



The Gift Acceptance Policy of the Community Foundation of Tampa Bay (hereinafter the “Foundation”) encompasses the solicitation and acceptance of outright gifts, planned gifts and testamentary gifts and the establishment of all funds for all purposes in agreement with the objectives of the Foundation.

Authorization

Planned and testamentary gift types include bequests, charitable gift annuities, charitable remainder trusts, charitable lead trusts, retained life estates, gifts of life insurance or retirement assets, interest in business entities such as partnerships or closely-held stock, and such other gift arrangements as the Board may from time to time approve. All gift acceptance programs, solicitation plans, and activities shall be subject to the oversight of the Board.

Purpose of Gifts

The purpose of all gifts to the Foundation must relate to the mission of the Foundation, which is to build a better community through creative philanthropy, vision and leadership. The purpose of the gift and the procedures for its administration shall, when feasible, be defined in a letter or agreement signed by the donor.

Roles and Responsibilities

In accordance with the bylaws of the Foundation, the Executive Committee of the Board of Trustees shall constitute the gift acceptance committee. The primary responsibilities of this committee shall be to review proposed gift transactions using the criteria specified on page 3. The committee shall also periodically review and approve gift acceptance guidelines for planned gifts, consistent with established policies and guidelines and in compliance with Internal Revenue Service regulations.

Policies

The policy of the Foundation is to inform, serve, guide or otherwise assist donors who wish to support the Foundation’s activities. It is expressly not the policy of the Foundation to engage in undue influence in these matters.

All information concerning donors and prospective donors shall be held in strict confidence by the Foundation, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests for or releases of information concerning a donor or prospective donor will be honored or allowed only if permission is obtained from the donor prior to the release of such information. Persons acting on behalf of the Foundation shall encourage the donor to discuss the proposed gift with the legal and/or tax advisors of the donor’s choice, at the donor’s expense. This is to ensure that the donor receives a full, accurate, and independent explanation of all aspects of the proposed charitable gift. Persons acting on behalf of the Foundation shall also encourage the donor to advise their family about their gift so that their family’s expectations regarding the disposition of the donor’s estate are managed.



All fund agreement templates used by the Foundation shall initially be reviewed and approved as to form by the Foundation's Board of Trustees. Any material modifications to existing templates will also be reviewed and approved by the Foundation's Board of Trustees.

The Foundation will accept charitable gift annuities only under conditions described below.

The Foundation may serve as trustee of irrevocable charitable remainder trusts and charitable lead trusts or as co-trustee with a trust institution or individual, when it is irrevocably named as the sole charitable beneficiary. However, it may serve in select circumstances when it is not the sole beneficiary if, in the judgment of the Executive Committee, the interests of the Foundation will be best served. The Foundation may employ one or more financial managers for the administration and investment of trust assets. Expenses related to investments and administrative services shall be charged to the respective trusts.

The Foundation will not serve as trustee or co-trustee of any revocable trusts or of other trusts that are not qualified charitable remainder trusts or charitable lead trusts.

Gift Acceptance Guidelines and Procedures

In reviewing gifts to the Foundation, the Executive Committee and/or staff will consider the following criteria:

- The charitable intent and ultimate community benefit
- The nature of any restrictions
- The permanency of the gift; or in the case of a non-permanent fund, the amount of time the fund will remain with the Foundation
- Projected costs of managing the gift asset
- Fee revenues to the Foundation for administering the gift. Foundation staff may determine fee structure when appropriate.

Acceptance of gifts consistent with the purposes, bylaws, and procedures of the Foundation shall not require review by the Executive Committee if the gifts are in any of the following forms:

- Marketable securities;
- Cash;
- Checks;
- Gifts of usable furniture and equipment for the offices or programs of the Foundation;
- Paid-up life insurance policies preferably where the Foundation is the owner and beneficiary;
- Bitcoin;
- Charitable remainder trusts, charitable lead trusts, or charitable gift annuities, if funded with cash or publicly traded securities.



Gifts requiring review and approval of the Executive Committee include the following:

- Gifts of real estate. The donor will be required to provide an independent appraisal and an environmental review (see Appendix A) as well as a description of the property. The Committee will review these documents as well as consider any liabilities, restrictions or other conditions related to the gift. These policies also will apply to any other asset that has real estate holdings as an element of its value (e.g., certain limited partnerships or other business entities);
- Interests in business entities where the interest is not represented by marketable securities [i.e., closely held securities, partnership and limited liability company interests (“closely-held business entity”)];

Notwithstanding the foregoing, if the Foundation has received an interest in the same closely-held business entity previously from either the donor making the new gift or another donor and that earlier closely-held business entity gift was approved by the Executive Committee Executive Committee approval is not required for later gifts of the same closely-held business entity;

- Charitable remainder trusts, charitable lead trusts, or charitable gift annuities, if funded with assets other than cash or publicly traded securities;
- Retained life tenancy in a residence, ranch or farm;
- Arrangements where the donor receives fees for services to the Foundation
- Gifts to establish funds for a purpose that may fall outside the mission, bylaws and procedures of the Foundation.

Every gift of an illiquid asset (tangible personal property, real estate, life insurance policies other than those named above, non-publicly traded securities, oil and gas, cryptocurrencies, NFTs, and all other gifts) or gifts not in compliance with these policies shall be reviewed and approved by the committee prior to acceptance. In the case of such illiquid assets, the Foundation will not release any monies from a fund prior to the liquidation of the assets. Fees for illiquid assets may be assessed in arrears upon liquidation of the asset. (Procedures for accepting illiquid assets can be found in **Appendix A for Real Estate** and **Appendix B for Private Securities and Tangible Personal Property**.)

Gifts requiring committee review will be handled promptly. Foundation staff will deliver to the chair of the committee all information necessary to make a decision. If a gift is not accepted, the donor will be notified in writing by staff immediately. All gift reviews will be handled with confidentiality.

Notation: Gifts requiring immediate action (e.g., gifts on December 31, or pending sale of property) may be exempted from Executive Committee review if, in the judgment of the President, and in consultation with available members of the Executive Committee, that gift may be accepted without significant reservations or in any way jeopardizing the Foundation’s tax exempt status.



Funds

The Foundation establishes component funds in response to community needs and donors' charitable concerns. The Board of Trustees of the Foundation has responsibility for acceptance, management and disposition of component funds. Options for fund structures at the Foundation include the following:

Donor Advised Funds (Minimum \$10,000)

Donor advised funds are established and advised by donors. Two advisors and one successor advisor can be named. Grants to nonprofits can be recommended at any time.

Family Foundations (Minimum \$100,000)

Family Foundations are established by donors and often their families. Multiple and unlimited successor advisors can be named. Special services in support of family philanthropy, including educational and collaborative opportunities, are offered.

Reserve Funds (Minimum \$25,000)

Nonprofit organizations establish these funds to hold and invest unrestricted reserve funds. Funds are available for withdrawal in whole or in part.

Endowments

Community Impact (Minimum \$10,000)

Community Impact endowments are established with unrestricted gifts from donors to support Foundation initiatives. Grants are directed by the Foundation's Community Impact Team and approved by the Board of Trustees according to its annual spending policy.

Agency (Minimum \$25,000)

Agency endowments are established by the nonprofit organizations for their benefit. Grants to the nonprofit are made once a year according to the annual spending policy of the Board of Trustees. Nonprofits may waive distributions at any time to build the endowment.

Designated (Minimum \$10,000)

Designated endowments are established by donors to benefit a specific nonprofit. Grants to the nonprofit are made once a year according to the annual spending policy of the Board of Trustees.

Field of Interest (Minimum \$25,000)

Field of Interest endowments are established with restricted gifts from donors to support specific philanthropic causes but not specific nonprofits. Grants are directed by the Community Impact Team and approved by the Board of Trustees according to its annual spending policy.



Scholarships (Minimum \$25,000)

Scholarships are established by donors to provide financial support for the education of qualified candidates. Grants from external scholarship funds are directed by an independent selection committee from the named college, university, or high school or by an education foundation or corporation. Grants from scholarship funds administered by the Foundation are directed by the Foundation's Scholarship Committee. Scholarships may be either endowed or non-endowed.

Gifts

Asset Types

The Foundation will accept gifts in the form of the following assets, subject to the conditions described below. In order to provide written substantiation for gifts over \$250, the donor's name and address must be provided. Documentation of receipt will be provided to the donor in each case in compliance with current IRS regulations.

Cash

Gifts of cash should be paid to the Foundation accompanied by a written document (fund agreement, letter, or other written instruction) signed by the donor indicating to which fund the contribution should be credited.

Checks

Must be made payable to the Foundation. The specific fund for which the check is intended should be noted in the bottom left corner of the check, or in attached correspondence.

Cryptocurrency

Gifts of the cryptocurrency known as Bitcoin may be accepted by the Foundation without approval of the Executive Committee. Gifts of any other type of cryptocurrency shall require review by the Executive Committee on an individual basis. Gifts of Bitcoin shall require the donor's name, address, birthdate and contact information to include email address and cell phone number. All digital assets shall be converted to U.S. dollars upon receipt.

Pledge Receivables

Written pledges to make gifts may be made applicable to any fund at the Foundation. A schedule of pledges receivable should be included in the fund agreement, letter or other written instruction from the donor.

Marketable Securities

Publicly traded stocks and bonds may be electronically transferred, re-registered in the name of the Foundation, or conveyed through use of a stock power form. The Foundation also will accept interests in mutual funds. It is the policy of the Foundation to sell securities upon receipt. Stock controlled under Securities and Exchange Commission Rule 144 will be held until the restriction on sale expires and then will be sold. Gifts of bonds that require a holding period may be accepted and cashed when the holding period has expired.



Unacceptable securities include those which are assessable or which in any way may create a liability; those that, by their nature, may not be assigned (such as series E savings bonds); those that have no apparent value.

Interests in Business Entities

Donors may make gifts of interests in business entities (i.e., closely held marketable securities, limited partnership interests, interests in limited liability companies). These can be accepted if the Foundation assumes no liability in receiving them. In evaluating a gift proposal of such assets, the Executive Committee may consider the probability of conversion to a liquid asset within a reasonable period of time, projected income that will be available for distribution and administrative fees, and the nature of the business from which the asset is derived.

A letter from the attorney for the donor must accompany gifts of limited partnership interests or interests in limited liability companies, providing the following information:

- Independent appraisal of value of the subject entity and statement of the percentage of the entity to be gifted to the Foundation;
- Assurance that the Foundation will be held harmless in the event the entity becomes bankrupt or is otherwise unable to satisfy its obligations;
- Assurance that the Foundation will be held harmless in the event the entity is sued.

In cases where the interest to be gifted to the Foundation is an interest in a limited partnership or limited liability company and the gifted interest will not be promptly liquidated, the donor and the Foundation shall enter into an Agreement Related to Limited Partnership / Limited Liability Company Gift, in the form and with the terms as set out in the template for such agreement attached as Appendix C.

The Foundation does not accept gifts of general partnership interests due to potential unlimited liability.

In cases where an interest gifted to the Foundation is promptly liquidated, but its value is less than the minimum required to establish a fund, the gift generally shall be directed to the Foundation's Community Impact Fund. The donor generally shall not have the option to direct such a gift unless it is to one of the Foundation's existing funds.

If an interest in a business entity that meets the criteria for acceptance set forth above cannot be promptly liquidated, and the documented present value of the interest meets or exceeds the minimum requirement, that interest may be credited to a new, named component fund at the Foundation. The fund may be treated as a donor advised, designated, scholarship, field of interest, or Community Impact Fund as requested by the donor. Grants may be made only from income generated by the business interest or from other liquid assets in the component fund, provided the fund's documented present value remains at least at the minimum acceptance level.

Further details related to gifts of business entities are included in Appendix B.



Treatment of Excess Business Holdings for Donor Advised Funds

Notwithstanding any other provision hereof, the Foundation shall not accept any gift of a business interest in a business enterprise for a donor advised fund that would likely subject the Foundation to tax under section 4943 of the Internal Revenue Code regarding 'excess business holdings.' Any potential gift that would result in a donor advised fund holding:

- 20% or greater interest in a business or in an entity, or
- Any interest in an entity in which any ownership interest is held by a donor or advisor to the donor advised fund, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest (all known as disqualified persons),

shall be referred to the Foundation's legal counsel for a determination on the potential application of Code Section 4943. To the extent that such assets would constitute or become excess business holdings and they are accepted in a donor advised fund, the Foundation will ensure disposal of the assets within the time periods prescribed by the tax law. The Foundation will notify potential donors of such requirements prior to the acceptance of such gifts.

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

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 from the definition 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" businesses and program-related investments
- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the effect of excluding gifts of interests in most family limited partnership, and other types of holding company arrangements.

Real Property

Generally, gifts of real property in Florida should result in a net contribution to the Foundation of at least \$100,000. Gifts of real property outside Florida should result in a net contribution of at least \$250,000.

Unencumbered real property will be accepted at fair market value as established by at least one qualified appraisal, provided by the donor, and acceptable to the Executive Committee. The donor must provide evidence of clear title to the property and a qualified appraisal to the Executive Committee; property with multiple owners will be accepted only if all owners of the property agree in writing to the gift.



Real property that is encumbered by a trust deed, loan or mortgage will be accepted only in exceptional circumstances.

Prior to acceptance of a gift of real property, the Foundation and the donor must agree, in writing, on arrangements for paying expenses associated with the property and all encumbrances, including legal costs associated with donation and subsequent sale, if any, taxes and assessments, insurance coverage, and maintenance costs.

In order to avoid potential liability for environmental cleanup and toxic and hazardous materials issues related to real estate, the Foundation may require inspection through an environmental audit of all proposed gifts of real estate and assets related to real property.

In addition to the considerations listed above, commercial properties and businesses will be examined in relationship to the potential for exposure of the Foundation to unrelated business taxable income.

Further details related to gifts of real property are included in Appendix A.

Tangible Personal Property

Generally, gifts of tangible personal property should result in a net contribution to the Foundation of at least \$50,000 but it is not required. This type of gift is available to current fund-holders.

Gifts of such assets as boats, airplanes, automobiles, artwork, furniture, equipment, jewelry, gems, and metals valued in excess of \$5,000 must be accompanied by a qualified appraisal acceptable to the Executive Committee. Unless the property is to be used in connection with the Foundation's tax-exempt purpose, it will be sold at the highest possible price as soon as possible after conveyance. No commitment will be made to keep gifts of personal property. The Foundation discourages gifts of tangible personal property which cannot readily be sold or which require unusual expenses prior to sale. Costs associated with sale, including legal fees and taxes shall be paid out of the proceeds from the sale of the property. If a lengthy selling period is anticipated, the Foundation may ask the donor to cover such expenses with a cash gift.

When CFTB is the sole beneficiary of an estate or trust that includes tangible personal property, it is the policy of CFTB to encourage the Personal Representative or Trustee, as the case may be, to sell the tangible personal property as part of the estate or trust administration and distribute the cash sale proceeds to CFTB rather than distributing the tangible personal property to CFTB.

Further details related to gifts of Tangible Personal Property are included in Appendix B.

Royalties, Distribution Rights

The Foundation may accept gifts of royalties or distribution rights on published works (such as books or films) where there is clear evidence of marketability or assurance of an income stream. A qualified appraisal acceptable to the Executive Committee is required.



Insurance Policies and Proceeds

Donors may transfer ownership of a paid-up policy to the Foundation and take a tax deduction for the interpolated terminal reserve (typically cash surrender value). Donors may transfer ownership of premium-due policies to the Foundation and make income tax deductible contributions in the amount of the premiums. In either case, the Foundation shall be the owner and permanent beneficiary of the policy and retain the policy in its offices.

Contributions for premium-due policies must be made by direct payment to the Foundation at least ten days prior to the premium date. The Foundation cannot assume delinquent premium payments unless the Executive Committee determines it is economically beneficial to the Foundation. Paid-up policies of any value may be accepted by the Foundation. Premium-due policies must have a minimum cash value of \$10,000. A one-time administrative fee may be assessed by the Foundation for services related to the transfer of ownership of the policy.

Donation of policies or annuities written for a year-end tax purpose must have a certifiable date from the insurance company to be a qualified donation for that tax year.

The Foundation does not enter into charitable reverse split dollar agreements.

Retirement Assets

Account type retirement plans, in which a balance accumulates as principal, may be gifted to the Foundation. These include Individual Retirement Accounts (IRA), 401(k), 403(b), and defined contribution plans. (Annuity plans, such as defined benefit plans, in which retirement benefits are paid out as income and principal does not accumulate, generally cannot be used for charitable gifts.)

Methods for gifting retirement assets include:

- Naming the Foundation as successor or contingent beneficiary for all or part of the assets upon death of either the retirement asset owner or spouse;
- Creating a testamentary charitable remainder trust or testamentary charitable gift annuity with the assets upon the death of the assetowner, naming the Foundation as remainder beneficiary.

Planned and Testamentary Gifts

The Foundation's planned and testamentary giving program encompasses all forms of gifts whose benefits do not fully accrue to the Foundation until some future time (such as the death of the donor or other income beneficiaries or the expiration of a predetermined period of time), or whose benefits to the Foundation are then followed by the interests of non-charitable beneficiaries.

Donors using planned and testamentary gift techniques may establish any of the fund types listed above. Will, trust, or other documents should specify the Foundation as the charitable recipient and name the fund to which the donor's gift will contribute. The type of fund and purpose of the fund may be described in detail in a separate fund agreement.



1. Bequests

Bequests may be from a will or trust and may be specific or contingent in nature. A bequest through will or trust to the Foundation should include the following:

- The name of the Community Foundation of Tampa Bay, Inc., a Florida nonprofit corporation whose principal office is located at 4300 W. Cypress Street, Suite 700, Tampa, FL 33607; the name of the fund to which the bequest is made (this may be a new or existing fund). In the case of a new fund, the Foundation will, upon notification that the bequest has been in a will or trust, prepare a separate fund agreement defining the purpose for which the fund has been created.

2. Charitable Remainder Trusts

a) Description: Unitrusts

The basic form of Unitrust provides for payment to the donor and/or beneficiary of an amount equal to a set percentage of fair market value of the assets of the Unitrust, valued annually. The percentage is determined at the time the Unitrust is created, is stated in the Unitrust, and is permanent. The payout must equal no less than 5% of the fair market value of the assets placed in the Unitrust when it is created, and may be made monthly, quarterly, semiannually, or annually. If the annual income and/or realized capital gains do not equal the committed Unitrust percentage, principal is used to supplement the short fall. If there is any excess income or appreciation in excess of the stipulated payment, it is added to the principal. Additional contributions may be made to Unitrusts.

The present value of the remainder interest must be equal to or greater than 10% of the original contribution to the trust.

b) Description: Annuity Trusts

Donor and/or beneficiary annually receive a payout that is fixed irrevocably at the time of the gift and stated in the Annuity Trust Agreement. The payout must equal at least 5% of the fair market value of the assets placed in the trust when it is created. Income in excess of annual payment is added to principal. If the income in any year is less than the annual payment the difference is derived from realized capital gain or principal. Additional contributions may not be made to Annuity Trusts.

The present value of the remainder interest must be equal to or greater than 10% of the original contribution to the trust.

c) Policy

- i. Representatives of the Foundation are authorized to solicit gifts in the form of Charitable Remainder Trusts (including basic Unitrusts, Annuity Trusts, Net Income Unitrusts, Net Income with Make-Up Unitrusts and Flip Unitrusts) with annual payout rates ranging from 5% to 8% of fair market value of Trust assets; pay out rates of more than 8% must be reviewed for approval by the Executive Committee.



- ii. Donors who elect to self-trustee must consult with their own legal and tax advisers to be informed of the administrative and tax-reporting responsibilities they are accepting by serving as trustee. A Foundation representative may provide information on vendors providing administrative and tax reporting services.
- iii. The Foundation prefers to serve as Trustee only when:
 - The income beneficiary is age 65 or older;
 - The assets initiating the trust are valued at a minimum of \$500,000;
 - The Foundation is named as irrevocable remainder beneficiary, for endowment purposes, for 100% of the remaining assets.
- iv. Any agreements that name the Foundation as Trustee shall be subject to ratification by the Foundation Board of Trustees.

3. Charitable Lead Trust

a) Description

Annuity or Unitrust amounts from the assets within the Charitable Lead Trust are paid to the Foundation for a period of years, or for the remaining life of the donor or beneficiary. The remainder interest is either retained by the donor or given to a non-charitable beneficiary.

b) Policy

1. Representatives of the Foundation are authorized to solicit gifts for Charitable Lead Trusts. The donor may select any annuity or fixed pay out percentage.
2. Any agreements that name the Foundation as Trustee shall be subject to ratification by the Foundation Board of Trustees.
3. Exceptions to the above must be approved by the Executive Committee of the Foundation prior to execution of the agreement.

4. Charitable Gift Annuity

a) Description

The Foundation and the donor enter into a contract providing a fixed dollar payment for life to the donor and/or other beneficiaries, in exchange for a contribution to the Foundation. The amount of the payment is dependent upon the age of the donor and the size of the gift. The date that annuity payments to the beneficiary begin may be deferred. The Charitable Gift Annuity Contract is a general obligation of the Foundation.

b) Policy

1. Representatives of the Foundation are authorized to solicit gift annuity agreements. The Charitable Gift Annuity remainder must: (a) establish a permanent endowment fund for the benefit of one or more charitable organizations or (b) benefit the Foundation either for operating expenses or its Community Impact Fund. Gift annuity illustrations shall be shown to demonstrate a minimum of 50% of the assets as available for transfer to the Foundation's community impact programs or operating endowments or to the donor's choice of endowment fund.
-



-
2. The Suggested Maximum Gift Annuity Rates as promulgated by the American Council on Gift Annuities will not be exceeded without approval and ratification by the Executive Committee.
 3. Disclosure to the Donor must follow state and federal regulations.
 4. The recommended minimum gift for an annuity agreement is \$50,000 although gifts of \$25,000 or more can be presented for consideration by the Foundation's President and CEO.
 5. Agreements may provide for income payments to no more than two successive life beneficiaries.
 6. The minimum age of income beneficiaries shall be 65 years.
 7. Additional contributions cannot be made to a Charitable Gift Annuity.

Document History:

Adopted by the Board of Trustees with revisions: February 7, 2023

Adopted by the Board of Trustees with revisions: May 25, 2021

Adopted by the Board of Trustees with revisions: March 20, 2018

Adopted by the Board of Trustees with revisions: November 29, 2011

Approved by Board of Trustees: September 27, 2005



Appendix A Real Estate Acceptance Policies

Real Estate Gift Acceptance Policies

When a donor expresses the desire to donate a gift of real estate, the following guidelines will be followed:

1. The Foundation staff and the donor should meet to visually evaluate the property and develop appropriate gift arrangements with the donor, subject to proper approval. The approval process includes consulting with the Chair of the Foundation Board and the Foundation's Executive Committee.
2. An appraisal (MAI,* FHA+ or equivalent) is to be performed at donor's expense by an independent appraiser according to IRS guidelines.
3. The checklist for Real Estate Gifts needs to be followed, if applicable (see attachment I).
4. A financial analysis must be performed prior to acceptance to determine whether the gift makes financially sound investment for the Foundation, especially if commercial or income property is involved. Encumbered real estate will be evaluated by the Executive Committee prior to acceptance.
5. Gifts of real property should result in a net contribution of at least \$100,000 if the property is in Florida, or at least \$250,000 if out of state.
6. 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. These may include licensed real estate professional commissions, title work, closing costs, legal fees, property taxes, insurance, and environmental assessments.
7. The following agreements with the donor may be required: Fund Agreement, expense reimbursement and fee agreement, deed execution and title insurance policy.

Considerations for Accepting Real Estate Gifts

1. 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 the encumbrances and any costs associated with satisfying them.

*A Member, Appraisal Institute

+ Federal Housing Administration



2. 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. If the property produces income, the Foundation must consider the amount of income it receives against the ongoing cost of the encumbrances.
3. The Foundation will not pay for appraisals, finder's fees, or the drafting of legal documents without approval of the Executive Committee.

Disposition of Property

Generally, the Foundation will sell property as quickly as possible after the gift is completed.

- The Foundation should consider its investment objectives before selling.
- The Foundation should avoid selling property at a distressed price. A quick distress sale may jeopardize the donor's charitable contribution deduction and might negatively impact the market values in the area.

Environmental/Pollution Concerns

In some cases, a Phase One Inquiry will be required prior to acceptance of proposed real estate gifts. The inquiry should include site observations, building observations, and interviews with the current owners, adjacent site reconnaissance and any other items considered necessary.

If concerns are raised by the Phase One Inquiry, Phase One Screening and, dependent upon the level of environmental concern at the site, a Phase Two Assessment may be required.

Phase One screening should include the following:

Review of Regulatory Agency Records: EPA/NPL Site List, EPA-CERCLIS Site List, EPA-RCRA Generator Site List, State DEP Hazardous Waste List, State DEP Land Fill List, State EEP Leaking UST List, and an interview with the local fire department.

Review of Occupant History: Review of fire insurance maps.

The Phase One assessment should include:

Review of Regulatory Agency Records: EPA-RCRA-TSD Site List, EOA-ERNS List and State DEP Registered UST List.

Review of Physical Setting: USGS Topographical Map, USDA Soil Survey, State or USGS Groundwater Map, USDI Wetlands Map, Aerial Photographs, and Building or Site Plans.

Review of Owner History: Tax Assessors records, chain of title review and interview with previous owner(s).

Review of Occupant History: Historical City Directories, Building Department Records and interviews with previous occupants.

Optional Testing Includes: Asbestos-containing materials, radon gas, lead-based paint and lead in drinking water.



Final Documents for Gift Acceptance Should Include:

- A seller/donor agreement containing environmental/pollution disclosure and liability.
- Known and unknown liabilities from transfer documents should not be excluded from the agreements.

Gifts Related to Real Estate

Gifts of Trust Deeds, Notes, and Mortgages

The Foundation may accept trust deeds, notes, and mortgages as gifts. In most cases, a qualified appraisal would determine the value, taking into account the unpaid principal balance, the interest rate payable under the loan, and the current interest rates.

Bargain Sale of Real Estate and Tangible Personal Property

Gifts in the form of a bargain sale need to be appraised by an independent appraiser (MAI, FHA or equivalent) with the fee to be paid by the donor.

In addition, the asset will be readily marketable (maximum estimated selling period of one year) or a reasonable current use to the Foundation. The minimum gift valuation should be \$100,000 net of the Foundation's investment.

Gifts of Real Estate with Retained Life Tenancy

Consideration of a life tenancy gift requires the Foundation staff to follow the stated guidelines for acceptance of real property. The donor pays for the appraisal and all transfer fees and costs. The gift value and anticipated value of property at the end of the life tenancy will be calculated by the Foundation when the gift is made.

There should be reasonable expectation that the property can be sold within one year after the death of the donor or donor's relinquishment of the property.

In accepting gifts of real estate with retained life tenancy, the Foundation will also take into consideration the potential use of the property during the life tenancy to avoid acceptance of a property that may become a liability in future years.

The Foundation should agree to participate in a gift of real estate with retained life tenancy only if:

- The life tenancy beneficiary(ies) is(are) age 65 or older;
- The property value initiating the life tenancy is a minimum of \$300,000;
- The Foundation is named as irrevocable remainder beneficiary, for endowment purposes, for a minimum of 50% of the remaining assets.



Checklist for Real Estate Gifts

GENERAL INFORMATION

Donor's Name _____

Address _____

Phone Number: (Home) _____ (Business) _____

Location of Property _____

Type of Property _____

Owners of Record _____

Ownership: <i>Circle One</i>	1) Sole	2) Joint	3) General Partnership
	4) Limited Partnership	5) Community Property	

Does the Ownership Include Mineral Rights, Water Rights, any Restrictive Easements, Covenants or Rights of Way, etc.? _____

Legal Description (from owner's documents) _____

Any Impending Litigation With Regard to the Property? _____

Valuation and Date of Most Recent Appraisal _____

Annual Property Taxes _____

Fees (association fees, sewer, water or other operating costs) _____

Are There Any Liens, Encumbrances, Mortgages, etc.?

Status of this Year's Taxes and Holding Costs (including delinquent fees) _____

Donor's Basis/Cost of Property and Length of Time Owned _____

Estimated Time Required to Sell the Asset _____



Zoning Uses (residential, commercial, etc.) _____

Prior Uses (residential, farm, gas station, etc.) _____

Has the Property Been the Subject of Any Regulatory Designations (such as wetland or easement)? If So,
List Type of Designation and Regulatory Agency _____

Proposed Delivery Date of Deed _____

Date of Physical Inspection of Property _____



Documents to Obtain for Real Estate Gifts

Title Opinion	Date Received
Donor should be asked to supply.	_____
Reliable Appraisal	
Must be ordered, paid for and submitted by donor within 60 days of deed delivery.	_____
Deed	
Shows how title is vested and is used to prepare the title transfer.	_____
Property Tax Bill	
Shows assessed value of land, improvements, actual tax and any assessments.	_____
Income/Expense Pro Forma for Three-Year Period	
If commercial or residential income-producing property.	_____
Association Agreement and Financials	
Ownership rights and responsibilities of some properties, primarily residential and condominiums, are governed by an owners association. The agreement should include fees or assessments, financials, together with a statement showing the condition of any reserve fund for deferred maintenance.	_____
Conditions, Covenants and Restrictions	
Conditions, covenants and restrictions are required of most subdivisions. A copy of these will show how the property may be used and what restrictions may apply.	_____
Lease or Rental Agreements	
If the property is leased or rented to others, a copy of each rental agreement should be obtained showing the terms of the agreement term of rental, deposits, etc.	_____
Notes and Trust Deeds or Mortgage Statements	
Notes and trust deeds or mortgage statements should be obtained. Will show the current status of a loan and will be helpful in identifying and discussing the loan with the lender and including assignment documents evidencing current loan servicer.	_____



Insurance Policy

Will verify cost of Insurance and provide information for the Foundation to transfer insurance, if desired, after gift is made.

Plot Map/Property Line/Survey

This indicates location of property and is an important step in acquiring much of the information for gift analysis.

Inspection Reports

Where inspection reports are available from previous activity related to the property, such a Code Officers, inspection reports or structural assessment reports by an engineer.

Fund Agreement

Outline of donor's charitable interest.

Donor/Donee Transfer Agreement

Must use Foundation approved agreement form (if appropriate depending on type of gift). The agreement should be drafted with legal counsel help to meet the needs of each gift.



Appendix B
Illiquid Assets

In the form of Private Securities
and/or
Tangible Personal Property

Gift Acceptance Checklist for Illiquid Assets: Private Securities

Form of delivery Electronic Physical

Form of holding C Corporation S Corporation FLP LLC LLP

Are there costs to the Foundation on acceptance or sale? Yes No

Donor's cost basis: \$ _____

Are there consequences to the donor on disposition? Yes No

Is the asset subject to a buy-sell agreement? Yes No

Are there other restrictions on sale? Yes No

What is the likely market for sale? Immediate Highly Conditional Unknown

Is there a copy of an appraisal in the file? Yes No

Will ownership create liability risk? Yes No

If Yes, best estimate of liability risk: High Medium Low

Are there any excess business holdings issues? Yes No

Are there any issues with unrelated business income? Yes No

Comments _____



Gift Acceptance Checklist for Illiquid Assets: Tangible Personal Property

Description of personal property _____

Location of personal property _____

Is the property _____ Related Use or _____ Unrelated Use

If property is related use, are there any restrictions on use of the item? If yes, please describe

Will the property be sold on receipt? _____ Yes _____ No

If so, what is the likely market? _____ Immediate _____ Highly Conditional _____ Unknown

What are the costs of sale? _____

Value \$ _____ Estimated Y/N Appraised Y/N

Cost of holding item (insurance, safeguarding, transport, other) \$ _____

Comments _____

Procedure	Date
Delivery of property	
Fund agreement in file	
Appraisal in file	
Approval or Rejection by Executive Committee	
Contact Information	Phone
Donor	
Donor's attorney	
Donor's accountant	
Other professional	
Staff	



Appendix C
Agreement Related to Limited Partnership /
Limited Liability Company Gift
(Attached)



AGREEMENT RELATED TO LIMITED PARTNERSHIP / LIMITED LIABILITY COMPANY GIFT

This Agreement is made between [Insert Donor[s] Name[s]] and the Community Foundation Tampa Bay.

The Donor[s] and CFTB desire to outline the Donor's [s'] charitable intentions in making the gift described herein and the mutual promises, agreements, and covenants of the parties regarding the gift described in this Agreement.

IDENTIFICATION OF PARTIES

Donor: [Donor Name(s)], who resides at [Address] shall be referred to herein [collectively] as "Donor". Following the death of Donor, the deceased donor's estate and representatives of the Donor's estate shall be bound by all promises, agreements, and covenants made by the Donor in this Agreement.

Indemnitor: [Name(s)] [is / are] the Indemnitor[s] (hereafter [collectively] "Indemnitor"). **NOTE for drafter----**Donor(s) will always be Indemnitor(s)

Charitable Organization: Community Foundation Tampa Bay, a tax-exempt organization described in §501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code") and a Florida not for profit corporation, whose principal place of business is 4300 W. Cypress Street, Tampa, Florida 33607, shall be referred to herein as "CFTB". CFTB represents and warrants that it is classified as other than a private foundation pursuant to §509(a)(3) of the Code.

Company: [Name of business entity whose shares/membership interest is being gifted] ("Company"), is a limited liability [company/partnership] formed under the laws of the State of Florida. Donor represents and warrants that Company has not elected to be taxed as a corporation within the meaning of the Code.

Donor[s] [has / have] provided to CFTB the following Company Governance Documents:

- [Limited Liability Limited Partnership/ Limited Partnership] Agreement dated _____] **OR**
- [Articles of Organization (if Company is an LLC) filed with the Florida Department of State on (Date)]
- [Certificate of [Limited Liability Limited Partnership / Limited Partnership] filed with the Florida Department of State on (Date)].

[Subsidiary Company: [Name of any **subsidiary** business entity whose shares/membership interest is being gifted] ("Subsidiary Company"), is a limited liability [company/partnership] formed under the laws of the State of Florida, and a subsidiary of Company. Donor[s] represents and warrants that Subsidiary Company has not elected to be taxed as a corporation within the meaning of the Code.

Donor[s] [has / have] provided to CFTB the following Subsidiary Company Governance Documents:

- [Limited Liability Limited Partnership / Limited Partnership] Agreement dated _____] **OR**
- [Articles of Organization (if Company is an LLC) filed with the Florida Department of State of (Date)]
- [Certificate of [Limited Liability Limited Partnership / Limited Partnership] filed with the Florida Department of State on (Date)].

GIFT DESCRIPTION

Gifted Company Interest: [Description of shares/percentage interest in Company being gifted]



[Gifted Subsidiary Company Interest: [Description of shares/percentage interest in any Subsidiary Company being gifted]]

[Property: That certain parcel of real property with all improvements thereon, as described in Exhibit A attached to this

Agreement—**NOTE FOR DRAFTER:** Prepare Exhibit A to attach; include the following information on Exhibit A: Address and legal description of any real estate being gifted, also include details regarding (i) any occupants of the property, (ii) how the real estate is zoned, (iii) its current use, (iv) amount of property taxes and other assessments, and (iv) amount of all other costs incurred in the past 12 months to maintain the property; also attach an Ownership Title Report]

All assets listed in this Gift Description section shall be collectively referred to herein as “Gifted Interest”.

GIFT

Donor will donate, give, assign, and transfer, unconditionally and irrevocably, except as expressly provided otherwise herein, all of the Donor’s right, title, and interest in the Gifted Interest, which shall be documented by a fully executed transfer instrument[s], by entry in the books and records of the Company [and, if applicable, recorded in the public records of the county where any Property is located].

TERMS AND CONDITIONS

The provisions of the attached document[s] captioned “Gift Terms and Conditions” [and “Addendum to Gift Terms and Conditions (Environmental)”] **[NOTE FOR DRAFTER: include the environmental addendum if real property is part of the Gifted Interest)]** are incorporated herein by reference and made a part of this Agreement.

EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of [Date].

IN WITNESS WHEREOF, the Donor[s] and the CFTB have executed this Agreement as dated below.

Donor[s]

[Insert Donor Name] Date

[Insert Donor Name] Date

Community Foundation Tampa Bay

Marlene Spalten, President and CEO Date



GIFT TERMS AND CONDITIONS

1. **Representations, Warranties, and Covenants of the Donor.** Donor and each Indemnitor hereby represent and warrant to, and covenant with, CFTB, as follows:

- a. **Organization and Ownership of Company and Interests.** Each of the Company and any identified Subsidiary Company is a business entity validly existing under the laws of the state of its formation. The Donor's interest in the Company included in the Gifted Interest and the Donor's interest in any Subsidiary Company included in the Gifted Interest are validly issued, fully paid, and non-assessable. Upon execution of this Agreement and any transfer or assignment documents in furtherance of this Agreement, CFTB acquires good and marketable title to the Gifted Interest. If applicable, Company owns good and marketable title to the Subsidiary Interest. CFTB's acquisition of good and marketable title to the Gifted Interest is free and clear of all encumbrances, other than (i) as provided or disclosed in the Company Governance Documents and, if applicable, Subsidiary Company Governance Documents and (ii) the restrictions imposed by applicable federal and state securities laws.
- b. **Comprehensive Disclosures for Gifted Interest.** Donor has provided CFTB true copies of all of the Company Governance Documents and any applicable Subsidiary Company Governance Documents. There are no other written agreements or other documents and no verbal agreements, other than those Donor has disclosed to CFTB in writing, that govern the ownership or operation of the Company and, if applicable, Subsidiary Company, the rights or obligations of interest holders in the Company and, if applicable, Subsidiary Company, or the relationship of such interest holders to the Company and, if applicable, Subsidiary Company or other interest holders in those companies.

Donor agrees to provide CFTB with any amendments to the Company Governance Documents within 30 days of their execution and CFTB will have 90 days from the date of receipt of any amendment to the Company Governance Documents to it and give notice to the Donor of either: (i) its acceptance of the terms of the amendment and its willingness to continue as a party to the Agreement under the amended terms of the Company Governance Documents or (ii) that it does not accept the terms of the amendment and it's withdrawal as a party to the Agreement.

- c. **No Engagement in Reportable Transactions.** The Company and any Subsidiary Company are not engaged in any "reportable transactions" (as defined in §6707A(c)(1) of the Code) or in any tax avoidance transactions listed by the Internal Revenue Service as abusive tax shelters.
- d. **Comprehensive Disclosures Related to Property.** Identified in this Agreement are the only current improvements existing on, occupants of, uses made of, and zoning designations applicable to, the Property. Every such use complies with all applicable zoning ordinances, and all permits and approvals required for any such use have been obtained and are current. Also identified herein are the amount of property taxes and other assessments assessed for the Property for the latest year for which assessed, and the amount of all other costs incurred in the most recently concluded calendar year by any person to maintain the Property or any portion thereof or on account of owning an interest in the Property. The Donor has provided CFTB true



copies of an Ownership Title Report, and Owner Liability Documents and Lease, if any, and there are no written agreements, instruments, covenants, declarations, or documents other than as stated or described in the Ownership Title Report, Owner Liability Documents, or Lease, and no verbal agreements other than those Donor has disclosed to CFTB in writing, that create or impose (or may with the passage of time create or impose) any exception to the title being transferred to CFTB; any claim, pledge, lien, or other encumbrance against the Property; any lease or restriction upon the use or transfer of the Property; and/or any obligation or restriction upon owners of any interest in the Property.

- e. Property Taxes and Assessments. No property taxes or other assessments for the payment of which a lien may be placed on the Property are due and unpaid.

2. Responsibility for Loss and Ownership Liabilities. Donor and each Indemnitor, jointly and severally, will indemnify CFTB or a CFTB Indemnitee for any Loss, in addition to any other rights such indemnified person may have at law or in equity, in the event of Loss. Donor and each Indemnitor also jointly and severally will pay upon demand by CFTB, and indemnify CFTB for, any Ownership Liability of CFTB to the extent that at the time CFTB demands payment or indemnification the cash and other liquid assets that CFTB possesses in any Related Donor Advised Fund/Family Foundation Fund are insufficient to pay such Ownership Liability.

- a. Definition of Loss. For purposes of this section, “Loss” means any loss or liability arising in whole or in part from (i) a breach of representation, warranty, or covenant of Donor or any Indemnitor in this Agreement or (ii) tort or other breach of a legal duty, regardless of to whom owed, by Donor or an Indemnitor or any employee or agent of Donor or an Indemnitor, whether the loss or liability is direct or consequential, and whether or not it is within the reasonable contemplation of the parties. Examples of Loss include, but are not limited to, liability to subsequent buyers or other third parties; taxes, penalties, interest, and other obligations imposed by a governmental agency; reasonable attorney’s fees and other costs to prevent, eliminate, mitigate, dispute, or defend against loss or liability; and financing costs.
- b. Definition of Ownership Liability. For purposes of this section, “Ownership Liability” means any financial obligation imposed upon, acceded to, or reasonably incurred by CFTB (i) because CFTB is the owner of the Gifted Interest or (ii) to enable CFTB to: (a) receive, secure, or maintain ownership of any part of the Gifted Interest or cash or non-liquid proceeds thereof; (b) maintain all or any part of the Gifted Interest or non-liquid proceeds thereof within a Donor Advised Fund of the Donor (as defined in §4966(d)(2) of the Code) without penalty; or (c) operate, maintain, manage, or liquidate all or any part of the Gifted Interest or non-liquid proceeds thereof, but excluding any Loss. Examples of Ownership Liability include, but are not limited to, excise, income, ad valorem, and other taxes, penalties, interest; reasonable attorney’s fee and other costs incurred to dispute obligations; recording or transfer fees and documentary stamp taxes; public or private assessments; insurance premiums; and legally required minimum charitable distributions.
- c. Further Definitions. As used in this section, the term “CFTB Indemnitee” means: (i) CFTB; (ii) any of the officers, directors, agents, and employees of CFTB; and (iii) any tax-exempt organization to which CFTB is a



supporting organization or which is a supporting organization of the same organization to which CFTB is a supporting organization (“supporting organization” as defined in the Code and Regulations thereunder), or any of the officers, directors, agents, and employees thereof. Also as used in this section, the term “Related Donor Advised Fund/Family Foundation Fund” means a component fund of CFTB over which Donor or a person designated by Donor has advisory privileges, including grant recommendations.

- d. Limitations. The amount of any Loss is reduced by the amount of the recovery actually received by the indemnified person with respect to such Loss (less the amount of actual and reasonably incurred claim and enforcement costs and legal fees and expenses) under applicable insurance policies or pursuant to indemnity rights against person or entities not parties to this Agreement.

3. Representations, Warranties, and Covenants of CFTB. CFTB hereby represents and warrants to, and covenants with Donor and Indemnitor as follows:

- a. Accredited Investor. CFTB is an “accredited investor” as defined in the federal securities laws, and CFTB is accepting the donation, transfer, and assignment of the Gifted Interest solely for CFTB’s account for investment and not with a view to, or for sale in connection with, any distribution thereof in any transaction or series of transactions that would be in violation of applicable federal or state securities laws.
- b. Indemnity by CFTB. CFTB will indemnify Donor and Indemnitor from and against any loss or liability arising in whole or in part from (i) any breach of a representation, warranty, or covenant of CFTB in this Agreement or (ii) a tort or other breach of a legal duty, regardless of to whom owed, by CFTB or any employee or agent of CFTB, whether the loss or liability is direct or consequential, and whether or not it is within the reasonable contemplation of the parties, including but not limited to, any penalties assessed by any government agency.

4. Future Agreements and Disclosures of CFTB. Donor and Indemnitor acknowledge that with regard to subsequent sales, transfers, liquidations, or other transactions related to the Gifted Interest, CFTB will represent and warrant title to the Gifted Interest only as free of encumbrances made by CFTB and against the lawful claims and demands of persons owning, holding, or claiming by, through or under CFTB; and that CFTB’s general intent and practice is to provide no representations, warranties, and indemnities or other covenants other than representations and warranties related to its own title, status, and authority, and to agree to no potential post-liquidation obligations or liabilities that are not covered by escrowed proceeds.

5. Consultation with Counsel; No construction Against Preparer. Donor and each Indemnitor acknowledge, represent and warrant that (i) CFTB recommends that Donor and each Indemnitor engage independent legal, financial, and tax counsel to review and advise each with regard to execution of this Agreement and making the gift described herein, and CFTB imposes no time by which either Donor or any Indemnitor must execute this Agreement, (ii) neither CFTB nor any of its employees or agents have provided any legal, financial, tax or other professional advice to Donor or any Indemnitor for the reliance of such person, and (iii) neither Donor nor any Indemnitor is relying upon any statements made by CFTB or any of its employees or agents in deciding to enter into this Agreement or make the gift. The parties



agree that no provision of this Agreement is to be construed against or interpreted to the disadvantage of any party by any arbitrator, court, or other governmental or judicial authority, or other adjudicator by reason of such party having or being deemed to have prepared or imposed such provision.

6. **Governing Law; Dispute Resolution.** This Agreement and the rights of the parties are to be governed by and must be interpreted in accordance with the laws of the State of Florida without regard to its conflicts of laws principles. Any claim or dispute between any of the parties or any person identified herein as a potential indemnitee concerning questions of law or fact or both arising out of or in any way relating to this Agreement must be resolved by binding arbitration in accordance with the rules of the American Arbitration Association, under the set of expedited procedures, if any, provided under those rules, regardless of the amount in dispute. The parties must abide by, perform, accept, and fulfill the final award or finding concerning the matters in arbitration without recourse to any other court or tribunal, except to the extent necessary to enforce said final award or finding. The parties consent to the exclusive jurisdiction of the state or federal courts located in the State of Florida to enforce any arbitral award or resolve any dispute regarding the enforceability or applicability of this arbitration provision, or to resolve any other dispute described in this provision in the event this provision is determined to be unenforceable with regard to or inapplicable to such dispute.
7. **Entire Agreement; Execution.** This Agreement, any collateral written agreements, consents, certifications, or other instruments signed by any of the parties for the purpose of effecting the gift described herein or carrying out the terms hereof, the Company Governance Documents, and any agreement entered into by the parties in connection with Donor's opening of any fund with CFTB, contain the entire agreement of the parties with respect to the transfer of the Gifted Interest. This Agreement may be executed in multiple counterparts, each of which is an original, and all of which are deemed one instrument. It becomes effective on the date that the last of the parties to the Agreement signs it.
8. **Multiple Donors or Indemnitors.** The representations, warranties, and covenants herein of each Donor and Indemnitor are joint and severable undertakings of those persons.
9. **Survival.** Each section of this Agreement survives the signing, delivery, and performance of this Agreement and any other instrument or agreement that carries out or memorializes this Agreement, and the subsequent transfer of any part of the Gifted Interest to a third party.
10. **Further Assurances.** At any time, and from time to time, the parties will take additional actions reasonably necessary to accomplish or memorialize the covenants or purpose of this Agreement.
11. **Severability of Clauses.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision, which will remain in full force and effect.
12. **No Assignment.** No party may assign any right or obligation under this Agreement.
13. **Notice.** To be effective under this Agreement, a notice must be in writing, signed by the sender, and delivered by: (a) first class, certified mail, return receipt requested, postage prepaid; (b) express delivery by a recognized national carrier or express delivery service, cost prepaid; or (c) personally hand delivered. The effective date of such notice is the third business day after the date which such certified mail or express delivery has been deposited for delivery, if



addressed to the address provided in this Agreement or subsequently in a written notice, or the date of actual delivery if it is later and recipient so proves. The effective date of such notice that is personally hand delivered is the date of personal hand delivery.

- 14. Representations of Signer.** If any of Donor and/or Indemnitor is an entity, then the person signing this Agreement on behalf of the Donor or Indemnitor individually represents and warrants that (i) he or she and Donor or Indemnitor have full power and authority to execute and deliver this Gift Agreement, (ii) Donor or Indemnitor exists, has not been dissolved, and is in good standing, (iii) Donor has full power and authority to make the gift described herein, and (iv) the obligations of Donor or Indemnitor provided in this Agreement are valid and enforceable against Donor or Indemnitor.



ADDENDUM TO GIFT TERMS AND CONDITIONS (ENVIRONMENTAL)

1. **Definitions.** The capitalized terms used in this Addendum and not defined elsewhere in the Agreement have the following meanings:
 - a. **Environmental Law.** Any present or future federal, state, or local law, statute, ordinance, rule, regulation, or the like, or any common law, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances, or relating to liability for or costs of other actual or threatened danger to human health or the environment. “Environmental Law” includes the following statutes, as amended, any successor statutes there to, an any state or local statute, ordinance, rule, regulation, or the like addressing similar issues: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C.A. §9601, *et. seq.* (“C.E.R.C.L.A.”); the Resource Conservation and Recovery Act of 1976 (including Subtitle I related to underground storage tanks), 42 U.S.C.A. §6901, *et. seq.* (“R.C.R.A.”); the Hazardous Materials Transportation Act, 49 U.S.C.A. §1801, *et. seq.*; the Clean Water Act, 33 U.S.C.A. §1251, *et. seq.*; the Clean Air Act, 42 U.S.C.A. §7401, *et. seq.*; the Emergency Planning and Community Right-to-Know Act; the Solid Waste Disposal Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. “Environmental Law” also includes any present or future federal, state, or local law, statute, ordinance, rule, regulation, or the like, or any common law, either: (i) conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; (ii) requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; or (iii) regulating the Release or Remediation of Hazardous Substances from residential storage tanks (above or below ground).
 - b. **Environmental Loss.** Any loss, liability, damage, demand, claim, action, judgment, cause of action, assessment, penalty, fine, punitive damage, fee, cost, or expense of any kind or nature (including Remediation or clean-up costs, and the fees and disbursement of engineers, environmental consultants, legal counsel, and accountants) and any foreseeable or unforeseeable consequential damage.
 - c. **Hazardous Substance.** Any substance (whether solid, liquid, or gas) (i) defined, listed, or otherwise classified as a pollutant, hazardous waste, hazardous substance (including substances under 40 C.F.R. Part 302.4 and amendments thereto), hazardous material, or extremely hazardous waste, or using words of similar meaning or regulatory effect under any present or future Environmental Law, or (ii) that may have a negative impact on human health or the environment, including hydrocarbons, petroleum and petroleum by-products (including, without limitation, home heating oil), asbestos and asbestos-containing materials, polychlorinated biphenyls or substances that contain the same (including transformers or other equipment containing dielectric fluid), lead, radon, radioactive materials, flammables, explosives, mold, fungus, spores present in the air and in and on physical components or the



Property, formaldehyde (including urea formaldehyde foam insulation), and medical and infectious waste, including substances designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, or listed pursuant to Section 307 of the Clean Water Act.

- d. Hazardous Substance Event. Any storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling, or transportation of any Hazardous Substance from, under, into, or on the Property or any surrounding property.
- e. Release any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, dumping, disposing, or other movement or depositing.
- f. Remediation. Any response, remedial removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain, or otherwise remediate any Hazardous Substance; any enrollment or participation of the Property within any state’s voluntary clean-up or similar program; any actions to prevent, cure, or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis or evaluation relating to Hazardous Substances

2. Environmental Representations, Warranties, and Covenants of Donor and Indemnitor. Donor and each Indemnitor hereby represent and warrant to, and covenant with CFTB as follows:

- a. Property Compliance with Environmental Laws. The Property is in full compliance with all Environmental Laws as they may apply to the Property, and the Donor has not received any notice (written or otherwise) alleging any condition in, on, or around the Property that is in violation of, or any in the future constitute any violation of, any Environmental Laws.
- b. No Hazardous Substances. No Hazardous Substances are located on any part of the Property, and none have been released, placed, disposed of, produced, or discharge on any part of the Property.
- c. No Storage Tanks. There are no above or below ground, regardless of whether buried or partially buried, storage tanks, vessels, drums or other containers that contain or have contained Hazardous Substances located on the Property.
- d. Compliance Action. Donor will take all action in Donor’s power to ensure that the Property complies with all applicable Environmental Laws and will modify such procedures as necessary to ensure continued compliance therewith at all times.
- e. Notice of Hazardous Substance Events. Donor will notify CFTB immediately upon learning of the occurrence of a Hazardous Substance Event on, or affecting any portion of, the Property, or of any occurrence or other circumstance that indicates that a Hazardous Substance Event may have occurred on or affected any portion of the Property.



- f. Cooperation with Authorities. Donor will cooperate with Environmental Law authorities and, whenever necessary, aid the Environmental Law authorities in enforcing the Environmental Law.
- g. Nonexclusive Remedies. Any indemnity right against the Donor under this Agreement is in addition to, and not in lieu of, any other rights and remedies, including but not limited to rights to contribution, provided in the Environmental Law.
- h. Release. Donor releases CFTB and every CFTB Related Person from any and all Environmental Loss which may have accrued, or may ever accrue, to the Donor with regard to any act or omission of any CFTB Related Person in the generation, use, handling, storage, disposition, or release of Hazardous Substances in, on, at, under, from, or adjacent to the Property. The foregoing release includes any contribution claim under applicable Environmental Law, common law, or equity. For purposes of this Addendum, "CFTB Related Person" means: (i) any officer, director, trustee, agent, or employee of CFTB; (ii) any tax-exempt organization to which CFTB is a supporting organization or which is a supporting organization of the same organization to which CFTB is a supporting organization ("supporting organization" as defined in the Code and Regulations thereunder), and any officer, director, agent, or employee thereof; (iii) any predecessor or successor to CFTB in ownership of any interest in the Property, and any officer, director, agent, or employee thereof; and (iv) any insurer of CFTB.