THE COMMUNITY FOUNDATION

ROCHESTER AREA COMMUNITY FOUNDATION
POLICY AND PROCEDURE
FOR POTENTIAL GIFTS OF PARTNERSHIP INTERESTS

I. AUTHORITY TO NEGOTIATE

The President will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of RACF. Assuming such activities follow approved procedures and assuming such agreements are approved by the Foundation's legal counsel, this authority to act will not require review or further approval by the Board of Trustees.

II. GENERAL GUIDELINES

Contributions of partnership interests to RACF raise several issues which bear on the advisability of accepting the contribution. These issues include (i) exposure to creditors' claims and contingent liabilities; (ii) RACF's obligations to obtain a reasonable rate of return and to invest prudently; (iii) possible exposure to the unrelated business income tax (UBIT); and (iv) possible adverse effects to RACF's tax-exempt status. The purpose of this Policy and Procedure is to assure that these issues are addressed prior to the acceptance of a contribution of a partnership interest.

A. **Type of Interest:** In general, RACF will only accept contributions of limited partnership interests. RACF cannot accept general partnership interests, due to the exposure to claims of creditors and other liabilities.

B. **Nature of Activity:** RACF will only accept interests in passive, investment-type partnerships, such as those holding rental real estate, stocks, bonds, and other investments. RACF cannot accept interests in partnerships that carry on an active, for-profit business.

- Holding an interest in a partnership that carries on an active, for-profit business will subject RACF to the unrelated business income tax (UBIT), and, in the case of general partnerships, the tax-exempt status of RACF may be jeopardized if the IRS takes the position that participation by RACF in the partnership as a general partner constitutes non-charitable activities. See Hoyt, *Legal Compendium for Community Foundations* at 71.

C. **Sale or Liquidation:** It should reasonably appear that the partnership interest can be sold or converted into income-producing property within a specific time frame, not to exceed three to five years. Treasury Regulations require that RACF assure that its funds produce a reasonable rate of return.

III. RESPONSIBILITIES OF THE DONOR

A. The donor will be responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions") See Treas. Reg 1.170A-13(a).

B. The donor must furnish the Foundation with copies of the partnership agreement and the most recent Schedule K-1 that the donor has received from the partnership. The Schedule K-1 will be reviewed to determine the nature of the income generated by the partnership (active versus passive).

C. The Foundation's legal counsel should review the limited partnership agreement to determine the nature of the interest being contributed and whether there are any liabilities associated with holding the limited partnership interest, such as capital calls or contingent liabilities.

D. It is the donor's responsibility to prepare the appropriate instruments which are necessary to transfer the partnership interest to the Foundation. All proposed transfer instruments must be reviewed by the Foundation's legal counsel prior to acceptance by the Foundation.

E. Prior to acceptance of the partnership interest, the Foundation and the donor must agree in writing on arrangements for paying expenses associated with the partnership interest.

- In general, it is expected that the donor will agree that UBIT and the Foundation's associated administrative costs (accounting expenses and tax return preparation) will be charged against the fund holding the partnership interest. In addition, there should be adequate assurance that the affected fund will have adequate cash to pay the tax and associated costs, either from the investment itself or from further contributions from the donor.

- In general, partnerships that hold only investments paying interest, dividends, rental, and other passive income will not give rise to UBIT. However, where the partnership holds investments that give rise to debt-financed income (such as mortgaged real estate or securities purchased on margin), holding the partnership interest will subject RACF to UBIT.

F. Donors will be encouraged to discuss contemplated bequests before finalizing their wills. Partnership interests that are bequeathed to the Foundation will be evaluated in accordance with this Policy and Procedure like all other gifts of partnership interests.

IV. PROCEDURE FOR ACCEPTING PARTNERSHIP INTERESTS

A. After the requirements of this Policy and Procedure have been satisfied, the President will have the authority to accept or refuse a gift of a partnership interest.

B. The President may refuse any offered gift of a partnership interest that is judged not to be in the best interests of the Foundation.

C. Prior to or upon transfer of the interest to the Foundation, the donor and the Foundation will sign an agreement (approved by legal counsel) stating the terms of the gift, which shall specify that there are no restrictions on the Foundation's right to use or convey the property.

D. In addition, the donor will be advised that if the property listed on IRS Form 8283 is sold, liquidated, or otherwise disposed of within two years of receipt, RACF is required to file a separate report within 125 days with the IRS on IRS Form 8282 ("Donee Information Return") and disclose facts about the disposition. See Treas. Reg. 1.6050L-1.

V. WHAT THE FOUNDATION WILL NOT DO

A. Except in extraordinary circumstances, the Foundation will not pay for legal assistance, appraisals or other services on behalf of the donor.

B. The Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor's income tax charitable deduction.