



## **FARMLAND GIVING AND RETENTION POLICY**

The Greater Salina Community Foundation's farmland giving program allows charitable gifts of farmland to continue providing income to causes that landowner donors care about for years to come. By donating farmland to the Foundation, the farmland remains locally owned and managed, while also producing income for grantmaking purposes to local charitable causes.

### **A. GENERAL – FARMLAND GIVING PROGRAM**

The Greater Salina Community Foundation (Foundation) recognizes that real estate, including farmland, can be a valuable asset supporting many charitable organizations and projects. Gifts of real estate and farmland are not without risk, and because of this, each potential gift will be carefully evaluated. The Foundation believes that by becoming a farmland owner that it will contribute to the farming economy in the region through prudent management of donated farmland and practicing good land stewardship. Management of donated farmland will be consistent with the values of the Foundation and its charitable purposes. Additionally, the Foundation may cooperate with others, including agriculture schools/colleges, units of government, farm groups, and other organizations having similar interests. The Foundation may maintain relationships, where possible, with tenant farmers who have farmed the subject farmland in the past.

#### Policy

1. The Greater Salina Community Foundation may accept gifts of real estate, including farmland, subject to this policy and the Gift and Fund Acceptance Policies of the Foundation.
2. The Foundation will only accept and consider for retention real estate used for grain, livestock, commodities and/or forage production, and limited related assets used in such production.
3. Whenever possible, farms containing a homestead should have the homestead portion of the property partitioned from the remaining farmland prior to any transfer of title to the Foundation.
4. Due to the time, expense, and expertise required associated with gifts of real estate and farmland, it is recommended that the property or land be a minimum of 80 acres. Real estate or farmland less than 80 acres may be considered on a case-by-case basis.
5. The Foundation may sell or otherwise dispose of all gifts of real estate or farmland not identified as suitable for the farmland giving program.

#### Procedure

1. The Greater Salina Community Foundation Board of Directors delegates the review of each proposed property to be donated to the Giving Acres, LLC, a single member owned limited liability company, that is wholly owned by a single member, which is the Greater Salina

Community Foundation, a Kansas nonprofit corporation and a federally recognized public charity under Section 170(c)(2) of the Internal Revenue Code, subsection 501(c)(3) for the purpose of accepting and holding certain real estate gifts.

2. The Executive Director of the Foundation shall coordinate with the Board of Managers to obtain all necessary information for review before a gift can be accepted. This information includes:
  - a. Real Estate Questionnaire signed by donor;
  - b. A site inspection report prepared by a Foundation employee or an authorized agent;
  - c. A Phase I Environmental Site Assessment;
  - d. The most recent property tax statement for the property; and,
  - e. A copy of the deed, certificate of title, updated abstract or title insurance policy, survey, tiling maps and any other relevant document the donor may share.
3. If any problems are identified with the potential gift, then the Foundation shall delay acceptance of the gift pending further examination and resolution of such problems, on a case-by-case basis.
4. If a Phase I Environmental Site Assessment identified problems with the gift property, then the Board of Managers shall refer the proposed gift to the Foundation Board of Directors who will make a decision whether to recommend further examination and/or remediation, or to recommend the property be deemed not acceptable as a gift.
5. All farmland to be held under the Foundation's farmland giving program must be approved by the Foundation Board of Directors.
6. The Foundation Board of Directors, in their sole discretion, may elect to not accept any property requiring further examination.

## **B. LIFE ESTATES**

Donors may establish a life estate to retain the income and possession of the farmland transferred to Giving Acres, LLC, and shall have the option to continue operating or renting it throughout their lifetime(s). A life estate gift to the Foundation enables a donor to realize an income tax deduction, avoid some or all capital gains liability, and if desired, to retain possession. A gift of a remainder interest in farmland shall be acceptable whenever the farmland meets all other conditions for retention, including a completed and signed Maintenance, Insurance, and Taxes (MIT) Agreement.

Donors shall have the option to both retain and grant life estates in the farmland at the time of transfer. A long-term lease between a donor and current tenant shall be considered an acceptable encumbrance to the real estate, provided the lease meets the approval of the Foundation Board of Directors.

### Policy

1. Life estate retention is primarily intended for gifts of farmland.
2. Life estates shall be limited to the donor's life and/or the lives of a donor's spouse. Life estates that designate individuals beyond the lives of the donor and/or donor's spouse will be considered on a case-by-case basis.
3. Donors are discouraged from creating a large class of life estates.
4. A lease in place between a donor and his tenant shall be continued, according to the terms of a Foundation approved lease, for the life of the donor and the unexpired term of the lease.
5. The donor must maintain and pay costs on the property, including property taxes and upkeep.

## Procedure

1. Greater Salina Community Foundation shall follow the procedure as outlined above in A. 2. to review the proposed gift.
2. The Foundation shall enter into a Maintenance, Insurance, and Taxes Agreement (MIT), clarifying and imposing restrictions and limitations on use and other expectations of the donor, with any donor who wishes to hold or grant a life estate.
3. The MIT Agreement shall be reviewed annually and contain terms to govern the relationship between the life tenant, farm tenant, and remainderman. These terms should include the following:
  - a. Donor's responsibility for maintaining, insuring, and paying all taxes on the property;
  - b. Required conditions for leases, liens or other mortgages;
  - c. Right by donors to occupy and utilize premise as residence during lifetime;
  - d. Insurance and damage to property; and,
  - e. Liability arising from the property during the donor's lifetimes.
4. The Foundation will inform donors that their farmland will continue to produce valuable crops and provide income for charitable purposes long after the gift is made.
5. When a donor wishes to retain or grant a life estate in farmland, the Foundation will inquire and discuss with the donor the current federal and state legislation in connection with medical assistance recovery liens.

## **C. REQUIREMENTS FOR ACCEPTANCE, CONSIDERATIONS**

All potential gifts of real estate and farmland to the Greater Salina Community Foundation require approval on a case-by-case basis. The Foundation should be conscious of any improvements to the land and should not become an owner of any unacceptable improvements. Whenever possible, severance of unacceptable improvements should be considered to avoid bringing the Foundation into the chain of title to the severed part of real estate. When a preliminary judgment as to acceptability is required, any determination made by the foundation is given a presumption of prudence in order that the Foundation may proceed to develop plans with potential donors of farmland.

## Policy

1. Farmland acceptable to the Greater Salina Community Foundation and Giving Acres, LLC, for the farmland giving program generally is farmland suitable for growing crops common to the area and pastureland. It is land with no improvements other than fences and similar improvements.
2. The land should be capable of commanding a market rate of cash rent. Farmland may be leased on a crop-share basis with special consideration on a case-by-case basis, however cash rent is preferred.
3. The land may have conservation reserves and other conservation set-asides or facilities.
4. Some tillable farmland also may have pasture or woodland. These features will not render the farmland unacceptable unless disproportionate costs are associated with its retention.
5. Before accepting a gift of farmland, any unacceptable improvements must be severed from the land. Greater Salina Community Foundation and Giving Acres, LLC, must not appear in the chain of title as an owner thereof.
6. The property must be declared free of any pollution, physical hazards, or contaminants with legal or remedial implications.

7. A former building site cleared and returned to raising crops is acceptable unimproved farmland. The Foundation will evaluate the site through the Phase I Environmental Site Assessment.
8. All property must be free of any liens, taxes, fees, or other encumbrances, except certain permitted leases and donor-created first rights of refusal that do not affect the fair market value.
9. Title to the property must be good and merchantable subject only to exceptions that may be approved. The donor must be the record owner.
10. When an environmental problem has been identified as an unacceptable impediment and is the only impediment to acceptance, the Foundation may obtain an estimate of the cost to remediate and cure, waive the impediment, and pay for the clean-up.

### Procedure

1. The Foundation shall have up to 90 days after the offer of a gift of farmland to conduct an inspection of the premises, examine the title, and other such preliminary matters as are appropriate to the transfer of real estate. The Foundation may ask the donor to fill out the Real Estate Questionnaire.
2. The Foundation shall follow the requirements as set forth in the Gift and Fund Acceptance Policies as adopted by the Board of Directors.
3. Potential donors will be informed that the Foundation reserves the right not to accept a contribution of real estate or farmland in the event conditions imposed by the Foundation cannot be met or if the Board of Directors deems that it is not in the best interest of the Foundation to accept the property.
4. A Phase I Environmental Site Assessment is required when real estate or farmland is given to the Foundation. The Foundation will reduce its probability of liability under the federal law if it conducts "all appropriate inquiry" regarding possible environmental contamination according to the United States Environmental Protection Agency standards. The staff of the Foundation will obtain environmental assessments sufficient to meet EPA standards. Particular attention must be paid to any physical feature that would reasonable lead to further inspection or inquiry.
5. The Foundation shall execute a Farmland Retention Acceptance Agreement with a donor who wishes to donate farmland. The agreement shall set forth the requirements for acceptance and retention.
6. Generally, the costs associated with the transfer of real estate are an expense of the transferor. Costs paid for the donor by a charity may be income to the donor or reduce the amount of the gift for purposes of deductibility. If any costs associated with the transfer are paid by the Foundation or Giving Acres, LLC, the donor must be advised there may be tax consequences to them. All donors will be advised to seek independent legal and tax advice.

### **D. RETENTION**

The Greater Salina Community Foundation and Giving Acres, LLC, should manage farmland in accordance with generally accepted farm management practices, which may include the construction of reasonably necessary improvements, maintenance of existing improvements, continuation of conservation practices, etc. The Foundation may utilize the expertise and services of other organizations or agents to assist in the operation of the farm, including farm management services or the preparation of a comprehensive plan. Leases for the operation of each farm shall be entered into and renewed, whenever possible, on an annual basis as the Foundation deems prudent in

management of each farm. The Foundation understands that tenants need stability and some assurance to continue good farming practices. Additionally, the Foundation will work with applicable units of government, including conservation programs as necessary.

### Policy

1. The Foundation shall enter into "cash rent" leases, wherever possible. Crop share leases shall be considered on a case-by-case basis, and only where special consideration has been taken to address unrelated taxable business income to the Foundation.
2. Farm leases shall preferably be for one crop year but may be extended on a case-by-case basis.
3. The Foundation shall utilize the recommendation from the Board of Managers or farm management services in the timing and negotiating of individual farm leases.
4. Tenants must comply with all local, state and federal government requirements.
5. The Foundation will assess an annual management fee up to 10% of net income designated for farm maintenance, and will be reviewed on an annual basis.

### Procedure

1. The Foundation will manage each farm, and may hire a farm management service to assist in the management of each farm, as follows:
  - a. Tenants will be selected and leases prepared to operate the farmland.
  - b. Contract with units of government with respect to the farmland including participation in price support and conservation programs of the government.
  - c. Contract for and supervise repairs and improvements as needed from time to time.
  - d. Collect, receive and receipt all rent and income from the farm.
  - e. Pay real estate taxes and assessments, if any.
  - f. Procure and maintain insurance, including liability and property insurance where applicable.
  - g. Make accountings of funds collected and disbursed regarding each farm.
  - h. Obtain required reports from tenant.

## **E. FUND AGREEMENTS AND TYPES OF FUNDS**

Any type of fund that currently is available at the Greater Salina Community Foundation may be established with a gift of real estate or farmland, including farmland that is retained and managed as part of the farmland giving program, with the exception of provisional funds.

Donors may choose to set up an endowed fund with the farm income deposited into a fund at the Foundation, invested for long-term growth with annual grants, or establish a pass-through fund with the farm income granted immediately as outlined in the fund agreement. Both funds are subject to the Foundation's current administrative fee schedule.

## **F: INDEFINITENESS**

Farmland donated may be retained indefinitely for charitable purposes, at the donor's request, so long as it remains consistent with foundation policies, practical for the Foundation to manage, and is permitted by law. Such farmland shall be subject to the Foundation's variance power as referenced in the fund agreement.