(Insert Organization Name)
Gifts of Real Property Policy and Procedures

By Elizabeth Solender, Solender/Hall, Inc.
(Commercial Real Estate Advisors to Charities)

<u>Purpose</u>:

To define the policies and procedures for accepting proposed gifts of real property to *Organization.*

<u>Policy</u>:

It is the policy of *Organization* to accept gifts of real property providing it can be shown that (1) the potential gift may result in financial gain to *Organization*, or (2) *Organization* may gainfully utilize the real property for one or more of its programs. Each situation will be considered individually.

<u>Responsibility</u>:

Preliminary analysis of the potential gift is the responsibility of the Manager of Development and the Development staff. Acceptance of gifts of real property is subject to the approval of the Board of Directors unless delegated to the Executive Committee of *Organization*.

<u>Guidelines</u>:

Specific real property or an interest in real property that require an evaluation and approval before acceptance include, but are not limited to:

Oil, Gas & other Minerals
- Working interests
- Mineral rights

Real Estate
- Residential
- Commercial
- Land
- Farms and Ranches

1. Gifts of a nature that would be inconsistent with the goals, objectives and image of *Organization* will not be accepted.

2. Gifts of real estate are ordinarily acceptable only after it has been determined that no reasonable possibility exists that the property could be contaminated by hazardous waste or mold. An initial inspection of the property shall be made by *Organization.* The investigation shall include both a physical inspection of the property and an

investigation of the existing and previous ownership and use of the property. If, after the inspection, it is determined there is a likelihood the property is contaminated by hazardous waste or has had water damage that may result in mold, the property will not be accepted at that time and consideration will be given to having an EPA Phase One environmental assessment performed. The expense of the assessment must be borne by the donor unless the Executive Director approves an exception.

3. All gifts of real estate will be evaluated in light of debt, insurance requirements, homeowners' association fees, property taxes and other carrying costs as to the effect on the advisability and value of accepting the gift. Properties with debt will not routinely be accepted except with an independent appraisal and only if the debt amounts to less than 50% of the value established by the appraisal.

4. A determination will be made whether there are any restrictions, easements, liens, or other title issues that could substantially impair the value or marketability of the property.

5. An independent qualified appraiser will be retained to establish the fair market value of the property. The appraisal will establish the donor's charitable gift value, give *Organization* a reasonable value at which to carry the asset on its books and establish a reasonable asking price for the property. The expense of the appraisal must be borne by the donor unless the Executive Director approves an exception.

6. If the property will not be retained for use by *Organization*, it will be listed for sale with a licensed, unrelated real estate broker as soon as possible. *Organization* will attempt to realize a sale with a purchase price no less than the appraised value of the property, but is not bound to do so. Factors such as high taxes, sizable debt or other carrying costs may dictate that the property be sold as quickly as possible for a price less than the appraised value. If this is the case, the donor will be so informed. Once the property is sold, the proceeds—minus any costs associated with the selling, holding, or maintaining of the property—will be used by *Organization* as directed by the donor.

7. All documents will be subject to legal review prior to accepting the property. The cost will be negotiated with the donor.

8. If the donor wishes the gift to be used to fund a charitable trust or to be given as a part of a planned giving program, legal counsel specializing in estate planning will be retained by *Organization* to assist in the gift process and enable *Organization* to accept the gift.

9. When *Organization* accepts a gift of real estate, *Organization* requires a signed letter indemnifying and holding *Organization* harmless for any and all liability arising from acts occurring prior to *Organization's* ownership of the property.

10. Legal advice should be sought by the donor. The donor' legal expenses must be borne by the donor unless the Executive Director approves an exception.

11. The development director must understand the process to ensure proper communication is made to the donor.

12. The asset that is accepted must be in accordance with the overall investment policy.

13. An evaluation of unrelated business income tax will need to be done to ensure there are not additional filings required (Form 990T).

Procedure for the Evaluation and Acceptance of Real Estate:

1. A donor indicates to *Organization* an interest in making a gift of real estate. Real estate could include land, apartment buildings, retail centers, office buildings, condominiums, single family dwellings, farm or ranch land or mineral interests.

2. A representative of *Organization* schedules a visit with the donor and a physical evaluation of the property needs to be done by the Organization.

3. The donor is informed that the following information about the property will be needed:

   a) Legal description of the property including, address or location, directions to the site and method of access;
   b) Copy of the donor's vesting Deed;
   c) Copy of recent property tax statements;
   d) Name of the owner(s), percentage of ownership and type of ownership;
   e) Terms of debt, if any, and whether *Organization* will be expected to assume the debt;
   f) Survey or plat, if available;
   g) History of use of the property;
   h) Information about the costs of owning and operating the property (e.g., property taxes, utilities, maintenance, roof repairs and insurance) and, if income producing, net operating results of the property for the past two years;
   i) Copies of any insurance policies;
   j) Rent roll and current leases, if applicable;
   k) Zoning status of the property including any restrictions in use, any enforcement violations, proposed condemnation;
   l) Copies of any service agreements;
   m) Copies of any existing environmental assessments; and
   n) Copy of a recent appraisal, if available.
   o) Copies of any debt instruments
   p) Copies of any leases associated with the property
   q) Copies of any legal action regarding the property
   r) Copies of any noncompliance with any federal, state or local laws and regulations.

4. A representative of the *Organization* along with a real estate professional will visit the property to perform a visual site inspection, take photographs and make an initial

assessment of the marketability of the property. Any obvious environmental hazards will be noted and a recommendation made whether or not to pursue the potential gift any further.

5. If the recommendation is to pursue the potential gift, a qualified firm shall perform an EPA Phase One assessment. Based on the results of the Phase One assessment, a Phase Two assessment may be required. The donor may be requested to provide funding for the assessments.

6. A title commitment will be obtained to review current ownership of the property and to determine if there are any defects in the title.

7. A zoning verification letter will be obtained from the appropriate governmental authority.

8. When there are buildings on the property, there must be an inspection of the mechanical systems, electrical systems, plumbing and structure. Cost of the inspection will be negotiated with the donor.

9. The donor will be informed that a qualified appraisal is required to establish the fair market value of the property. The donor is responsible for obtaining the appraisal and for reporting the donation to the I.R.S. on form 8283 for gifts valued in excess of $5,000. The donor can claim a charitable tax deduction for the full fair market value of the real estate and avoid capital gains taxes on the appreciation. *Organization* will issue a gift receipt without a gift value, and the donor can substantiate the fair market value of the property for tax purposes through a qualified appraisal.

10. Whenever possible the donor will be asked to absorb the costs for the transfer of ownership to *Organization*. These costs include title insurance, preparation of the Deed of Trust, recording costs, and legal fees charged by the title company. In addition, *Organization* will not bear the cost of a commission or fee payable to a broker with respect to the transfer of the property to *Organization*.

11. A report and recommendation will be prepared for the Executive Committee including a budget representing total costs of ownership for the period of time *Organization* expects to own the property. The budget should include taxes, insurance, utilities, maintenance, debt service, fees and permits, advertising, commissions, legal fees, closing costs, and all other costs incurred in obtaining, owning and disposing of the property. The budget will be used to project the net proceeds to *Organization* expected from the final disposition of the property.

12. Final acceptance of the gift is the responsibility of the Executive Committee of *Organization*.

13. After the transfer of ownership to *Organization* is completed, the property will be listed immediately with a licensed, unrelated real estate broker unless the gift is for a specific

purpose deemed necessary by *Organization*. *Organization* will reserve the right to sell the property at a later date should the intended purpose no longer be appropriate for *Organization*. If property is sold within a two year period, *Organization* must file a Form 8282 informing the donor and the I.R.S. of the sales price.

14. If the donor has taken accelerated depreciation in excess of straight-line prior to making the gift, the donor will be responsible for making any recapture payments to the IRS. Likewise, property taxes must be paid by the donor until the transfer of the property.

The following organizations graciously provided copies of their real estate gift policies and procedures to be quoted extensively in this model policy: YMCA of Metropolitan Dallas, Children's Medical Center of Dallas, Presbyterian Healthcare Foundation and the Baptist Foundation of Texas. In addition the following individuals were consulted in the development of this policy: Neely D. Duncan, CPA, CFE, FCPA, Principal with Lane Gorman Trubitt PLLC; John Hufnagle, CPA; and Gary L. Scott, JD with Gary L. Scott, PC

This policy and procedure is intended to be used as a model. Each charity should consult its legal and accounting professionals before drafting and implementing its own real estate gift policy and procedure document.

Other Issues to Consider

<u>Out of the Area or Out of State Donations</u>

Receiving a gift of real estate at a location a significant distance away from the Organization can be very challenging. Gifts of this type need to be considered on a case-by-case basis. Gifts of a significant size may be worth the extra effort and expense required to perform due diligence, manage the asset and sell it. Each charity will need to determine the size of the gift that makes the effort worthwhile.

<u>Partial Ownership</u>

A Donor may wish to make a gift of a specific property to several charities. In some cases the percentage of ownership may not be equal. In addition, one of the other charities may be given authority to manage and dispose of the property on behalf of the other charities. Most large charities will not take a gift unless they are the managing owner. Each charity will need to determine how comfortable they are with this type of gift.

<u>Unrelated Real Estate Broker</u>

Using a real estate broker who is a member of the board of directors or related to a member of the board, officers or employees can be an executive director's nightmare. The executive director is placed in the position of supervising a member of the board or a relative. What happens if the executive director is not satisfied with the services being performed? How easy will it be to terminate the service provider? Will the service provider be allowed to go around the executive director directly to the board? What is to prevent it? Will the board member be asked to leave the meeting when decisions concerning the services are being discussed? There is a good argument that such an arrangement gives rise to an unavoidable conflict of interest, but even if it doesn't, it is not recommended.

<u>Limited Liability Corporation</u>

Depending on the charity's risk tolerance, a charity may want to consider placing any gift of real estate in a Limited Liability Corporation. By doing this, the charity would limit its exposure to potential liabilities involved in owning the property. Ownership through an LLC may be highly advantageous if there are any potential hazardous materials issues or personal injury risks.

<u>Roll Back Taxes</u>

When land that has been designated for property tax purposes as "agricultural use" is sold to a user to develop residential lots or a commercial development, the property is subject to roll back taxes. In this situation, the property tax designation is changed to the new use and the tax rate is rolled back five years. As a result, someone will be liable to pay those property taxes. This can be a sizable sum and the charity should take this into account when valuing the property and when selling it. Which party pays the tax is typically a negotiated item when accepting and selling the property. “Agricultural use” is not the only “use” subject to rollback taxes. For example, some church properties are subject to rollback taxes. Any proposed gift of real estate should be evaluated for possible rollback taxes.

Real Estate to Consider Avoiding

Many charities are offered lake lots, trailer park lots, lots in planned communities and time-shares. Most of these have values of less than $5,000 and are in locations not convenient to the charity. These types of real estate may not be worth the effort to acquire and sell.

Gifts with Conditions or Restrictions & Reversionary Interests

Sometimes donors will donate property with conditions or restrictions and reversionary interests. Both conditions and restrictions are generally tied to a reversionary interest: if the condition is not satisfied or when the property ceases to be used for its intended purpose, it reverts back to the donor or the donor’s heirs.

For example, a donor gives an organization several acres of land “on condition that the organization constructs a new facility costing more than $500,000.” The organization builds a facility and years later wants to sell the property. The title company requests proof that the organization spent the required $500,000 on the facility. Generally when this happens no one with the organization was with the organization when the facility was built and no one has any idea where the records might be stored, if they have not been destroyed. This may impair the sale of the property.

An example of a restriction would be when donated land is to be used “only for playing fields.” Twenty or thirty years later the organization may want to expand its facility on to some of the land restricted to playing fields, and the donor is long since deceased. This situation can be a real nightmare for the organization.

When offered real property subject to conditions or restrictions, the organization should negotiate with the donor so that satisfaction of the condition is measured by an objective criteria and the restrictions on use are for a limited number of years.

In the first example above, when the organization accepts the property and spends the required $500,000, it should immediately obtain from the donor an acknowledgement, in recordable form, stating that the condition has been met. The acknowledgement should be immediately recorded in the applicable real property records. In the second example, the organization should negotiate with the donor a limitation of years. A donor giving property to an organization for playing fields may have a legitimate interest in making certain that the organization uses the land for that purpose, but not forever. Five or ten years should reasonably satisfy the donor.

These are very complex issues and legal counsel should be sought by the organization whenever a donor wishes to impose a condition or restriction on a real estate gift.