

CENTRAL MINNESOTA COMMUNITY FOUNDATION
AGREEMENT CREATING CHARITABLE REMAINDER UNITRUST

IRC Sec. 664(d)(2) Unitrust for Donor and Spouse,
Concurrent and Consecutive Interests

IMPORTANT: This form is intended to be used exclusively by attorneys as a guide in the preparation of a charitable remainder trust (CRT) under section 664 of the Internal Revenue Code, and its provisions should not be completed or altered except by an attorney because minor changes in language may result in a loss of all tax advantages intended in establishing the trust. The construction and effect of this form under applicable state law should be determined. This form was prepared with reference to laws in effect on August 1, 2000.

NOTE: In this form the donor retains the right to receive one-half of the unitrust amount for the joint lives of the donor and the spouse with the full unitrust amount continuing to the survivor for life. The donor gives to the spouse the right to receive the other one-half of the unitrust amount during their joint lives and the contingent right to receive the full unitrust amount during the life of the survivor. IRC section 2056(b)(8) and 2523(g) allow estate and gift tax marital deductions for the interest of a spouse in a qualified CRT, provided that the only non-charitable beneficiaries are the donor and the spouse. Both spouses may be donors.

The charitable remainder calculated at the CRT's inception cannot be less than 10% of the contributed asset's value. If additional contributions are transferred to the CRUT, the 10% remainder rule must be followed.

Generally, the donor should not transfer real or personal property subject to a mortgage or other debt to the trust. Some of the acute problems which may result are: (i) unrelated business taxable income from debt financed property can occur, making the trust a taxable entity in the year the UBTI is received; (ii) if the debt is personal to the donor, payment of this obligation by the trust result in

grantor trust treatment, precluding qualification as a CRT; and (iii) a bargain sale results.

Difficult to value property may not be suitable for a unitrust because of the annual valuation problems that will result.

Generally, it is believed that the donor is permitted to serve as trustee. However, if the donor, the spouse serves as trustee or holds the power to substitute the donor or the spouse or a non-independent party as trustee, the retention of certain powers may cause the donor to be taxed under the grantor trust rules which will in turn, preclude qualification of the trust as a CRT. If the donor desires to serve as trustee, the trust instrument must be carefully drafted to ensure that no disqualifying powers are included.

If the trustee is the donor or is related or subordinate to the donor, or if the donor retains the power to appoint the donor or a person who is related or subordinate as successor trustee, problems arise if the trust may hold hard to value assets such as closely-held stock or real property. This model does not permit the donor or a related or subordinate person to act as trustee.

IRC sections 508(e) and 4947 require that the CRT be subject to certain "governing instrument" provisions, which are satisfied by an appropriate state statute such as Minnesota Statutes, section 501B.32. The last paragraph of Article ONE states the provisions as guidance to the trustee; they are contained in all IRS sample forms. IRC section 4943 (prohibiting retention of excess business holdings) and section 4944 (prohibiting jeopardy investments) do not need to be included in a CRT if certain exceptions apply. If it is desirable to avoid these two prohibitions, the application of an exception allowing their omission should be established and the donor's intent to overcome their inclusion under Minnesota Statutes, section 501.32, should be evidenced.

THE [NAME OF DONOR] CHARITABLE REMAINDER UNITRUST

We, [Name of Donor] and [Name of Spouse], of [City or County of Residence], Minnesota, intend to create a charitable remainder unitrust (The [Name of Donor] Charitable Remainder Unitrust) by transferring the property described in Schedule A to Central Minnesota Community Foundation, Inc., as trustee, and the trustee agrees to hold said property and all additions, in trust, as follows. The first taxable year of the trust shall begin on the day the property described on Schedule A is transferred to the trustee. The trust is irrevocable, and this trust instrument may not be amended except as provided in Article ONE.

ARTICLE ONE

During our lives, the trustee in each taxable year of the trust shall pay to us (the recipients), in equal shares, a unitrust amount equal to [at least 5] percent of the net fair market value of the trust property determined as of the first day of such year. The unitrust amount shall be paid from income and, to the extent income is not sufficient, from principal and in equal quarterly installments, with the first payment for each year to be made three months after the first day of the year. Any income for a taxable year in excess of the unitrust amount shall be added to principal.

The trustee shall prorate on a daily basis the unitrust amount for a short first taxable year and for the period a recipient lives during the taxable year of the recipient's death. If an incorrect payment of the unitrust amount is made, the trustee shall, promptly after the error is discovered, pay to the recipient in the case of an underpayment, or collect from the recipient in the case of an overpayment, an amount equal to the difference between the amount which the trustee should have paid the recipient and the amount which the trustee paid the recipient. If any additional contribution is made to the trust after the first day of a taxable year, the unitrust amount for such year shall be increased by a proration on a daily basis for the remainder of such year of [same percentage as in the preceding paragraph] percent of the value of such contribution on the day it is added to the trust.

On the death of the first of the two of us to die, the entire unitrust amount shall be paid to the surviving recipient in the manner set forth in the preceding paragraphs of this Article as if he or she were the sole recipient, provided that the payments to the surviving

recipient are conditioned upon such recipient or some other source providing funds for the payment of any death taxes which are chargeable to the trust.

On the surviving recipient's death, all property then belonging to the income and principal of the trust, other than any amount due such recipient, shall be distributed to Central Minnesota Community Foundation, Inc. (the Foundation), at St. Cloud, Minnesota, to create or add to the [Desired Name] Fund of the Foundation, provided that if at distribution the Foundation is not an organization described in sections 170(c), 170(b)(1)(A), 2055(a) and 2522(a), such property shall be distributed to such one or more organizations described in said sections and in such shares as the trustee in its sole discretion determines.

Nothing in this trust instrument shall be construed to restrict the trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

We intend to create a charitable remainder unitrust under section 664(d)(2) and section 5 of Revenue Procedure 90-30 and this trust instrument shall be interpreted in accordance with this intent. The trustee is prohibited from exercising any power that would be inconsistent with this intent. The trustee shall have the power, acting alone, to amend the trust for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust in accordance with this intent. The trustee shall effect any such amendment by an acknowledged instrument filed with the trust records.

While the trust is a trust described in section 4947(a)(2), the trustee shall not:

- (a) Engage in any act of self-dealing as defined in section 4941(d);
- (b) Retain any excess business holdings so as to subject the trust to tax under section 4943(c);
- (c) Make any investments so as to subject the trust to tax under section 4944; or
- (d) Make any taxable expenditures as defined in section 4945(d).

While the trust is a trust described in section 4947(a)(1), the trustee shall make distributions at such times and in such manner as not to subject the trust to tax under section 4942.

ARTICLE TWO

We, or the survivor of the two of us, may remove any trustee of the trust and may appoint any person as successor trustee if a vacancy in the office of trustee occurs, provided that neither of us may be appointed a successor trustee and a successor trustee may not be appointed who is related or subordinate to us within the meaning of section 672(c).

References to sections in the preceding provisions of this trust instrument are to the Internal Revenue Code.

An appointment, resignation or removal of a trustee shall be effected by an acknowledged instrument filed with the trust records. Each successor trustee appointed as provided in this Article shall accept such appointment by an acknowledged instrument filed with the trust records.

The trustee shall each year render an account of the administration of the trust to us and to Central Minnesota Community Foundation, Inc.

Subject to the restrictions stated in Article ONE, the trustee may exercise in its sole discretion and without prior authority from any court, as to property in any trust or otherwise in its possession, all powers conferred by law upon trustees, or expressed in this instrument, and we intend that such powers be construed in the broadest possible manner:

- (a) The powers enumerated in Minnesota Statutes, section 501B.81, which powers are hereby incorporated in and made a part of this instrument by reference.
- (b) Power to invest or reinvest in such securities or other property, real or personal (within or without the United States), and to retain property for such periods as it determines, including participation in a common investment fund maintained by the trustee.
- (c) Power, without the consent of any beneficiary, to make payments or distributions in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property.

IN WITNESS WHEREOF, we have signed this trust instrument dated _____, 2000.

[Name of Donor]

[Name of Donor's Spouse]

Central Minnesota Community
Foundation, Inc. Trustee

By _____
Steven R. Joul
President

By _____

STATE OF MINNESOTA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2000, by [Name of Donor and Spouse].

Notary Public

STATE OF MINNESOTA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2000, by Steve R. Joul and _____, respectively the President and _____ of Central Minnesota Community Foundation, Inc., a Minnesota corporation.

Notary Public

**SCHEDULE A TO
THE [NAME OF DONOR] CHARITABLE REMAINDER UNITRUST**