VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.</p> <p>VIII. To be provided with disclosure of all significant parties involved with the Foundation.</p> <p>IX. To be assured that the Foundation will not share mailing lists with any other entity.</p> <p>X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.</p> |
|---|---|

Board of Trustees approved as of _____

[Name]
Board Secretary