



San Antonio
Area Foundation

**Policy for Acceptance, Retention, Management,
and Disposition of Property–Including
Excess Business Holdings**

Policy #: 401.1	Title: Policy for Acceptance, Retention, Management, and Disposition of Property–Including Excess Business Holdings		Review Cycle:
Staff Owner (Title): Vice President, Development and Donor Services	Responsible Committee: Development Committee	Approved By: San Antonio Area Foundation Board of Directors	Approved/Amended Date: 9/24/19

Table of Contents

	<u>Page</u>
1. Definitions of Certain Terms Used in This Policy	3
1.1 Act	3
1.2 Excess Business Holdings	3
1.3 Foundation.....	3
1.4 Independent and Qualified Advisors.....	3
1.5 IRC	4
1.6 Subordinate Organization.....	4
1.7 Senior Leadership Team.....	4
2. General Purpose of this Policy	4
3. Ethical Standards in Dealing with Donors	5
4. Variance Power	6
5. Authority to Accept Gifts	7
5.1 Acceptance by Officers and Designated Employees.....	7
5.2 Acceptance by the Senior Leadership Team.....	7
5.3 Time-Sensitive Gifts.....	7
5.4 Timing of Review.....	7
5.5 Authority to Negotiate and Sign Gift Agreements.....	8
5.6 Nonacceptance of Gifts.....	8
6. Investment Policy	8
6.1 Third Party Advisors.....	9
6.2 Illiquid Assets.....	10
7. Acceptance and Disposition of Specific Types of Property	10
7.1 Acceptance of Gifts and Bequests Valued at Less Than \$10,000	10
(a) Cash and Other Acceptable Property of Any Value to Be Added to Existing Funds	11
7.2 Cash.....	11
7.3 Publicly-Traded Stock and Securities.....	11
(a) Appraisal.....	11
7.4 Real Estate	11
(a) Appraisal.....	12
(b) Distributions.....	12
(c) Liquidation.....	12
(d) Accepting Gifts of Real Property.....	12
(e) Environment Assessment.....	12
7.5 Minerals and Royalties	13
7.6 Insurance.....	13
7.7 Disposition of Excess Business Holdings of Donor Advised Funds and Supporting Organizations	13
7.8 Other Assets.....	15
7.9 Required Transaction Advice	16

8. Planned Gifts	17
8.1 By Will(Bequests).....	17
8.2 Retirement Plans or IRA Accounts.....	18
8.3 Life Income Gifts.....	18
(a) Charitable Remainder Trust.....	18
(b) Charitable Lead Trust.....	18
(c) Charitable Gift Annuity.....	19
(d) Life Estate.....	19
8.4 Fees and Expenses.....	20
9. Due Diligence Expenses	20
9.1 Payment of Due Diligence Acceptance Expenses.....	20
9.2 Payment of Due Diligence Management and Disposition Expenses.....	21
9.3 Expense Charges	21
10. Disclaimers	21
10.1 Property Bequeathed to and Accepted by the Foundation.....	21
10.2 Disclaimer of Decedent's Property Bequeathed to the Foundation.....	22
10.3 Disclaimers	23
10.4 Preliminary Investigation	24

1.

Definitions of Certain Terms Used in This Policy

1.1 Act. References to “Act” mean the Texas Uniform Prudent Management of Institutional Funds Act, as amended.

1.2 Excess Business Holdings. References to “Excess Business Holdings” have the same meaning as the definition of “excess business holdings” in IRC Section 4943(c) when applied to a “donor advised fund” by IRC Section 4943(e) or when applied to a “supporting organization” by IRC Section 4943(f).

1.3 Foundation. References to “Foundation” mean the San Antonio Area Foundation, a “community trust” described in Treas. Reg. Section 1.170(f)(2). The Foundation now includes a Texas non-profit corporation named the “San Antonio Area Foundation” and numerous common-law trusts that have adopted the Plan of the San Antonio Area Foundation.

1.4 Independent and Qualified Advisors. References to “Independent and Qualified Advisors” or “Advisor” mean individuals (including Foundation's Board of Directors members and any committee) who are familiar with the nature of the asset; the area in which the asset is located if it is real estate, minerals, or royalties; who the CEO or the Chief Financial Officer of the Foundation has determined to be qualified by previous experience with the same type of asset then under consideration; and who has signed the Foundation's Conflict of Interest Statement. Independent and Qualified Advisors may be volunteers selected by the CEO, by the Board of Directors, and/or recommended by a committee charged with responsibility concerning the Foundation's property then under consideration. Independent and Qualified Advisors selected by the Foundation's CEO, by the CFO, and/or by the Board of Directors to advise the Foundation from time to time may be paid by the Foundation for the reasonable value of the Advisor's requested services. The officers and directors of the Foundation shall act in good

faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances in selecting Advisors, establishing the scope in terms of the advice requested, and periodically reviewing the qualifications of each Advisor.

1.5 IRC. References to “IRC” mean the Internal Revenue Code of 1986, as amended. References to “IRC Section” mean sections of the Internal Revenue Code and include corresponding provisions of subsequently enacted provisions of the Internal Revenue Code.

1.6 Subordinate Organization. References to a “Subordinate Organization” mean an organization described in IRC Section 509(a)(3) that is operated, supervised, or controlled by the Foundation as required by its Articles of Incorporation, Certificate of Formation, Bylaws, Trust Agreement, gift instrument, or other governing documents of the entity to support the programs and/or finances of the Foundation.

1.7 Senior Leadership Team. References to “Senior Leadership Team” include the Chief Executive Officer (CEO), the President, the Chief Operating Officer (COO), Chief Financial Officer (CFO), and any employee holding the title of Vice President.

2.

General Purpose of this Policy

In order to achieve its mission, the Foundation must accumulate, through charitable gifts, a pool of assets sufficient to build community capital for future use with the corresponding obligation to support current and future community needs. The Foundation adopted this Gift Acceptance Policy to establish a clear understanding of the Foundation’s gift acceptance policy and practices and the acceptance, retention, management, and/or disposition of property it receives by gift or bequest. This Policy’s purpose is to provide guidelines for the acceptance of gifts by the Foundation to assure that each gift is structured to maximize benefits to the donor, the Foundation, the community and the beneficiaries of the Foundation’s charitable programs and

activities, without encumbering the Foundation with a gift that generates costs disproportionate to its benefit, or that may be restricted in a manner not in keeping with the laws governing charitable gifts or the Foundation's charitable purposes. The Foundation will review any specific instructions, requirements, or conditions from the donor to use the gift in the way the donor intended. This Gift Acceptance Policy applies to all gifts received and accepted by the Foundation. Any exception to this policy requires the approval of the Board of Directors. The Foundation shall require each of its Subordinate Organizations to adopt similar policies that are appropriate to the specific purposes and operations of each Subordinate Organization.

3.

Ethical Standards in Dealing with Donors

Every person acting for or on the Foundation's behalf shall adhere to the standards set forth in *A Donor Bill of Rights (Attachment A)* and the *Model Standards of Practice for the Charitable Gift Planner (Attachment B)*. Among those standards is the assurance that all information about a donation or contemplated donation will be handled by the Foundation with respect and with confidentiality to the extent provided by law.

The Foundation is committed to the highest ethical standards of philanthropy and development. In all transactions between potential donors and the Foundation, the Foundation aspires to provide accurate information and full disclosure of the costs, benefits and liabilities that could influence a donor's decision, including but not limited to:

- The Foundation's fees,
- The irrevocability of a gift,
- Prohibitions on certain donor restrictions,
- Items that are subject to variability (such as market value, investment return and income yield),
- The Foundation's responsibility to provide periodic financial statements with

regard to donor funds,

- Investment policies, and
- Other information deemed necessary by the Foundation for donors to make an informed choice about using the Foundation as a vehicle of charitable gifts.

Financial or tax calculations prepared by the Foundation are for illustrative purposes only and the Foundation shall have no liability to any prospective donor with respect to such calculations. All prospective donors are advised to seek the advice of independent financial, investment, tax, and legal counsel prior to making a gift to the Foundation.

4.

Variance Power

Per the bylaws, “the Board of Directors may, at any time or from time to time modify a restriction or condition contained in the Donor’s gift instrument regarding the management or investment of the contributed property and its proceeds if:

- due to changed circumstances, a literal compliance with the express charitable purposes and related restrictions or conditions designated by the Donor is unnecessary, undesirable, impractical, incapable of fulfillment, or inconsistent with the charitable needs of the area served by the Foundation;
- a restriction contained in the gift instrument regarding the management or investment of the property has become impracticable or wasteful, impairs the management or investment of the property; and/or
- because of changed circumstances not anticipated by the Donor, a modification of the restriction or condition will further the Donor’s charitable purposes.”

5.

Authority to Accept Gifts

5.1 Acceptance by Officers & Designated Employees. The Foundation's CEO, Vice President of Development and Donor Services, Development and Donor Services staff, and Chief Financial Officer may accept, for and on the Foundation's behalf, unrestricted gifts of cash (checks or credit cards). Any of the Foundation's Chief Financial Officer, Controller, and Investment Accountant may accept, for and on the Foundation's behalf, unrestricted gifts of publicly traded stocks and securities. This may be subject to change based on the financial authority resolution established by the Foundation's Board of Directors.

5.2 Acceptance by the Senior Leadership Team. All other gifts require review and approval by the Foundation's Senior Leadership Team, with advice from Independent and Qualified Advisors, including but not limited to gifts of the types listed below:

- Real property or interests in real property
- Minerals and Royalties
- Life insurance policies

5.3 Time-Sensitive Gifts. Notwithstanding the Senior Leadership Team's authority above, gifts requiring immediate action (such as gifts in late December that require action before year-end) may be exempted from full Committee review if, in the Foundation CEO's judgment, in consultation with the Board of Directors, that gift may be accepted consistent with this Policy. The Act imposes a duty on the Foundation and each of its Subordinate Organizations to review the suitability of retaining property contributed to the Foundation within a reasonable period of time after the Foundation receives the property.

5.4 Timing of Review. Gifts requiring Senior Leadership Team review will be handled promptly. Immediately after action by the Senior Leadership Team, a member of the Foundation staff will notify the prospective donor if a gift is or is not accepted.

5.5 Authority to Negotiate and Sign Gift Agreements. Subject to this Policy and to the Senior Leadership Team and Board of Directors' review and approval authority, the Foundation's CEO and any staff member designated by the CEO for such purpose have the authority to respond to inquiries, negotiate with donors, assemble documentation, retain expert and technical consultants, and execute agreements on the Foundation's behalf.

5.6 Nonacceptance of Gifts. The Foundation cannot accept any gift that will be directly or indirectly subject to any material restriction or condition by the donor that prevents the Foundation from freely and effectively employing the gift assets or that prevents the Foundation from applying its Spending Policy to those assets in order to further the Foundation's charitable purposes. In addition, the Foundation reserves the right to reject any gift that might place the other assets of the Foundation at risk or that is not readily convertible into assets that fall within the Foundation's investment guidelines. The Foundation may also decline a gift if it is not reasonably able to administer the terms of the gift in accordance with the donor's wishes.

6.

Investment Policy

The Foundation and each of its Subordinate Organizations may invest in any kind of property or type of investment consistent with the prudent standards of the Act. Prudence generally requires that the Foundation diversify investments, but the Foundation's Board of Directors may determine that non-diversification is appropriate under exceptional circumstances. Management and investment decisions about a specific asset must be made not in isolation but rather in the context of the Foundation's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Foundation and to the purposes of each Fund of the Foundation. A decision not to diversify must be based on the Foundation's needs and not for the benefit of any donor. A

decision to retain property in the hope of obtaining additional contributions from the same donor may be considered made for the benefit of the Foundation, but the propriety of that decision will depend on the circumstances.

6.1 Third Party Advisors. In making a gift to the Foundation, the donor gives up all right, title, and interest to the contributed assets. In particular, the donor relinquishes the right to choose investments and investment managers or brokers, or to veto investment choices for the contributed assets. However, if permitted by law and if the size and nature of the gift warrants separate investment consideration, the Foundation will endeavor to accommodate requests from a prospective donor for the separate investment of funds managed by one or more designated professional advisors consistent with the Foundation's Selection, Retention, and/or Termination of Donor Recommended Investments Policy. A designated professional advisor is defined as a particular individual designated by a donor who serves as his or her investment manager, broker or agent. If the gift is accepted by the Foundation subject to such a condition, an account may be managed by the designated professional advisor. Each year the Foundation will review the investment returns and shall have the sole and absolute discretion to continue or terminate the financial management engagement and transfer the funds into the pooled assets of the Foundation for financial management. In addition, upon retirement or death of the donor's designated investment advisor, the account will be closed, and the assets will be transferred to the Foundation's investment pool. Except when such accommodation has been agreed to in writing, the Foundation reserves the right to make any or all investment decisions regarding gifts accepted by it in accordance with its Statement of Investment Policy as that Policy may be amended from time to time. For additional guidance, refer to Policy 304.1 Management, Investment, and Expenditure of Funds and Trusts and the Foundation's Statement of Investment Policy.

6.2 Illiquid Assets. The Foundation's general policy is to promptly liquidate all contributed assets. On occasion, the Senior Leadership Team, in consultation with the Investment Committee, may decide that it will not liquidate such assets immediately. Factors the Committee may consider in reaching such a decision include but are not limited to:

- Market conditions – a gift may be retained for a reasonable period of time if the likely sales price would be substantially less than the asset's real value. Similarly, a large block of stock might be sold over a period of time in order not to artificially depress the price.
- Use by the Foundation – the Foundation may elect to keep gifts that it will employ directly in furtherance of its exempt purposes. For example, the Foundation might keep real property that it will use as its offices.
- Desirability as an investment – on rare occasions, the Foundation may be given property that it wishes to retain as an investment. Considerations in this decision include the projected return and how the asset fits into the Foundation's investment portfolio.

Illiquid assets will be disregarded when the Foundation applies its Spending Policy.

7.

Acceptance and Disposition of Specific Types of Property

7.1 Acceptance of Gifts and Bequests Valued at Less Than \$10,000.

(a) Cash and Other Acceptable Property of Any Value to Be Added to Existing Funds. The Foundation will accept gifts and bequests of cash and other property described in this section valued in the aggregate at less than \$10,000 if:

- i. the property is acceptable under the terms of this Policy; and
- ii. the cash or property will be added to any existing Fund of the Foundation.

7.2 Cash. The Foundation accepts gifts of cash by checks made payable to the Foundation or the component fund or by credit card or wire transfer to the Foundation's account. Currency gifts will not be accepted.

7.3 Publicly-Traded Stock and Securities. The Foundation accepts gifts of stocks, bonds, and similar securities that are publicly traded on national exchanges. As a general rule, such securities will be sold as soon as practicable after they are contributed to the Foundation. All proceeds from such sale, less commissions and expenses, are then credited to the component fund to which the securities were contributed. The Foundation may accept gifts of such securities in any amount to any existing fund. However, gifts to establish a new component fund at the Foundation must meet the applicable minimum funding requirement.

a) Appraisal. An appraisal is not required so long as the security is not subject to any restriction, such as those imposed by contract or the Securities Exchange Commission. Where appraisal is not required, the value of the gift is determined by calculating the average of the highest price and the lowest price of the security on the date the security is received by the Foundation, provided the exchanges are open and the security trades on that day, otherwise on the first day thereafter that the security trades. For gifts of interests in mutual funds, the value is determined by averaging the closing price of the mutual fund on the last trading day before the gift is received by the Foundation and the day the gift is received.

7.4 Real Estate. All real estate except for minerals and royalties contributed to and accepted by the Foundation will normally be transferred by the Foundation to one of the Foundation's Real Estate Service Committee Subordinate Organizations and will be held, administered, leased, and/or sold by the Subordinate Organization to which it has been transferred. All real estate except for minerals and royalties contributed or devised to the

Foundation and retained for any reason within the Foundation will normally be sold by the Foundation as soon as reasonably possible unless the retained real estate is to be used by the Foundation for the operation of one or more of its own charitable programs, or for other charitable programs. However, before committing the Foundation to retention or disposition of real estate, the Foundation's CEO and/or the Board of Directors shall seek the advice and counsel of the Foundation's Real Estate Service Committee Subordinate Organization with respect to any proposed transaction concerning donated real estate. All gifts of real property must be reviewed by the Real Estate Service Committee Subordinate Organization including but not limited to 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. Subject to the Real Estate Service Committee Subordinate Organization'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 property is of an acceptable minimum value.
- Confirm that the donor has legal capacity and is entitled to convey the property through copies of deed, title report, etc., provided by donor.
- Determine whether, if property is encumbered by debt or other encumbrance, the debt or encumbrance is of a level that will not unduly burden the Foundation or adversely affect the marketability of the property.
- Perform a legal, market, and financial analysis including an appraisal of market value, prior to acceptance of the gift to determine whether the gift represents a financially sound proposition for the Foundation.
- Weigh the Foundation's ability to effectively manage the property for the time necessary to sell it. 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 property desired by donor may jeopardize the classification of such gift as charitable.

a) Appraisal. Each gift of real property giving rise to a charitable deduction must be independently appraised in accordance with federal tax law. The donor will be responsible for obtaining such appraisal. An appraisal is needed for documentation for the donor's tax return.

b) Distributions. Distributions from real property held in a component fund are limited to the current spending policy applied to the net income generated by the property less fees assessed by the Foundation and any unrelated business tax imposed thereon.

c) Liquidation. The Foundation generally will seek to sell real property as soon as possible and generally will not accept gifts that the Real Estate Service Committee believes cannot be liquidated at market value within a reasonable time frame.

d) Accepting Gifts of Real Property. Donors of real property must provide all information and documents requested by the Foundation at the earliest possible time prior to the acceptance of the gift. The Foundation may request additional information or documents when necessary to its legal, market, and financial evaluation of the proposed gift. Prior to accepting any gift of real property, a member of the Foundation staff or other authorized representative of the Foundation must visit the property to determine its nature and type and to identify any potential issues not evident from information supplied by the donor that might impact the gift.

e) Environmental Assessment. Before real property will be accepted as a gift to the Foundation, a prospective donor must provide at least a Phase I Environmental Report with

disclosure of any environmental problems or statement that none exists. If any potential environmental issue is found through the Phase I assessment, a Phase II Environmental Report will be required at the donor's expense.

7.5 Minerals and Royalties. The Foundation does not accept a working interest in minerals but may convert working interests to royalty interests or may accept a working interest that will be transferred to and held in a separate Subordinate Organization. All minerals and royalties contributed to and accepted (or devised to and not disclaimed) by the Foundation will normally be retained in the Foundation and will not be transferred to one of the Foundation's Subordinate Organizations. Minerals owned by the Foundation may be leased or sold, in whole or in part, by the Foundation after the CEO and/or the Board of Directors has received advice concerning the proposed transaction.

7.6 Insurance. The Foundation may accept gifts of new or existing life insurance policies so long as: (a) the policy is not encumbered (e.g., there is no outstanding loan against the policy); and (b) the Foundation is made the policy's owner and primary beneficiary. The CEO shall appoint an Insurance Committee of Independent and Qualified Advisors that, together with the CEO or his/her delegate, shall review all life insurance policies held by the Foundation at least every two years to determine whether any insurance policy should be surrendered for its cash value, exchanged for another policy issued by the same or by a different insurance company, sold for its fair market value, retained, or if any other action should be taken. The Foundation may begin or continue to pay premiums on any policy if, in the opinion of the Insurance Committee and the Board of Directors, such premium payments are reasonable and desirable.

7.7 Disposition of Excess Business Holdings of Donor Advised Funds and Supporting Organizations. The Foundation will sell, require the sale, or otherwise dispose of all property that constitutes an Excess Business Holding of an IRC Section 4966(d)(2)

Donor Advised Fund that is a component part of the Foundation. The Foundation will also require the sale or other disposition of all property that constitutes Excess Business Holdings of a Subordinate Organization that is also a “supporting organization” described in IRC Section 4943(f). Note: Most if not all of the Foundation’s Subordinate Organizations are not described in IRC Section 4943(f). The Pension Protection Act of 2006 amended section 4943 of the Internal Revenue Code to limit ownership of closely-held business interests in a donor advised fund. A fund’s holdings, together with the holdings of disqualified persons (donor, advisor, members of their families and businesses they control) may not exceed any of the following:

- 20% of the voting stock of an incorporated business;
- 20% of the profits interest of a partnership, joint venture, or the beneficial interest in a trust or similar entity;
- Any interest in a sole proprietorship.

These limitations do not apply if the donor advised fund holds an interest that does not exceed two percent of the voting stock and two percent of the value of the business in question. Donor advised funds receiving gifts of interests in a business enterprise have five years from the receipt of the interest 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. To prevent a violation of these rules, it is the Foundation’s policy is to divest itself of such holdings within five years from the date the Foundation acquires the asset. If that is not possible, the asset will be transferred to a new or existing fund that is not a donor advised fund.

7.8 Other Assets. The Foundation does not generally accept the following gifts:

- Securities not traded on a national exchange including securities in closely held entities

- Interests in entities other than securities, such as Partnership interests
- Limited liability company interests
- Accounts receivable (e.g. gifts of loans, notes, mortgages)
- Intellectual property
- Artwork, coin collections, jewelry, precious metals, and similar assets
- Merchandise and other inventory
- Grain in storage

Any exception requires the approval of the Foundation's Board of Directors. If the Board of Directors agrees to accept any of the above assets, all other tangible and intangible personal property contributed or devised to and accepted by the Foundation, including interests in limited partnerships and limited liability companies, will normally be sold by the Foundation as soon as reasonably possible if the sale can be made for the undiscounted full fair market value of the asset. The Foundation shall obtain advice from Independent and Qualified Advisors concerning the fair market value of the asset, its marketability, and the desirability/necessity of retention, sale, or other action before initiating any negotiations for sale or other disposition.

7.9 Required Transaction Advice. The Foundation shall not agree to any legally binding sale, lease, exchange, disclaimer, or other action and shall not disclaim, reject, or dispose of any real estate before the CEO and/or the Board of Directors has received advice from the Real Estate Service Committee or at least two members of the Board of Directors of one of the Foundation's Real Estate Services Committee's Subordinate Organizations. The Foundation shall not be committed to any legally binding action with respect to the disclaimer, sale, lease, exchange, or other action with respect to property before the Foundation's CEO and/or the Board of Directors has received advice from at least

one Independent and Qualified Advisor who may be, but is not required to be, a member of the Foundation's Board of Directors or one of the Foundation's committees.

8.

Planned Gifts

Deferred gifts are those whose benefit does not fully accrue to the Foundation until some future time, or whose benefit is shared with other beneficiaries. The Foundation's representatives are authorized to solicit gifts through wills, as well as through gift annuities or charitable trusts. The Foundation will work closely with a prospective donor and, at the request of the donor, confer with the donor's financial advisors to realize such a gift. In cases where the potential gift is complex, the Foundation's CEO may request review by the Senior Leadership Team and/or Independent and Qualified Advisors. For most deferred gifts, the Foundation will ask for a nonbinding Letter of Intent from the donor containing reference to the asset that will fund the gift, as well as instructions to the Foundation for how to administer the gift, including an alternative plan if the original instructions cannot be followed.

Deferred gifts include but are not limited to the following:

8.1 **By Will (Bequests)**. The Foundation will generally accept bequests from a donor who has directed that certain assets be transferred to the Foundation and honor the donor's wishes as expressed, but the Foundation reserves the right to refuse any bequest that is inconsistent with this Gift Acceptance Policy. Sample bequest language for restricted and unrestricted gifts is available from the Foundation to donors and/or professional advisors upon request. The Foundation may not be named as Executor for a donor in his/her will and will not serve if named. The Foundation may create a named fund in memory of the donor if there is no stipulation for anonymity in the will.

8.2 Retirement Plans or IRA Accounts. Subject to limitations imposed by Internal Revenue Service Regulations, donors may make lifetime gifts of retirement assets or name the Foundation as the beneficiary of their plan. Retirement plans include, but are not limited to, Individual Retirement Accounts (IRA), 401(k), 403(b), and defined contribution plans. However, the Foundation reserves the right to refuse any bequest as necessary and appropriate consistent with this Gift Acceptance Policy.

8.3 Life Income Gifts. The Foundation will work closely with donors to implement planned giving options that provide income to a donor or his/her designees, as well as financial benefit to the Foundation (split-interest gifts). The Foundation strongly encourages donors to consult their own legal counsel and tax advisors to create any life income gift. Options include:

a) Charitable Remainder Trust. A charitable remainder trust makes payments to one or more beneficiaries for their lifetimes, or for a fixed term, or a combination of both. To establish a charitable remainder trust, the donor conveys assets to a trust from which the beneficiaries are paid for a period of time, and when the trust term ends the remainder of the assets in the trust passes to the Foundation for its charitable purposes. The donor determines whether the payout will be fixed (a charitable remainder annuity trust) or variable (a charitable remainder unitrust). The donor may name either the Foundation or a Trustee approved by the Foundation to manage the trust; provided that the Foundation will agree to act as Trustee only if (1) the initial contribution is greater than \$100,000 and (2) the Foundation will receive a remainder interest of the lesser of 50% of the initial contribution or \$250,000. A charitable remainder trust may be established during a donor's lifetime or by will.

b) Charitable Lead Trust. A charitable lead trust first makes distributions to the Foundation for a specified period, with the remainder reverting to the donor or other

beneficiaries at the end of the period. To establish a charitable lead trust, the donor conveys assets to a trust from which the Foundation receives funds over a period of time for its charitable purposes, and when the trust term ends the remainder of the assets in the trust passes to the beneficiaries. The donor determines the terms of the payments to be made and must name a Trustee approved by the Foundation to manage the trust. It may be set up during a donor's lifetime or by will.

c) Charitable Gift Annuity. A charitable gift annuity is a gift of cash or securities that provides a specified lifetime income, either immediate or deferred, to the donor or other beneficiary, with any sum remaining at the death of the donor or beneficiary retained by the Foundation. A charitable gift annuity is a contract between the donor and the Foundation and is backed by the assets of the Foundation. A charitable gift annuity is in part a charitable gift and in part the purchase of an annuity.

d) Life Estate. A donor may wish to contribute real estate, such as a personal residence or farm, to the Foundation but retain the right to use the property until the death of the last remaining life tenant. Upon the death of the last remaining life tenant, the Foundation would own the entire interest in the real property. The same considerations given to other gifts of real property apply to gifts of real property encumbered by life estates. Each life estate and remainder interest accepted by the Foundation will be unique and will change value and desirability with the passage of time. Consequently, no general policy can apply, and the Foundation will evaluate the asset and consult with independent and Qualified Advisors from time to time to determine the probable value of the asset, the possibility of disposition, and the merits of retention or disposition in order to determine the most appropriate course of action.

8.4 Fees and Expenses. On the acceptance of estate gifts, the Foundation will assess a one-time fee equal to 1% of the estate asset value not to exceed \$500,000. This fee is in addition to Foundation annual management fees and extraordinary expenses.

9.

Due Diligence Expenses

This Policy requires the Foundation's Senior Leadership Team and/or some of its Committees to obtain or conduct certain "due diligence" studies, evaluations, appraisals, etc., before the Foundation accepts, rejects, disclaims, or renegotiates any proposed or actual gift bequest, or other transfer of property to the Foundation, and the performance of these due diligence functions may generate substantial expenses. This Policy also requires the Foundation's Senior Leadership Team to consult Independent and Qualified Advisors from time to time concerning the management, retention, or disposition of property.

9.1 Payment of Due Diligence Acceptance Expenses. The Foundation will seek prepayment for all of its due diligence expenses from the proposed donor, from the proposed donor's probate estate, or from other interested parties. However, if the due diligence expenses must be paid by the Foundation in order to determine whether to accept, reject, disclaim, or modify the terms of the proposed or actual gift or bequest, the Foundation's CEO is authorized to pay for the reasonable due diligence expenses attributable to each of the properties then under consideration if the Chair of the Committee then conducting the due diligence study determines that the expenditures are necessary or advisable. Any due diligence expenses in excess of \$50,000 per property require prior approval of the Foundation's Executive Committee or Board of Directors. The Foundation will also request reimbursement from the donor or the donor's probate estate for any due diligence expenses the Foundation has paid.

9.2 Payment of Due Diligence Management and Disposition Expenses. The Foundation's CEO will consult with the Committee Chair, if any, that supervises any property that has been accepted by the Foundation when and if due diligence expenses are necessary or advisable for the prudent care, management, and disposition of Foundation property. The CEO is authorized to approve and to pay up to \$50,000 for advice and recommendation from Independent and Qualified Advisors concerning the care, management, or disposition of any one of the Foundation's property. Any such expenditure in excess of \$50,000 shall require the prior approval of the Executive Committee of the Board.

9.3 Expense Charges. All unreimbursed due diligence expenses incurred by the Foundation attributable to the Foundation's property will be charged to the Fund that received the subject property. If the Foundation declines a gift or disclaims a bequest, unreimbursed due diligence expenses will be charged to the Fund that would have received the property. If no such Fund exists, the expenses will be charged to the Foundation's operating account.

10.

Disclaimers

10.1 Property Bequeathed to and Accepted by the Foundation. Property may pass to the San Antonio Area Foundation (including to a trustee of a Trust operating under the Plan of the San Antonio Area Foundation) by reason of a disclaimer by a person (the "Disclaimant") made under Section 37A of the Texas Probate Code or the applicable law of another jurisdiction. The disclaimer may not be a "qualified disclaimer" for the purpose of IRC Section 2518 and Treas. Reg. Section 25.25181 and Treas. Reg. Section 25.2518-2 if the Disclaimant has any power or control over the Foundation's

future use of the disclaimed property. There, neither the Disclaimant nor any member of the Disclaimant's family who then serves or may thereafter serve as a member of:

- a) the Board of Directors,
- b) any committee of the San Antonio Area Foundation that has authority to distribute or expend property of the San Antonio Area Foundation, or
- c) the staff of the San Antonio Area Foundation, or
- d) an officer, director, or controlling shareholder of a trustee holding the disclaimed property

shall be eligible to vote on or to determine any expenditure or distribution of the disclaimed property or any income from or proceeds of the disclaimed property, and all decisions concerning expenditure and/or distributions of the disclaimed property and the income from and the proceeds of the disclaimed property shall be made by members of the Board of Directors, other Foundation committees, and/or other Foundation staff members who are not the Disclaimant or any member of the Disclaimant's family and who are not employees of or otherwise subordinate to the Disclaimant and/or any member of the Disclaimant's family. Members of the Disclaimant's family shall include: (i) the Disclaimant's spouse, (ii) the Disclaimant's ancestors, (iii) the Disclaimant's children, grandchildren, and great-grandchildren, (iv) the spouses of the Disclaimant's children, grandchildren, and great-grandchildren, and (v) the Disclaimant's siblings and their spouses.

10.2 Disclaimer of Decedent's Property Bequeathed to the Foundation. A decedent may devise or bequeath to the Foundation real estate and other property that could create unacceptable risks and potential liabilities for the Foundation (or for a trustee of a trust that is a component part of the Foundation) or have other characteristics

that cause the ownership, management, and/or disposition of the property to be a liability for the Foundation. Consequently, the Foundation must determine whether any of its component parts shall accept or disclaim real estate, general partnership interests, proprietorships, and other property subject to substantial debt or other potential liabilities and management problems as soon as possible after the Foundation is aware that it is the beneficiary of a bequest under the terms of a decedent's Will. Each trustee of a trust that will or has adopted the Plan of the San Antonio Area Foundation must notify the Foundation's President at least twenty (20) business days before taking any action to disclaim any trust property.

10.3 Disclaimers. The rules for an effective disclaimer under Texas law are contained in Chapter 240 of the Texas Uniform Disclaimer of Property Interest Act (the "Disclaimer Act"). In order to be a "qualified disclaimer" that avoids gift tax under Internal Revenue Code Section 2518, a disclaimer must be made within nine (9) months after the decedent's death or within nine (9) months after a transfer is or becomes irrevocable. However, for the purposes of Texas law, a disclaimer may be made at any time before the property interest has been accepted. While property or a gift is under review and it has not been determined that the Foundation will accept or disclaim the gift, the Foundation shall not perform the following actions pursuant to IRC Section 2518 and Chapter 240 of the Disclaimer Act including:

- a) taking possession of the interest, or
- b) exercising dominion and control over the interest.

See Section 240.151 of the Disclaimer Act for more detail on actions that bar effective disclaimers and Section 240.101 – 240.111 for the delivery or filing of the disclaimer. Based on advice from legal counsel, an appropriate Committee and/or Independent and Qualified Advisors, the CEO, the Executive Committee, and/or the Board of Directors

should determine whether to accept or to disclaim part or all of the property devised and bequeathed to the Foundation. If it is possible to do so, any disclaimer should be completed within nine (9) months of the decedent's death and should comply with the provisions of IRC Section 2518 and Treasury Regulation Section 25.2518-2.

10.4 Preliminary Investigation. If the Foundation is a beneficiary of the decedent's probate estate, the CEO shall assign a member of the staff to obtain information from the estate administrator concerning the nature and characteristics of any property that may be received by the Foundation during or upon termination of the estate administration. Based on the information received, the CEO should then determine whether to consult the Chair of an appropriate committee to obtain advice about the particular assets involved. For example, if the Foundation is likely to receive title to real estate, it will to seek the advice and counsel of the Real Estate Service Committee to determine whether the Foundation should request or initiate a Phase 1 environmental study of the real estate and to identify any administrative problems or risks associated with the property or with the Fund that is to be established under the decedent's Will.

Attachment A: Donor Bill of Rights

Attachment B: Model Standards of Practice for the Charitable Gift Planner

Attachment A: Donor Bill of Rights

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donation is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

The Donor Bill of Rights was created by the Association of Fundraising Professionals (AFP), the Association for Healthcare Philanthropy (AHP), the Council for Advancement and Support of Education (CASE), and the Giving Institute: Leading Consultants to Non-Profits. It has been endorsed by numerous organizations

Attachment B: Model Standards of Practice for the Charitable Gift Planner

A code of ethical practice for all professionals who work together to structure gifts that balance the interests of the donor and the purposes of the charitable institution.

PREAMBLE

The purpose of this statement is to encourage responsible gift planning by urging the adoption of the following Standards of Practice by all individuals who work in the charitable gift planning process, gift planning officers, fund raising consultants, attorneys, accountants, financial planners, life insurance agents and other financial services professionals (collectively referred to hereafter as "Gift Planners"), and by the institutions that these persons represent. This statement recognizes that the solicitation, planning and administration of a charitable gift is a complex process involving philanthropic, personal, financial, and tax considerations, and as such often involves professionals from various disciplines whose goals should include working together to structure a gift that achieves a fair and proper balance between the interests of the donor and the purposes of the charitable institution.

I. PRIMACY OF PHILANTHROPIC MOTIVATION

The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions.

II. EXPLANATION OF TAX IMPLICATIONS

Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the Gift Planner of those incentives and their implications.

III. FULL DISCLOSURE

It is essential to the gift planning process that the role and relationships of all parties involved, including how and by whom each is compensated, be fully disclosed to the donor. A Gift Planner shall not act or purport to act as a representative of any charity without the express knowledge and approval of the charity, and shall not, while employed by the charity, act or purport to act as a representative of the donor, without the express consent of both the charity and the donor.

IV. COMPENSATION

Compensation paid to Gift Planners shall be reasonable and proportionate to the services provided. Payment of finders fees, commissions or other fees by a donee organization to an independent Gift Planner as a condition for the delivery of a gift are never appropriate. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for Gift Planners who are employed by a charitable institution is never appropriate.

V. COMPETENCE AND PROFESSIONALISM

The Gift Planner should strive to achieve and maintain a high degree of competence in his or her chosen area and shall advise donors only in areas in which he or she is

professionally qualified. It is a hallmark of professionalism for Gift Planners that they realize when they have reached the limits of their knowledge and expertise, and as a result, should include other professionals in the process. Such relationships should be characterized by courtesy, tact and mutual respect.

VI. CONSULTATION WITH INDEPENDENT ADVISORS

A Gift Planner acting on behalf of a charity shall in all cases strongly encourage the donor to discuss the proposed gift with competent independent legal and tax advisors of the donor's choice.

VII. CONSULTATION WITH CHARITIES

Although Gift Planners frequently and properly counsel donors concerning specific charitable gifts without the prior knowledge or approval of the donee organization, the Gift Planners, in order to insure that the gift will accomplish the donor's objectives, should encourage the donor, early in the gift planning process, to discuss the proposed gift with the charity to whom the gift is to be made. In cases where the donor desires anonymity, the Gift Planners shall endeavor, on behalf of the undisclosed donor, to obtain the charity's input in the gift planning process.

VIII. DESCRIPTION AND REPRESENTATION OF GIFT

The Gift Planner shall make every effort to assure that the donor receives a full description and an accurate representation of all aspects of any proposed charitable gift plan. The consequences for the charity, the donor and, where applicable, the donor's family, should be apparent, and the assumptions underlying any financial illustrations should be realistic.

IX. FULL COMPLIANCE

A Gift Planner shall fully comply with and shall encourage other parties in the gift planning process to fully comply with both the letter and spirit of all applicable federal and state laws and regulations.

X. PUBLIC TRUST

Gift Planners shall, in all dealings with donors, institutions and other professionals, act with fairness, honesty, integrity and openness. Except for compensation received for services, the terms of which have been disclosed to the donor, they shall have no vested interest that could result in personal gain.

Adopted and subscribed to by the National Committee on Planned Giving and the American Council on Gift Annuities, May 7, 1991. Revised April 1999.