

**INDIAN RIVER COMMUNITY FOUNDATION  
PROCEDURES FOR ESTABLISHMENT AND OPERATION  
OF FUNDS AND AFFILIATED ORGANIZATIONS**

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# PROCEDURES FOR ESTABLISHMENT AND OPERATION OF FUNDS AND AFFILIATED ORGANIZATIONS

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The INDIAN RIVER COMMUNITY FOUNDATION has established the following procedures in order to carry out its mission:

Building a stronger community through donor-driven philanthropy.

The purpose of all gifts to the Indian River Community Foundation (Community Foundation) must relate to its mission. The purpose of the gifts and the procedures for its administration shall, whenever possible, be defined in the fund's establishing document signed by the donor.

It is the business practice of the Community Foundation to inform, serve, guide or otherwise assist donors who wish to support the Community Foundation's activities, but never under any circumstances to pressure or unduly persuade. All programs, solicitation plans and activities shall be subject to the oversight of the Community Foundation Board.

## Indian River Community Foundation and Greater Horizons

The Community Foundation Board of Directors contracts annually with Greater Horizons, a subsidiary of the Greater Kansas City Community Foundation, to provide all back office operations. In addition Greater Horizons staff offers experienced guidance and expert counseling in the areas of marketing, strategic planning, business development, investment management and gift acceptance.

## **PART A. RULES GOVERNING ALL FUNDS AND AFFILIATED ORGANIZATIONS**

### **Section 1. *Types of Donors, Funds, Affiliated Organizations and Split-Interest Arrangements***

A Donor may establish with the Community Foundation one or more Funds, Affiliated Organizations and Split-Interest Arrangements. A Fund is an integral part of the Community Foundation; grants are made from each Fund to carry out the charitable purposes specified by the Donor. Affiliated Organizations and Split-Interest Trusts are not Funds and generally constitute separate legal entities. Affiliated Organizations are generally grant-making charitable organizations and Split-Interest Arrangements are ways to make a deferred gift to establish a Fund. Included within these categories are:

#### a. Eligible Donors

The Community Foundation will accept contributions from the following types of Donors:

1. Individuals and family members
2. Companies/Corporations/Professional Corporations and Firms
3. Nonprofit Organizations
4. Private Foundations
5. Various Branches of Government
6. Collective private groups of concerned citizens and associations
7. Bequests and Trusts

#### b. Funds

1. Donor Advised Funds
2. Designated Funds
3. Agency Endowments
4. Field of Interest Funds
5. Unrestricted Funds

c. Affiliated Organizations

1. Affiliated Trusts, Corporations, Foundations and Funds
2. Supporting Organizations

d. Split-Interest Arrangements

1. Charitable Remainder Trusts
2. Charitable Lead Trusts
3. Retained Life Estate

**Section 2. *Acceptance of Contributions***

a. Gift Acceptance Committee

The Gift Acceptance Committee, organized as an ad hoc committee of the IRCF Board of Directors, will meet on an as-needed basis to review the details of unique or complex gifts. Members will include the IRCF Executive Director and such other persons (IRCF Board members or not) who might offer professional expertise in the cost benefit/analysis of a potential gift. The Committee will bear the following responsibilities:

- Determine whether a specific gift contributes to the mission of IRCF;
- Outline steps to be taken in the acceptance/rejection process;
- Advise IRCF Executive Director how to protect IRCF from any possible repercussions; and,
- Recommend to IRCF Board of Directors the acceptance or rejection of the gift.

b. General Policies and Approval

Requests to establish Funds, Affiliated Organizations or Split-Interest Arrangements with the Community Foundation will be reviewed by the Executive Director (and by the Board of Directors (or a designated committee) if the staff determines such a review is necessary) for consistency with the Community Foundation's charitable purposes and specific charitable needs. The Executive Director of the Community Foundation has the authority to approve the establishment of individual Funds up to \$50,000 and affiliated relationships/agreements/contracts. Funds to be established with more than \$50,000 in assets must be approved by Board prior to acceptance. With respect to supporting organizations, the Executive Director has the authority to recommend approval of a particular supporting organization relationship to the Board of Directors, but the Board of Directors (or a designated committee) shall have the final authority to formally approve the relationship by appointing the requisite number of directors to the supporting organization's board.

c. Review and Approval of Contributions

All contributions are subject to the review and approval by the Community Foundation prior to acceptance. The Community Foundation's staff generally has the authority to accept contributions of cash and marketable securities (those that are actively traded and sellable on the open market). The Executive Director of the Community Foundation before acceptance will review contributions of all other assets that are not readily marketable. Contributions of illiquid assets include but are not limited to closely held securities, limited liability corporations (LLC's), limited partnerships and tangible personal property and require prior approval per gift acceptance policies as established and approved by the Board of Directors (or a designated committee). Contributions of real estate may be handled by the Real Estate Charitable Foundation, a supporting organization of Greater Horizons, and are subject to the review and approval by the board of directors of the Real Estate Charitable Foundation. Contributions that would violate the excess business holdings rule for donor advised funds under the Pension Protection Act of 2006 are generally prohibited, but may be accepted in special circumstances if reviewed and approved by the Executive Director and the Community Foundation Board of Directors.

d. Written Acknowledgment of Acceptance of Contributions

The Community Foundation will provide written confirmation at the time of acceptance of any contribution within four (4) business days of receipt of contribution. Contributions not accepted will be returned as soon as practical. The confirmation will include the dollar amount of the contribution of any cash gifts and marketable securities such as publicly traded stocks, bonds and mutual fund shares. Acknowledgement of private securities and other illiquid assets will only include a description of the gift but will not include a dollar value of the donated asset. Donors should obtain a qualified independent appraisal prior to making such a contribution. The IRS generally requires a donor to obtain a qualified appraisal for illiquid assets no earlier than 60 days before the date of the gift and no later than the due date (including extensions) for the tax return where the donor first claims a deduction for the gift.

e. Donor's Counsel

The Community Foundation encourages each prospective Donor to have the terms of all proposed agreements reviewed by the Donor's legal and/or financial advisors. The Community Foundation does not provide legal, tax or financial advice. The Donor is advised that it is the Donor's responsibility to obtain any necessary appraisals, file appropriate tax returns, and defend against any challenges to claims of tax benefits.

f. Minimum Initial Contributions

Generally, the minimum amounts to establish a named Fund or a Split-Interest Arrangement are:

1. Donor Advised Fund	\$25,000
2. Designated Fund	\$25,000
3. Field of Interest Fund	\$25,000
4. Nonprofit Organization Fund	\$25,000
5. Unrestricted Fund	\$25,000
6. Charitable Remainder Annuity Trust	\$100,000
7. Charitable Remainder Unitrust	\$100,000

The minimum amounts necessary to establish an Affiliated Organization will be mutually agreed upon by the Board of Directors (or its designated committee) and the Donor or the governing body of the Affiliated Organization.

g. Additional Contributions

Additional contributions of cash and actively traded marketable securities to an established Fund may be made in any amount at any time. Gifts of other assets (illiquid assets) require advanced approval per gift acceptance policies approved by the Board of Directors (or a designated committee) (see Section 2.b. above). However, federal tax laws prohibit additional contributions to a charitable remainder annuity trust or a charitable gift annuity. In these cases, a new trust or annuity agreement will be necessary.

h. Contributions are Irrevocable

Any contribution made to the Community Foundation, once accepted, represents an irrevocable charitable contribution to the Indian River Community Foundation. Contributions to the Community Foundation are not refundable.

#### i. Donor Restrictions on Use of Property

Federal tax laws provide that a Donor to the Community Foundation may not impose any "material restriction" (a term defined in the Treasury Regulations), which prevents the Community Foundation from freely and effectively employing the contributed assets, or the income derived there from, in furtherance of its charitable purposes. Any restriction (beyond the specified charitable purposes stated in the instrument of transfer) sought to be imposed by a Donor is subject to review and approval by the Community Foundation.

#### j. Policy to Sell Contributed Property

The general policy of the Community Foundation is to sell all contributed property as soon as practical after receipt so as to minimize market risk. For non-publicly traded securities or other assets for which no readily liquid market exists, the Community Foundation will exercise discretion as to the timing and price of sales. Closely held stock or other assets for which no readily liquid market exists that are retained for any reason and that are valued in excess of \$1,000,000 (or, in the aggregate, are of material value compared to the other assets of the Community Foundation), shall be revalued using a qualified appraisal **at least** every three (3) years from the date of the gift to the Community Foundation. The cost of the qualified appraisal shall be an expense of the Fund, Affiliated Organization or Split-Interest Arrangement holding such asset. Any costs incurred by the Community Foundation necessary for the disposition of securities and other assets (i.e., legal and appraisal fees) and for the management of such assets prior to disposition will be an expense of the Fund. Exceptions to this general policy will be made only in unusual circumstances and only with the prior approval of the Executive Director of the Community Foundation and in accordance with policies as established and approved by the Investment Committee.

#### k. Tax Deduction vs. Net Proceeds from Sale of Contributed Property

An individual for income tax purposes can deduct a charitable contribution only in the year in which the contribution is actually paid or ownership has transferred (excess contributions above adjusted gross income percentage limitations may be carried forward for up to five additional years). Tax laws generally provide rules on how the value of the contribution deduction is to be determined. Gifts to the Indian River Community Foundation are deductible at the highest "public charity" level allowed by law. See the Appendix for a further explanation of tax laws governing charitable contributions.

The value of the contribution for tax deduction purposes may vary from the net proceeds realized by the Community Foundation upon the sale of the contributed property. Donors are encouraged to consult with their professional tax advisors to determine the appropriate value for tax deduction purposes.

#### l. Confidentiality

All agreements with Donors and all information concerning Donors and prospective Donors shall be held in strict confidence by the Community 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 will be honored or allowed only if permission is obtained from the Donor prior to release of such information.

### **Section 3. *Investment Policies***

The Community Foundation's investment program shall seek to provide competitive market returns with reasonable levels of risk. The officers of the Community Foundation so empowered, or the Investment Committee, shall direct the investments of these Funds consistent with the objective. Copies of the Community Foundation's investment program and policies are available to any interested party upon request.

Generally, if a particular investment portfolio is not recommended by the Donor, Donor Advisor(s) or Advisory Committee, Funds shall be invested in a balanced portfolio as recommended by the Community Foundation's Investment Committee. If a Donor, Donor Advisor(s) or an Advisory Committee is interested in having all or a

portion of a Fund invested in a particular investment portfolio provided by the Community Foundation, then the current Donor, Donor Advisor(s) or Advisory Committee may make an appropriate recommendation to the Community Foundation in accordance with the policies and procedures approved by the Investment Committee. Such recommendations are advisory, and the Community Foundation will exercise independent authority over the investments of the principal and income of each Fund. Segregated asset accounts may be permitted, with advanced approval. The Fund holding such accounts shall pay the direct costs of such arrangements, including additional administrative costs.

#### **Section 4. *Administrative Expenses***

Each Fund, Affiliated Organization and Split-Interest Arrangement will be charged its equitable share of the Community Foundation's expenses in accordance with the current administrative support fee schedule as approved by the Board of Directors (or a designated committee). If an expense is directly associated with a specific Fund, Affiliated Organization or Split-Interest Arrangement, then the expense will generally be directly charged to the applicable fund. The current Community Foundation's fee schedule is available to any interested party upon request.

#### **Section 5. *Charitable Purpose***

For purposes of these Procedures, a "charitable purpose" is an educational, religious, scientific, literary, public or other purpose permitted to be carried on by organizations described in Sections 170(c)(1) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended.

#### **Section 6. *Educational Program***

The Community Foundation's mission and activities, and the needs of the community, will be well served by active promotion and community education concerning such activities and needs. The Community Foundation shall conduct an educational program by publicizing these procedures and the specific charitable needs to be supported by its Funds and Affiliated Organizations. The education program may be conducted as part of a larger effort of the Community Foundation to educate the public concerning the scope of the charitable activities and services of the Community Foundation.

#### **Section 7. *Amendments***

The Procedures for Establishment and Operation of Funds and Affiliated Organizations may be amended by a majority vote of the Board of Directors (or a designated committee) at any regular or special meeting.

## **PART B. FUNDS**

### **Section 1. *Types of Funds***

Funds are categorized by their charitable purpose and by how the assets are administered.

#### **a. Categorization by Charitable Purpose**

1. *Donor Advised Funds*: the Donor, Donor Advisor(s) or Advisory Committee may recommend charitable grant recipients from time to time.
2. *Designated Funds*: this type of fund is created to ensure that support will be provided to one or more specific charitable organizations named by the Donor(s).
3. *Agency Endowments*: this type of fund is established by nonprofit charitable organizations to help manage endowment assets and/or special project funds.



4. *Field of Interest Funds*: this type of fund allows the Donor to support an area of charitable interest, defined broadly (such as education) or narrowly (such as advanced vocal music training). A Donor can also select a defined geographic area or specific community to benefit from grant distributions.
5. *Unrestricted Funds*: Donors may choose an unrestricted fund that allows the Community Foundation to determine where annual grant distributions will do the most good.
6. *Community Projects*: The Community Foundation may serve as fiscal sponsor for various projects designed to improve a community's quality of life. These non-endowed funds are created to hold contributions raised for a specific purpose until disbursements are made to cover the costs of the project. When the money for the project has been expended, the temporary fund ceases to exist.

**b. Categorization by Administration of Assets**

1. Integral Funds, where the assets are managed by the Community Foundation (the general rule); and
2. Component Funds, where the Donor has designated a trustee, custodian, or agent to have custody of and administer the assets in the Fund and the Community Foundation has accepted this arrangement.

As is required by the federal tax regulations, the financial reports and audited financial statements will treat all Integral and Component Funds as funds of the Community Foundation.

**Section 2. *General Policies***

Each Fund, whether administered directly by the Community Foundation or through a separate trust, custodial account or agency agreement, shall be considered part of (and legally owned by) the Community Foundation and shall be governed by its Articles of Incorporation, Bylaws and by these Procedures. Funds will generally be administered directly by the Community Foundation but a Donor may request to have a Component Fund. Regardless of the form of administration, the Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

**Section 3. *Donor May Select Name of Fund***

Each Fund will be named as the Donor wishes. However, the Community Foundation reserves the right to reject names that it finds objectionable.

**Section 4. *Distributions***

**a. Grants Shall Follow Donor's Intent**

Grants will be made from each Fund consistent with the instructions given by the Donor at the time that the Fund was established. If, however, (1) the Donor's instructions are contrary to the Articles of Incorporation, Bylaws or Procedures, or (2) the "variance power" (described below in Sections B.5; B.8(b); B.9(b); B10(b); and B.11(b)) is exercised, then the Donor's instructions shall be modified to a degree that is necessary for compliance with these Procedures. To the extent practicable or feasible, the Board of Directors shall distribute amounts for purposes that are consistent with the Donor's charitable interests. The Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

**b. Grants Will Normally Identify the Name of the Fund**

Unless otherwise requested by the Donor Advisor, any distribution shall identify the name of the Fund from which it is made.

### c. Grants Must Not Provide a Financial Benefit to Donor

The Community Foundation will not make a grant that provides a financial benefit to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named, or any related party to such a person for purposes of this Manual, a “related party” shall include (i) any family member of such person (i.e., such person’s spouse, ancestors, children, step-children, grandchildren, great-grandchildren, brothers, sisters and any of their spouses) and (ii) any entity in which such a person or a combination of such persons owns more than 35% of the combined voting power, profits interest or beneficial interest. (The preceding sentence does not apply to grants made out of an Organization Fund to the Organization for which the Fund was established.)

Distributions from the Community Foundation may not be used in whole or in part for any pre-existing legally binding pledge or for any private benefit such as dues, membership fees, benefit tickets and the non-charitable portion of fund-raising dinners, or goods and services bought at charitable auctions.

The Community Foundation may make grants that provide a Donor, Donor Advisor(s), Advisory Committee member or related party with name recognition and such other benefits that the Internal Revenue Service has recognized as not providing the Donor with a financial benefit.

### d. Other Limits on Distributions

Additional rules apply to funds classified as “donor advised funds” under the Pension Protection Act of 2006. The legal definition of a donor advised fund under this law is a fund or account that (i) is separately identified by reference to contributions of a donor or donors; (ii) is owned and controlled by a “sponsoring organization” (i.e., the Community Foundation); and (iii) the donor (or any person appointed or designated by the donor – a “donor advisor”) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor’s status as a donor. This definition could include funds that the Community Foundation has classified as Donor Advised Funds, Designated Funds or Field of Interest Funds.

The Community Foundation will not make any grant, loan, compensation or similar payment (including expense reimbursement) to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named or any related party from any fund that is classified as a donor advised fund under the law.

The Community Foundation will not make any grant to an individual from any fund that is classified as a donor advised fund under the law.

If a distribution is proposed from any fund that is classified as a donor advised fund under the law to a non-charitable entity or to a Type III supporting organization that is not “functionally integrated” with the Community Foundation as defined by law, then such distribution will not be allowed until it has been reviewed by the Executive Director of the Community Foundation and, if required by law, procedures are in place so that the Community Foundation can exercise “expenditure responsibility” over such distribution. Expenditure responsibility generally requires the Community Foundation to exert all reasonable efforts and establish adequate procedures to (i) see that the distribution is spent solely for the charitable purpose for which it is made, (ii) obtain full and complete reports from the distributee regarding the use of such distribution and (iii) make full and detailed reports regarding such distribution to the Secretary of the Treasury.

### e. Donor Generally Cannot Control Timing of Grants

The ultimate right to direct the timing and amount of all distributions of income or principal from any Component Fund is vested in the Board of Directors. As is required by federal tax regulations, a Donor may not reserve the right to direct the timing of distributions from the Fund. However, a Donor can specify in the instrument of transfer:

1. That some or all of the principal (as opposed to income or specific assets) may not be distributed for a specified period of time.
2. That distributions are limited to income only.
3. That distributions should be made annually (or more frequently).

If distributions are limited to income, and unless otherwise specified in the instrument of transfer, income shall be annually computed based on the current spending policy of the Community Foundation, currently 5% of the average past three year-end Fund asset balances.

f. Board May Identify Specific Charitable Needs of the Community

In fulfilling that part of the Community Foundation's mission of providing leadership on critical community issues, the Board may enumerate specific charitable needs and specific organizations that it deems are most deserving of support.

**Section 5. Variance Power And Monitoring Function**

a. Community Foundation to Follow General Donor Intent if Variance Power is Exercised

If the Board of Directors exercises the variance power described in Section B.8(b), B.9(b), B.10(b), or B.11(b) to modify a Designated Fund, Organization Fund, or Field of Interest Fund, or if the privilege of the Donor, Donor Advisor(s) or Advisory Committee and other persons designated to make recommendations from a Donor Advised Fund has been terminated in accordance with Section B.7, then the Board of Directors shall convert the Fund into its choice of either an Unrestricted Fund or a Field of Interest Fund. To the extent practicable or feasible, the Board of Directors shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

b. Fund To Keep Donor's Name If Variance Power Exercised

Generally the Fund shall retain the name given by the Donor. If the Fund contains less than the minimum amount to establish a named Fund at the time it is converted, the Board of Directors may, in its discretion, deposit all of the Fund's assets into the General Fund.

c. Community Foundation to Monitor Beneficiary's Performance of Terms of Grant.

In addition to the Monitoring Functions hereinafter stated, the Board of Directors through the Board Committees and the Staff may periodically review the effectiveness with which agencies that receive grants from Funds and Affiliated Organizations are performing their responsibilities in the utilization of these grants toward attainment of the Community Foundation's and the Donor's objectives. Where necessary, the Board shall initiate corrective action.

**Section 6. Advisory Committees of Funds**

a. General Rules

A Donor or the Board of Directors may appoint an Advisory Committee for a Donor Advised, Designated, Nonprofit Organization or Unrestricted Fund.

With respect to a Field of Interest Fund, the Donor may recommend an Advisory Committee (which may include the Donor) to be appointed by the Community Foundation in which case the Executive Director of the Community Foundation shall have the authority to appoint the Advisory Committee on behalf of the Board of Directors of the Community Foundation.

The Advisory Committee may make recommendations to the Board of Directors concerning grants from the Fund and any other matters that it deems of importance. Generally, each Advisory Committee should select one person who will have the authority to transmit the Advisory Committee's recommendations to the Community Foundation.

b. Usually Majority Vote Is Required

Unless contrary instructions have been made by the Donor or by the Community Foundation, whenever two persons are designated to make recommendations they shall act by unanimous consent; whenever more than two persons are so designated, then a recommendation by a majority of such persons shall constitute an effective recommendation for consideration by the Community Foundation. Otherwise, each committee may operate under such procedures as it finds appropriate.

c. Authority to Act as Agent of Community Foundation Restricted

The Community Foundation generally encourages Donors to solicit contributions to the Community Foundation and its Funds. However, no person has the authority to act as the agent of the Community Foundation unless he or she has received express written authority from the Community Foundation. In particular, the Community Foundation does not authorize any volunteer or advisor to accept contributions on its behalf, to commit Community Foundation resources to any activity, or to engage in fundraising activities in the name of the Community Foundation or on behalf of any of its Funds without written permission from the Board of Directors or an authorized employee.

The Community Foundation is generally supportive of charitable activities that benefit the residents of this county. The restrictions in this section are necessitated, in part, because of compliance with tax and other laws that require disclosure of benefits associated with charitable contributions as well as contemporaneous written acknowledgements to certain Donors of contributions, the failure for which could subject the Community Foundation and its Funds to fines and penalties. The Community Foundation needs to be informed about activities being done in the name of the Community Foundation (and its Funds) and to monitor any obligations associated with those activities.

d. Fund raising

The Community Foundation will not sponsor any fund raising or other events for any Fund, and will not be responsible for the collection of any amounts from any parties, but will only be responsible for the proper disbursement of funds actually received. Any advertising, promotional or other materials must be consistent with this policy.

Donors, Donor Advisors and Advisory Committees must observe the following fundraising policies of the Community Foundation:

1. If the fundraising activity is designed to benefit a particular organization that is already incorporated with its own tax-exempt status, then all fundraising activities shall be conducted under that organization's tax-exempt status and taxpayer identification number. Any net proceeds can then be transferred from the separate tax-exempt entity to a Fund at the Community Foundation.
2. If the fundraising activity is designed to benefit an unincorporated organization or program, the Advisor(s) or Advisory Committee must contact the Community Foundation before initiating any fundraising activity to discuss potential IRS requirements and insurance liability. The general procedure for holding special events such as a benefit, ball, banquet or athletic event shall be as follows:
  - a. obtain written approval from the Community Foundation to conduct the event in advance of the planned fundraising activity;

- b. obtain advance approval from the Community Foundation for all publicity and solicitations for the event to assure compliance with IRS regulations; and
- c. complete an application for special event liability insurance. This application form is provided by the Community Foundation and will be sent to our insurance company, which will determine the insurability of the fundraising effort and the insurance premium to be paid by the Fund.

Failure to follow these procedures could subject the Community Foundation, Donors, Donor Advisors or Advisory Committee members and the particular Fund involved, to penalties, fines and liability.

e. Divorce/Separation of Current Donor Advisors

This policy generally will only affect current Donor Advisors whereby either husband and/or wife (spouse) may request grant distributions from a Fund.

In the event a husband and wife serve as the only members of an Advisory Committee to a Fund, and a legal action for divorce, separation or annulment is pending between the husband and wife, the Community Foundation may, upon receiving notice of such action:

1. suspend processing any grant distribution recommendation for such Fund(s) unless and until the husband and wife both agree in writing to approve the grant distribution recommendation, or
2. suspend processing any grant distribution recommendations for such Fund(s) unless and until the husband and wife have jointly agreed in writing to an alternative procedure, acceptable to the Community Foundation, to provide for the future administration of such Fund(s). Subject to the approval of the Community Foundation, the husband and wife may jointly authorize the Community Foundation to bifurcate any Fund(s), designating husband or other successor Advisor to serve as the Advisory Committee to one of the successor Fund(s) and designating wife or other successor Advisor to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation.

In the event that husband and wife cannot jointly agree as provided above and no divorce decree, order of legal separation, order of annulment, property settlement agreement, agreement of the parties or other legal order has been entered or approved which would otherwise resolve the issue to the satisfaction of the Community Foundation, the Community Foundation may, in its sole discretion, bifurcate any Fund(s) so affected into equal shares and designate husband to serve as the Advisory Committee to one of the successor Fund(s) and designate wife to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation. However, the Community Foundation shall not take such action until at least six months have transpired since the date upon which the action for divorce, separation or annulment was filed with the court of record.

**Section 7. *Special Rules for Donor Advised Funds***

a. Establishment and Purpose

A Donor may establish a Donor Advised Fund whereby the individual Donor(s) and/or designated Advisors, retain a lifetime privilege to recommend charitable grant recipients to the Community Foundation. Corporate Donor Advised Funds may continue to advise on charitable distributions as long as the Corporation continues to operate.

b. Distributions from Donor Advised Funds

Donors and/or Donor Advisors may make written recommendations of grants to tax exempt charitable organizations described in Section 501(c)(3) of the Internal Revenue Code, other than private non-operating foundations. Charitable organizations must be public charities as described in Sections 509(a)(1) or

509(a)(2) of the Internal Revenue Code, supporting organizations described in Sections 509(a)(3) of the Internal Revenue Code or operating private foundations. As provided in the Internal Revenue Code and Regulations, the Board of Directors has the absolute right to direct all distributions of income and/or principal from Donor Advised Funds.

c. Minimum Grant Amount from Donor Advised Funds

The Board of Directors may designate a minimum grant amount for Donor Advised Funds.

d. Eligible Advisors During the Donor(s)' Lifetime

Recommendations for distributions shall be subject to the following rules:

1. Generally the Donor(s) may designate any adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout the lifetime of the Donor or his or her spouse, unless earlier terminated by resignation or incapacity. Donor(s) may designate additional and/or alternative Advisors at anytime during the Donor(s)' lifetime.
2. A Donor other than an individual, such as a corporation, partnership or trust, will not be subject to a time limit for its privilege to make recommendations.

e. Successor Advisors After the Death of Donor(s)

1. The Donor(s) may designate one or more adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout their lifetimes, unless earlier terminated by resignation or incapacity. If more than one person is named, then the successor Advisors shall operate under the rules governing Advisory Committees described in Section B.6.
2. Subject to the terms of the instrument of transfer, each successor Advisor to the Fund that was designated by the Donor may likewise designate a successor Advisor to act in his or her place (who may in turn designate a successor Advisor to act in his or her place, and so on).

f. Option to Split Funds for Successor Advisors

If a Donor has designated successor Advisors and if the charitable interests of the successor Advisors are sufficiently diverse, then the Community Foundation may, with the consent of the successor Advisors and subject to the terms of the Donor's instrument of transfer, divide the Donor Advised Fund into multiple Donor Advised Funds and limit each successor Advisor's advisory privilege to a separate Fund.

g. Conversion of Donor Advised Fund After Advisory Privilege Ends

Upon termination of the advisory privilege, a Donor Advised Fund will be converted at the discretion of the Community Foundation to an Unrestricted Fund or a Field of Interest Fund as provided for in Part B, Section 5.

**Section 8. *Special Rules for Designated Funds***

a. Establishment and Purpose

A Donor may establish a Designated Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3) of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Charity as specified in the instrument of transfer or convert the Designated Fund to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

**Section 9. *Special Rules for Agency Endowments***

a. Establishment and Purpose

A Donor is a Nonprofit Charitable Organization as described in Sections 509(a) (1) or (a)(2) of the Internal Revenue Code, which specifies the establishing organization as the grant recipient of the Fund. An Organization may establish an Organization Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3) of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

b. Monitoring Function and Variance Power

The Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with the Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Nonprofit Charitable Organization as specified in the instrument of transfer or convert the Agency Endowment to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

**Section 10. *Special Rules for Field of Interest Funds***

a. Establishment and Purpose

A Donor or the Community Foundation may establish a Field of Interest Fund from which payments are made for a specific charitable purpose (field of interest). The specified purpose may be broad, such as support of education, health care or arts and humanities; or narrow, such as the prevention of child abuse. Field of Interest Funds may also be established for specific geographic areas such as neighborhood, section of city, county or metropolitan area. Any proposed Field of Interest Fund that is intended to provide aid to individuals who have suffered loss as a result of a catastrophic disaster shall be reviewed and approved in advance by the Community Foundation's corporate counsel to ensure compliance with additional Internal Revenue Service rules governing disaster relief funds. In short, disaster relief funds must have a sufficiently large or indefinite pool of grantees and recipients must be selected based on a written and objective determination of need that is reviewed by an independent selection committee that is controlled by the Executive Director of the Community Foundation.

b. Monitoring Function and Variance Power

The Board of Directors shall periodically evaluate all Field of Interest Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of

fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the field of interest of the Fund or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

### **Section 11. *Special Rules for Component Funds***

The tax regulations provide that in order for a trust to be treated as a component part of a community foundation (rather than a separate trust), the following requirements must be met:

- a. The terms of the trust instrument and the Donor's instrument of transfer must subject the trust to the operation of the Articles of Incorporation and Bylaws of the Community Foundation;
- b. The Community Foundation must have the power to modify any restriction or condition on the distribution of assets for any specified charitable purpose or to any specified organization if, in the sole judgment of the Board of Directors, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served;
- c. The Community Foundation must have the power to replace the trustee for breach of fiduciary duty under state law;
- d. The Community Foundation must have the power to replace any participating trustee for failure to produce a reasonable return of net income over a reasonable period of time;
- e. The Donor may not impose any "material restriction" (as that term is defined in the Treasury regulations) with respect to the transferred assets; and
- f. The Community Foundation must accept the contribution.

## **PART C. AFFILIATED ORGANIZATIONS (OTHER THAN SUPPORTING ORGANIZATIONS)**

### **Section 1. *Establishment and Purpose***

#### a. Definition and Tax Status

A trust, foundation, corporation or fund may become an Affiliated Organization by receiving services from the Community Foundation that further its charitable interests. Unless it becomes a Supporting Organization of the Community Foundation (described below in Part D), it will retain its independent tax status (for example, as a private foundation or as a public charity).

#### b. Process for Affiliation.

A trust, foundation, corporation or fund may become an Affiliated Organization by applying to the Board of Directors. The Board, or its designated committee, will review the application to assure that the organization's purposes are consistent with the charitable purposes of the Community Foundation and its specific charitable needs. Specific details of the Affiliation are negotiable between the Board of Directors of the Community Foundation and the Trustees of the organization or trust seeking to affiliate with the Community Foundation. Once accepted, the Affiliated Organization will continue to retain control over charitable disbursements.

### **Section 2. *Services Available***

The scope of services shall be mutually agreed upon by the Board of Directors and the Trustees, Directors or Advisors (hereafter Trustees) of the Affiliated Organization or Trust of the Community Foundation. These services may include reviewing and investigating requests for funding, recommending a course of action on



such requests, originating programs for consideration by the Trustees, making disbursements, monitoring and evaluating grants, and preparing reports.

### **Section 3. *Termination of Affiliation***

Either the Board of Directors of the Community Foundation or the Trustees of the Affiliated Organization may terminate the affiliation relationship upon such notice as is prescribed in the affiliation agreement.

## **PART D. SUPPORTING ORGANIZATIONS**

### **Section 1. *Establishment and Purpose***

#### a. Definition and Tax Status

A supporting organization is:

1. A charitable corporation or trust
2. Classified by the IRS as:
  - (a) a Section 501(c)(3) charity, and
  - (b) as a public charity (rather than a private foundation) because it supports a publicly supported charity, such as a community foundation.

The tax laws provide that a supporting organization will be a public charity, even if all contributions have come from related parties or even if it has not received any contributions over a period of years (either situation would normally cause a charity to be a private foundation).

#### b. Technical Requirements Under The Tax Laws

In order to be a supporting organization of the Community Foundation under Section 509(a)(3) of the Internal Revenue Code, the establishing Donor seeking supporting organization status must prove to the IRS that it:

1. Is organized to support the Community Foundation,
2. Is not controlled by "disqualified persons",

Disqualified persons include substantial contributors to the supporting organization (donors who gave more than 2% of the organization's total contributions), members of that person's family and businesses controlled by the person. By law, they cannot have 50% or more of the voting power of the governing body or a veto power over the actions of the organization since that would constitute "control."

3. Is operated, supervised, or controlled "by" or "in connection with" the Community Foundation.
  - (a) "by" means that the Community Foundation appoints a majority of the governing body of the supporting organization,

-or-

- (b) "in connection with" is a much more complicated procedure by which the supporting organization must show that:

- i. The Community Foundation appoints at least one member of the governing body of the supporting organization, and
- ii. Through its operations, the supporting organization does either one of the following:
  1. Engages in activities that the Community Foundation would otherwise do itself but for the supporting organization, or
  2. Distributes 85% or more of its income to or for the use of the Community Foundation in such a way that the Community Foundation is "attentive" to the supporting organization.

## **Section 2. *Policies Applicable to a Supporting Organization***

The terms of the relationship to become a supporting organization of the Community Foundation and the benefits and services that one organization may provide to the other shall be mutually agreed upon by the governing bodies of both organizations. In general, this relationship requires the active oversight and involvement of the Community Foundation. Consequently, the following information must be obtained from the supporting organization:

1. Copies of the organization's articles of incorporation and bylaws, if in corporate form, or trust instrument, if in trust form, and tax exemption letter from the Internal Revenue Service.
2. Copies of all board meeting notices and minutes of the board meetings;
3. Notification when any board member appointed by the Community Foundation finishes his or her term, resigns or otherwise ceases to serve;
4. Financial reports at least quarterly (unless all of the supporting organization's assets are already held at the Community Foundation);
5. Copies of all account statements upon request of the Community Foundation (if the supporting organization's assets are not all held at the Community Foundation);
6. Copies of the annual 990 reports to the Internal Revenue Service; and
7. Information concerning all grants so that the grants can be processed through the Community Foundation.

In return, the Community Foundation's role is to provide the supporting organization with the following primary services (additional services may be separately negotiated):

1. Appointment of the requisite number of members to the supporting organization's board as required by the organization's governing document(s);
2. Periodic financial statements;
3. Information upon request regarding grant-making opportunities; and
4. The processing of all grants.

The tax laws require that organizational documents (articles of incorporation or trust instrument) of the supporting organization must (1) specify that the Community Foundation will be the supported organization and (2) specify charitable purposes that are supportive of, and not broader than, those of the Community Foundation. In addition, the supporting organization's activities must support the Community Foundation. This does not mean that the supporting organization must pay all (or any) of its income to the Community Foundation. It may, instead, make grants to other charities and for charitable programs that are in furtherance of the Community Foundation's charitable purposes. However, as discussed above, the Community Foundation generally requires a supporting organization to process all grants through the Community Foundation.

### **Section 3. *Termination of Relationship***

Either the Board of Directors or the Governing Body of the supporting organization may terminate the relationship upon such notice as is prescribed in the agreement between the Community Foundation and the supporting organization. Termination may cause the supporting organization to lose its public charity tax status and be reclassified as a non-operating private foundation.

## **PART E. SPLIT-INTEREST ARRANGEMENTS**

### **Section 1. *Establishment and Purpose***

#### a. Definitions

1. Charitable Remainder Annuity Trust - A trust that pays a fixed dollar amount (at least 5% of the value of the property contributed to the trust). Payments are made annually (or more frequently) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at the Community Foundation. (See Part B, Section 1)
2. Charitable Remainder Unitrust - A trust that pays a fixed percentage (at least 5%) of the value of the trust's assets each year (as valued at the beginning of each year) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at the Community Foundation. (See Part B, Section 1)
3. Charitable Lead Trust - This is the inverse of a charitable remainder annuity trust or unitrust. Income is distributed to the Community Foundation, into a named charitable Fund established by the Donor, (over a period of years or the lifetime of the Donor) and the remainder is usually distributed to members of the Donor's family. Such a trust can be a useful part of an estate plan to keep a rapidly appreciating asset (such as real estate or stock) within a family.

Currently, the Community Foundation does not trustee charitable lead trusts. However, the Community Foundation may work with the Donor to help find an appropriate trustee.

4. Retained Life Estate - Donors may leave their principal residence, vacation home or farm to a named charitable Fund established by the Donor or to an existing Fund at the Community Foundation and retain the right to live in the house or farm for the Donor's lifetime (the life of a surviving spouse can also be added). The Donor receives a sizable charitable income tax deduction the year the property is donated through the Retained Life Estate. The amount of the tax deduction is dependent on the age(s) of the Donor and the value of the home or farm. A gift of a personal residence now, with retained life residency for the Donor and/or spouse, gives the Donor the same estate tax benefits as a gift by will plus an immediate income tax deduction.
5. Testamentary Trust Transfer - Any of the above gift plans can be placed in a testamentary plan as provided in a living trust, will, or other testamentary device.

### **Section 2. *Community Foundation as Trustee; Minimum Contributions; Other Conditions***

#### a. Community Foundation as Trustee of Split-Interest Gifts

The Community Foundation can also serve as trustee for charitable remainder annuity trusts and charitable remainder unitrusts. Historical investment performance on a total return basis is available to any interested party upon request.

b. Minimum Contributions

1. Charitable Remainder Annuity Trust     \$100,000
2. Charitable Remainder Unitrust         \$100,000

The Community Foundation will not trustee Charitable Lead Trusts. However, Donors may designate a named charitable Fund at the Community Foundation as the income beneficiary of the lead interest.

c. Other Conditions

1. Charitable Remainder Trusts

In order for it to serve as the trustee, the Community Foundation must be named as the beneficiary of the remainder interest of a charitable remainder annuity trust or a charitable remainder unitrust. A Donor may establish or add to an Unrestricted, Designated, Field-of-Interest, or Donor-Advised Fund with the remainder proceeds of the charitable remainder trust. In the absence of such a designation, the proceeds will generally be used to establish (or be added to) a named Unrestricted Fund. Expenses related to administrative services and investments will be charged to the respective trusts.

2. Policies Concerning Contributions

The general rules described in Part A (concerning contributions to the Community Foundation) generally apply to contributions to split-interest arrangements (particularly Section A.2 which gives the Community Foundation the authority to reject assets that are hard to sell or carry potential liabilities).

3. Independent Review by Legal Counsel

A Donor is advised to consult independent legal counsel concerning contributions to Split-Interest Arrangements including the drafting and review of all documents establishing the split-interest gift.

## APPENDIX

### TAX LAWS THAT GOVERN CHARITABLE CONTRIBUTIONS

#### Section 1. *Timing of Income Tax Deductions*

The tax laws generally provide that a contribution is deductible in the year that the property is delivered to the Community Foundation. Delivery is considered made under the following circumstances:

- (1) Unconditional delivery or mailing of a check to the Community Foundation which subsequently clears in due course will constitute an effective contribution on the date of delivery or, if the check is received in the ordinary course of the mails, on the date of mailing.
- (2) Unconditional delivery or mailing of a properly endorsed stock or bond certificate will constitute an effective contribution on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing.
- (3) If a contribution is made subject to compliance with certain conditions, then the contribution is not effective until the Community Foundation agrees to comply with such conditions.
- (4) Except as provided in paragraph (5), if a Donor delivers a stock certificate to his bank, broker, other agent or the issuing corporation for transfer to the Community Foundation, or instructs his bank, broker, other agent or the issuing corporation to transfer stock to the Community Foundation, then the gift is effective on the date the stock is transferred on the books of the issuing corporation.
- (5) If stock is registered in a nominee name by a bank, broker or other agent and such bank, broker or other agent agrees to hold the stock in such nominee name on behalf of the Community Foundation, so that the stock will not be transferred on the books of the issuing corporation, then the gift of such stock is effective on the earlier of the date on which such bank, broker or other agent (i) acknowledges in writing that it holds the stock on behalf of the Community Foundation, or (ii) makes the appropriate entry in its books and records to reflect that it holds the stock on behalf of the Community Foundation.
- (6) Delivery to the Community Foundation will be effective upon receipt by the Executive Director of the Community Foundation, or the employee or agent authorized by any such officer to accept the contributions.

#### Section 2. *Evidence of Deduction Required*

##### a. Any Contribution of \$250 or More

Donors will not be able to claim a charitable deduction for any gift of cash or property of \$250 or more to any charity unless a "contemporaneous written acknowledgement" from the charity can be produced; cancelled checks will not suffice. To meet the requirements, the receipt (1) must contain certain information and (2) must be received within certain time limits.

##### 1. Contents of Acknowledgment

The acknowledgment must state (a) the amount of cash and a description (but not value) of any property contributed and (b) whether the charity had provided any goods or services in exchange for the property described in clause (a) (if so, then it must state the value of the goods and services).

## 2. Time Limits

An acknowledgment will generally be considered to be "contemporaneous" if you obtain it before you file your tax return for that year.

### b. Appraisals Required For Gifts of Property Over \$5,000; Exceptions for Cash and Publicly Traded Securities

Donors who contribute property (other than publicly traded securities) valued at more than \$5,000 in any year must substantiate the value with "qualified appraisals" from "qualified appraisers". The \$5,000 threshold is increased to \$10,000 in the case of non-publicly traded stock. The requirement does NOT apply to contributions of cash or publicly traded stock. By law, the cost of the appraisal must be born by the Donor.

The Donor must attach a copy of IRS Form 8283 ("Non-cash Charitable Contributions") to the tax return in the year of the contribution. A charitable organization (including a community foundation) that receives such property must sign a copy of the appraisal report (IRS Form 8283), which should then be attached to the Donor's income tax return.

If the Community Foundation sells the property listed on IRS Form 8283 within three years of receipt, it is required by law to disclose the sale price to the IRS and to the Donor on IRS Form 8282.

### Section 3. Amount of Income Tax Deduction

Generally the Donor can deduct the amount of cash or the fair market value of the long-term capital gain property contributed to the Community Foundation. Usually the best results are for gifts of appreciated long-term capital gain stock and real estate because a Donor can generally deduct the entire fair market value for gifts of such property to the Community Foundation.

### Section 4. Annual Deduction Limitations

#### a. Individuals

##### 1. General Rule.

The maximum amount of the deduction depends on (1) the type of property contributed (either ordinary income or long-term capital gain property), (2) the nature of the charitable organization (public charity or private foundation), and (3) the amount of adjusted gross income ("AGI") shown on the IRS Form 1040. Deductions for amounts in excess of these annual limitations can usually be carried forward for five additional years.

##### 2. Specific Rules. The annual deduction limitations for INDIVIDUALS are:

Type of Charity	<i>Cash and Ordinary Income Property</i>	<i>Long-term Capital Gain Property (Stock &amp; Real Estate)</i>
<b>Public Charity</b> (including a Fund in the Community Foundation)	50% of AGI	30% of AGI
<b>Private Foundation</b>	30% of AGI	20% of AGI

Amounts that exceed the deduction percentage limitation may be carried forward for five additional years.

## b. Corporations

1. General Rule. Corporations may generally deduct up to 10% of their taxable income.
2. Special Rules.
  - a. S Corporations - the charitable deduction passes through to the corporation's shareholders.
  - b. Limited Liability Companies – the charitable deduction passes through to the members of the limited liability company if it is being treated as a partnership for tax purposes.
  - c. Personal Holding Companies - Sometimes the annual percentages that apply to individuals apply instead of the 10% limitation.
  - d. Insurance Companies - Special rules apply.
  - e. Foreign Corporations - Deductions are affected by Section 882(c).
  - f. Corporations Subject to the Accumulated Earnings Tax - A deduction can be taken for all charitable contributions made that year without regard to the 10% limitation.

## c. Trusts and Estates

Estates and trusts are eligible for an unlimited income tax charitable deduction, provided that the contribution came from income rather than corpus and was made pursuant to the governing instrument.

***The above Appendix is intended to provide a general overview of charitable tax law. The above does not constitute tax or legal advice. Donors should consult their professional tax advisor and/or legal counsel before making a charitable gift to the Indian River Community Foundation.***

Approved by the IRCF Board of Directors December 6, 2010