



Bay Area

community foundationSM

and Subsidiary

Consolidated Financial Statements

For the Years Ended
December 31, 2009 and 2008

**BAY AREA COMMUNITY FOUNDATION
AND SUBSIDIARY**

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INDEPENDENT AUDITORS' REPORT

May 3, 2010

Board of Trustees
Bay Area Community Foundation
and Subsidiary
Bay City, Michigan

We have audited the accompanying consolidated statements of financial position of the **Bay Area Community Foundation and Subsidiary** (the "Foundation") as of December 31, 2009 and 2008, and the related consolidated statements of activities and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As more fully discussed in Note 1 to the consolidated financial statements, the Foundation has not consolidated a wholly-owned subsidiary. In our opinion, accounting principles generally accepted in the United States of America require the consolidation of all wholly-owned subsidiaries.

In our opinion, except for the effect of the departure from generally accepted accounting principles described in the preceding paragraph, the consolidated financial statements referred to in the first paragraph present fairly, in all material respects, the financial position of **Bay Area Community Foundation and Subsidiary** as of December 31, 2009 and 2008, and the changes in their net assets and their cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.



**BAY AREA COMMUNITY FOUNDATION
AND SUBSIDIARY**

CONSOLIDATED STATEMENTS OF FINANCIAL POSITION

| | December 31 | |
|--|----------------------|----------------------|
| ASSETS | 2009 | 2008 |
| Cash and cash equivalents | \$ 775,424 | \$ 212,773 |
| Accounts receivable | 70,720 | 604,743 |
| Unconditional promises to give, net of allowance of \$6,400 in 2009 and \$3,750 in 2008 | | |
| Current | 143,537 | 158,944 |
| Restricted to long-term purposes | 773,141 | 560,095 |
| Notes receivable | 3,509,125 | 3,392,230 |
| Investments | 24,808,831 | 19,927,638 |
| Cash surrender value of life insurance policies | 30,018 | 27,012 |
| Prepaid expenses and other assets | 24,599 | 13,038 |
| Furniture and equipment, net | 45,378 | 30,881 |
| Investment in properties | 644,762 | 1,701,724 |
| Investment in GLCF Holding, Inc. | 1,000,100 | 1,000,100 |
| Nature conservatory | 279,900 | 279,900 |
| Total assets | \$ 32,105,535 | \$ 27,909,078 |
| LIABILITIES AND NET ASSETS | | |
| Accounts payable | \$ 25,756 | \$ 22,133 |
| Accrued liabilities | 7,090 | 14,689 |
| Capital lease payable | 268 | 1,824 |
| Grants payable | 105,000 | 144,928 |
| Obligations for agency endowments | 858,987 | 590,742 |
| Deferred revenue | 1,000 | 1,000 |
| Debt | - | 735,316 |
| Life-income payable | - | 163,657 |
| Total liabilities | 998,101 | 1,674,289 |
| Commitments and contingency (Note 12 and 17) | | |
| Net assets | | |
| Unrestricted | 27,214,191 | 23,027,414 |
| Temporarily restricted | 2,489,343 | 1,833,475 |
| Permanently restricted | 1,403,900 | 1,373,900 |
| Total net assets | 31,107,434 | 26,234,789 |
| Total liabilities and net assets | \$ 32,105,535 | \$ 27,909,078 |

The accompanying notes are an integral part of these consolidated financial statements.

**BAY AREA COMMUNITY FOUNDATION
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CONSOLIDATED STATEMENT OF ACTIVITIES

YEAR ENDED DECEMBER 31, 2009

| | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u> |
|---|-----------------------------|-----------------------------------|-----------------------------------|-----------------------------|
| Support and revenue | | | | |
| Contributions | \$ 897,060 | \$ 362,919 | \$ 30,000 | \$ 1,289,979 |
| Investment income | 415,674 | 48,470 | - | 464,144 |
| Other income | 106,850 | 1,893 | - | 108,743 |
| Rental income | 64,401 | - | - | 64,401 |
| Grants - federal | 1,560 | - | - | 1,560 |
| Net assets released from restrictions | 319,361 | (319,361) | - | - |
| Total support and revenue | <u>1,804,906</u> | <u>93,921</u> | <u>30,000</u> | <u>1,928,827</u> |
| Expenses | | | | |
| Grant and scholarship awards | 955,590 | - | - | 955,590 |
| Program related expenses | | | | |
| Grant making | 207,663 | - | - | 207,663 |
| Project expenses | 119,348 | - | - | 119,348 |
| Supporting services | | | | |
| General and administrative | 321,780 | - | - | 321,780 |
| Fundraising | 155,629 | - | - | 155,629 |
| Investment services | 64,114 | - | - | 64,114 |
| Total expenses | <u>1,824,124</u> | <u>-</u> | <u>-</u> | <u>1,824,124</u> |
| Loss on disposal of furniture and equipment | 609 | - | - | 609 |
| Loss on sale of investment in properties | 270,471 | - | - | 270,471 |
| Total expenses and losses | <u>2,095,204</u> | <u>-</u> | <u>-</u> | <u>2,095,204</u> |
| Net realized and unrealized gains on investment securities | <u>4,477,075</u> | <u>561,947</u> | <u>-</u> | <u>5,039,022</u> |
| Change in net assets | 4,186,777 | 655,868 | 30,000 | 4,872,645 |
| Net assets at beginning of year | 23,027,414 | 1,833,475 | 1,373,900 | 26,234,789 |
| Net assets at end of year | <u>\$ 27,214,191</u> | <u>\$ 2,489,343</u> | <u>\$ 1,403,900</u> | <u>\$ 31,107,434</u> |

The accompanying notes are an integral part of these consolidated financial statements.

**BAY AREA COMMUNITY FOUNDATION
AND SUBSIDIARY**

CONSOLIDATED STATEMENT OF ACTIVITIES

YEAR ENDED DECEMBER 31, 2008

| | <u>Unrestricted</u> | <u>Temporarily Restricted</u> | <u>Permanently Restricted</u> | <u>Total</u> |
|--|-----------------------------|-----------------------------------|-----------------------------------|-----------------------------|
| Support and revenue | | | | |
| Contributions | \$ 1,751,845 | \$ 411,989 | \$ 94,000 | \$ 2,257,834 |
| Investment income | 519,271 | 62,915 | - | 582,186 |
| Other income | 806,364 | 3,666 | - | 810,030 |
| Rental income | 72,766 | - | - | 72,766 |
| Grants - federal | 76,000 | - | - | 76,000 |
| Net assets released from restrictions | 514,599 | (514,599) | - | - |
| Total support and revenue | <u>3,740,845</u> | <u>(36,029)</u> | <u>94,000</u> | <u>3,798,816</u> |
| Expenses | | | | |
| Grant and scholarship awards | 1,224,393 | - | - | 1,224,393 |
| Program related expenses | | | | |
| Grant making | 215,219 | - | - | 215,219 |
| Project expenses | 142,822 | - | - | 142,822 |
| Supporting services | | | | |
| General and administrative | 304,861 | - | - | 304,861 |
| Fundraising | 115,814 | - | - | 115,814 |
| Investment services | 70,434 | - | - | 70,434 |
| Total expenses | <u>2,073,543</u> | <u>-</u> | <u>-</u> | <u>2,073,543</u> |
| Net realized and unrealized losses on investment securities | 6,614,193 | 889,877 | - | 7,504,070 |
| Loss on disposal of furniture and equipment | 721 | - | - | 721 |
| Impairment loss on investment in properties | 180,603 | - | - | 180,603 |
| Total expenses and losses | <u>8,869,060</u> | <u>889,877</u> | <u>-</u> | <u>9,758,937</u> |
| Change in net assets | (5,128,215) | (925,906) | 94,000 | (5,960,121) |
| Net assets at beginning of year | 28,155,629 | 2,759,381 | 1,279,900 | 32,194,910 |
| Net assets at end of year | <u>\$ 23,027,414</u> | <u>\$ 1,833,475</u> | <u>\$ 1,373,900</u> | <u>\$ 26,234,789</u> |

The accompanying notes are an integral part of these consolidated financial statements.

**BAY AREA COMMUNITY FOUNDATION
AND SUBSIDIARY**

CONSOLIDATED STATEMENTS OF CASH FLOWS

| | Year Ended December 31 | |
|--|-------------------------------|--------------------|
| | 2009 | 2008 |
| Cash flows from operating activities | | |
| Change in net assets | \$ 4,872,645 | \$ (5,960,121) |
| Adjustments to reconcile change in net assets to net cash provided by operating activities | | |
| Net realized and unrealized (gains) losses on investment securities | (5,039,022) | 7,504,070 |
| Loss on disposal of furniture and equipment | 609 | 721 |
| Depreciation | 10,131 | 6,383 |
| Loss on sale of investment in properties | 270,471 | - |
| Impairment loss on investment in properties | - | 180,603 |
| Provision for (recovery of) uncollectible unconditional promises to give | 2,650 | (10,450) |
| Donated securities | (30,202) | (5,481) |
| (Decrease) increase in agency assets included in investments | (186,957) | 233,831 |
| Changes in operating assets and liabilities which provided (used) cash | | |
| Accounts receivable | 604,023 | (579,612) |
| Unconditional promises to give | (200,289) | (12,863) |
| Cash surrender value of life insurance policies | (3,006) | 4,526 |
| Prepaid expenses and other assets | (11,561) | 5,457 |
| Accounts payable | 3,623 | 16,084 |
| Accrued liabilities | (7,599) | 4,001 |
| Grants payable | (39,928) | 87,544 |
| Obligations for agency endowments | 268,245 | (108,995) |
| Net cash provided by operating activities | 513,833 | 1,365,698 |
| Cash flows from investing activities | | |
| Purchases of investments | (8,621,791) | (1,904,907) |
| Proceeds from sales and maturities of investments | 8,996,779 | 981,398 |
| Proceeds from sale of furniture and equipment | - | 950 |
| Purchases of furniture and equipment | (25,237) | (17,933) |
| Proceeds from sale of investment properties | 716,491 | - |
| Advances on notes receivable | (116,895) | (50,130) |
| Capital contribution in GLCF Holding, Inc. | - | (100,000) |
| Net cash provided by (used in) investing activities | 949,347 | (1,090,622) |
| Cash flows from financing activities | | |
| Repayments of debt and capital lease payable | (736,872) | (275,409) |
| Contractual payments of life-income payable | (163,657) | (22,997) |
| Net cash used in financing activities | (900,529) | (298,406) |
| Net increase (decrease) in cash and cash equivalents | 562,651 | (23,330) |
| Cash and cash equivalents at beginning of year | 212,773 | 236,103 |
| Cash and cash equivalents at end of year | \$ 775,424 | \$ 212,773 |
| Supplemental information | | |
| Cash paid for interest | \$ 13,568 | \$ 42,025 |
| Account receivable from sale of investment in properties | 70,000 | - |

The accompanying notes are an integral part of these consolidated financial statements.

BAY AREA COMMUNITY FOUNDATION AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. NATURE OF OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES

Consolidation

The accompanying consolidated financial statements include the accounts of *Bay Area Community Foundation* and its subsidiary, *Great Lakes Center Foundation*, collectively referred to as the “Foundation.” *Great Lakes Center Foundation* is consolidated as *Bay Area Community Foundation* has an economic interest in *Great Lakes Center Foundation* and also has a majority voting interest in its governing Board of Trustees. All significant intercompany accounts and transactions have been eliminated.

Nature of Operations

Bay Area Community Foundation, a non-profit organization tax-exempt under Internal Revenue Code Section 501(c)(3), receives and administers gifts and bequests from individuals, businesses, foundations, and organizations in the Bay County area and places the gifts into funds that match the giving priorities of the donor. The majority of the gifts are term endowment gifts and board-designated endowment gifts, the income of which is returned to the community through grants to area not-for-profit organizations. The *Great Lakes Center Foundation* (“Great Lakes”), a nonprofit organization tax-exempt under Internal Revenue Code Section 501(c)(3), receives and administers funds for the acquisition and development of real estate in Bay County for the public welfare and betterment of the local community.

Great Lakes is a 100% owner of GLCF Holding, Inc. The accounts of GLCF Holding, Inc. are not consolidated in the accompanying consolidated financial statements as required by accounting principles generally accepted in the United States of America. In 2007, Great Lakes transferred \$686,622 of property and \$213,478 in cash to GLCF Holding, Inc. thereby recognizing an initial investment of \$900,100 at December 31, 2007. In 2008, Great Lakes invested an additional \$100,000 in cash in GLCF Holding, Inc. At December 31, 2009 and 2008, the Foundation has an investment in GLCF Holding, Inc. on the consolidated statements of financial position of \$1,000,100.

Concentrations of Credit Risk

The Foundation invests in various investment securities. Investment securities are exposed to various risks such as interest rate, market, and credit risk. Due to the level of

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and that such changes could materially affect the account balances and the amounts reported in the consolidated statements of financial position.

Fund Accounting and External Reporting

To ensure observance of limitations and restrictions placed on the use of available resources, for internal accounting and stewardship purposes, the accounts of the Foundation are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and internal reporting into funds established according to their nature and purpose.

For external financial reporting purposes, the Foundations report resources classified into net asset categories according to the existence or absence of donor-imposed restrictions. This has been accomplished by classification of net assets and transactions into three classes of net assets - unrestricted, temporarily restricted, and permanently restricted net assets. Net assets and revenues, expenses and gains or losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets and changes therein are classified as follows:

Unrestricted Net Assets - Net assets that are not subject to donor-imposed restrictions. Resources that are reported in this net asset category include unrestricted gifts, including those designated by the Board to function as endowment, and the investment earnings thereon, and related expenses associated with the operations of the Foundation.

Temporarily Restricted Net Assets - Net assets subject to donor-imposed restrictions, including term endowments, that will be satisfied by actions of the Foundation or the passage of time. Resources reported in this net asset category include gifts for which restrictions have not been met. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled or time restrictions have elapsed) are reported as reclassifications between the applicable classes of net assets.

Permanently Restricted Net Assets - Resources subject to donor-imposed stipulations that the corpus (original principal value of endowment gifts) be maintained permanently by the Foundation. The donors of these assets permit the

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Foundation to spend only the income earned on the related investments. All such income is restricted by the donors for specific purposes.

Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions about amounts reported in the consolidated financial statements and accompanying notes. Material estimates that are particularly susceptible to change relate to the determination of amounts recorded related to unconditional promises to give, the fair value of investments and investment in properties, and the collectibility of notes receivable. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand and amounts maintained in bank demand deposit accounts. Cash and cash equivalents do not include investments the Foundation has the ability and intent to hold long-term (investments purchased with quasi-endowment assets). The Foundation maintains deposit accounts with various financial institutions. In the normal course of business, at various times cash balances may exceed federally insured limits.

Accounts Receivable

Accounts receivable at December 31, 2009, are unsecured and consist primarily of \$70,000 due from the Bay Area YMCA in relation to the sale of an investment in property (see Note 5). Management believes that all accounts receivable will be fully collected within one year. Accordingly, no allowance for doubtful accounts is necessary. If amounts become uncollectible, they will be charged to expense in the period in which the determination is made.

Accounts receivable at December 31, 2008, were unsecured and consisted primarily of \$572,000 due from a related entity in relation to the sale of certain tax credits to a third party; such amounts were fully collected in 2009.

BAY AREA COMMUNITY FOUNDATION AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Investments

The Foundation carries investments in marketable debt and equity securities at fair value, which is determined generally by using quoted market prices. Realized and unrealized gains and losses are reflected in the consolidated statements of activities.

The Foundation maintains investment accounts for its term and quasi-endowments. Realized and unrealized gains and losses from securities in the master investment accounts are allocated monthly based on the relationship of the market value of each endowment fund to the total market value of the master investment accounts, as adjusted for additions to or deductions from those accounts.

Fair Value Measurements

Fair value refers to the price that would be received to sell an asset or paid to transfer a liability (exit price) in an orderly transaction between market participants in the market in which the reporting entity transacts such sales or transfers based on assumptions market participants would use when pricing an asset or liability. Assumptions are developed based on prioritizing information within a fair value hierarchy that gives the highest priority to quoted prices in active markets and the lowest priority to unobservable data such as the reporting entity's own data. The Foundation may choose to measure eligible items at fair value at specified election dates. Unrealized gains and losses on items for which the fair value measurement option has been elected are reported in earnings at each subsequent reporting date. The fair value option (i) may be applied instrument by instrument, with certain exceptions, allowing the Foundation to record identical financial assets and liabilities at fair value or by another measurement basis permitted under generally accepted accounting principles, (ii) is irrevocable (unless a new election date occurs) and (iii) is applied only to entire instruments and not to portions of instruments. At December 31, 2009 and 2008, the Foundation had not elected the fair value option for any financial assets or liabilities, not otherwise reported at fair value.

For assets and liabilities recorded at fair value, it is the Foundation's policy to maximize the use of observable inputs and minimize the use of unobservable inputs when developing fair value measurements for those financial instruments for which there is an active market. In cases where the market for a financial asset or liability is not active, the Foundation includes appropriate risk adjustments that market participants would make for nonperformance and liquidity risks when developing fair value measurements. Fair value measurements for assets and liabilities for which limited or no observable market data exists are accordingly based primarily upon estimates, are often calculated based on the

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

economic and competitive environment, the characteristics of the asset or liability and other factors. Therefore, the results cannot be determined with precision and may not be realized in an actual sale or immediate settlement of the asset or liability. Additionally, there may be inherent weaknesses in any calculation technique, and changes in the underlying assumptions used, including discount rates and estimates of future cash flows, could significantly affect the results of current or future values. For a further discussion of Fair Value Measurements, refer to Note 6 to the consolidated financial statements.

Unconditional Promises to Give and Contributions

Contributions, including unconditional promises to give, are recognized in the period received or when verifiable evidence that the promise was made exists. Contributions that are restricted by the donor are reported as increases in unrestricted net assets if the restrictions expire in the fiscal year in which the contributions are recognized. All other restricted contributions are reported as increases in temporarily restricted net assets depending on the nature of the restrictions. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets. Conditional promises to give are recognized when the conditions on which they depend are substantially met. Donated marketable securities and other noncash donations are recorded as contributions at their estimated fair values at the date of donation.

The Foundation reports promises to give at present value, discounted using the applicable federal rate to reflect the time value of money.

The Foundation uses the allowance method to determine uncollectible unconditional promises receivable. The allowance is based on prior years' experience and management's analysis of specific promises made.

Furniture and Equipment and Depreciation

Furniture and equipment is stated at cost. Maintenance and repairs are expensed as incurred. Management annually reviews these assets to determine whether carrying values have been impaired. Depreciation is provided using the straight-line method over the estimated useful lives of the assets (three to ten years). The assets are presented in the consolidated statements of financial position net of accumulated depreciation of \$29,960 and \$24,439 at December 31, 2009 and 2008, respectively.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Investment in Properties

Investments in properties are carried at the lower of cost or market value. Cost of purchased properties is determined based upon the purchase price. Donated properties are recorded at fair value when received. Major improvements are capitalized while ordinary costs to maintain the property are expensed as incurred. Management annually reviews these assets to determine whether carrying values have been impaired.

Beneficial Interest in Trusts

The Foundation is the beneficiary under various irrevocable charitable remainder and insurance trusts, the corpus of which is not controlled by management of the Foundation. Although the Foundation has no control over the administration or investment of the funds held in these trusts, the fair value of such trusts is recognized as a contribution in the period in which the Foundation receives notice that the trust agreement conveys an unconditional right to receive benefits. Charitable remainder trusts are reported at the estimated present value using the estimated future cash flows from the trust. Under the terms of the insurance trusts, the Foundation will receive the applicable death benefit from the related insurance policies. The Foundation's interest in the insurance policies is recorded as an asset measured at the policies' cash surrender value at the end of the Foundation's reporting period. Changes in the value of trust assets are included in the statements of activities as temporarily restricted revenue and support.

Life-Income Payable

At December 31, 2008, the obligation for the life-income payable was reported at the present value of the future payments based on life expectancy tables and an implied rate of discount. In 2009, the Foundation fulfilled its obligation.

Functional Allocation of Expenses

The cost of providing the various programs and activities has been summarized on a functional basis in the consolidated statements of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited. Although the methods of allocation used are considered appropriate, other methods could be used that would produce a different amount.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Recent Accounting Pronouncements

In July 2006, the Financial Accounting Standards Board (FASB) issued a new standard related to *Accounting for Uncertainty in Income Taxes*, now codified as Accounting Standards Codification (“ASC”) Topic 740. ASC Topic 740 seeks to reduce the significant diversity in practice associated with financial statement recognition and measurement in accounting for income taxes and prescribes the minimum recognition threshold and measurement attribute for disclosures of tax positions previously taken or expected to be taken on an income tax return. Not-for-profit organizations are also within the scope of ASC Topic 740. An organization must consider whether they have engaged in activities that jeopardize their current tax exempt status with the Internal Revenue Service. Furthermore, the organization must determine whether they have any unrelated business income, which may be subject to U.S. federal income tax. The Foundation adopted the provisions of ASC Topic 740 effective January 1, 2009, and, accordingly, analyzed its filing positions in the federal and state jurisdictions where it is required to file income tax returns, as well as all open tax years in these jurisdictions. The Foundation has also elected to retain its existing accounting policy with respect to the treatment of interest and penalties attributable to income taxes, and continues to reflect any charges for such, to the extent they arise, as a component of its general and administrative expenses. The adoption of ASC Topic 740 had no significant impact on the Foundation’s consolidated financial statements.

The Foundation has evaluated the provisions of ASC Topic 740, *Accounting for Uncertainty in Income Taxes*. The evaluation was performed for the years 2006 through 2009, the years which remain subject to examination by major tax jurisdiction as of December 31, 2009. The Foundation concluded that there are no significant uncertain tax positions requiring recognition in the Foundation’s consolidated financial statements. The Foundation does not expect the total amount of unrecognized tax benefits (“UTB”) (e.g., tax deductions, exclusions, or credits claimed or expected to be claimed) to significantly increase in the next twelve months. The Foundation does not have any amounts accrued for interest and penalties related to UTBs at December 31, 2009, and it is not aware of any claims for such amounts by federal or state income tax authorities.

Net Asset Classifications

In August 2008, FASB issued ASC Topic 958, *Endowments of Not-for-Profit Organizations: Net Asset Classifications of Funds Subject to an Enacted Version of the Uniform Prudent Management of Institutional Funds Act, and Enhanced Disclosures for*

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

All Endowment Funds. ASC Topic 958 provides guidance on the net asset classification of donor-restricted endowments funds for a not-for-profit organization that is subject to an enacted version of the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”).

The State of Michigan adopted UPMIFA effective September 10, 2009. The Foundation has adopted ASC Topic 958 for the year ended December 31, 2009. The Board of Directors, on the advice of legal counsel, has determined that a majority of the Foundation’s net assets meet the definition of endowment funds under UPMIFA. The Foundation is governed subject to the Bay Area Community Foundation By-Laws (the “By-Laws”) and most contributions are received subject to the terms of the By-Laws.

Under the terms of the By-Laws, the Board of Trustees has the ability to distribute so much of the corpus of any trust or separate gift, devise, bequest or fund as the Board in its sole discretion shall determine. In accordance with UPMIFA, the organization considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- 1) The duration and preservation of the fund,
- 2) The purposes of the organization and the donor-restricted endowment fund,
- 3) General economic conditions,
- 4) The possible effect of inflation and deflation,
- 5) The expected total return from income and appreciation of investments,
- 6) Other resources of the Foundation, and
- 7) The investment policies of the Foundation.

As a result of the ability to distribute corpus, the Board of Directors has determined that all contributions received subject to the By-Laws, and subject to UPMIFA, are classified as unrestricted net assets. Contributions that are subject to other gift instruments may be recorded as permanently restricted, temporarily restricted or unrestricted, depending on the specific terms of the agreement.

Generally, if the corpus of a contribution will at some future time become available for spending it is recorded as temporarily restricted, and if the corpus never becomes available for spending it will be reported as permanently restricted.

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During the year ended December 31, 2009, the Foundation reviewed the significant endowment funds and as a result of this evaluation has reclassified from unrestricted net assets \$2,032,117 to temporarily restricted net assets and \$1,000,000 to permanently restricted net assets. Such reclassifications were made to the net assets at the beginning of the year on the December 31, 2008 consolidated statement of activities.

Reclassifications

Certain amounts reported in the 2008 consolidated financial statements have been reclassified to conform with the 2009 presentation.

Subsequent Events

In preparing these consolidated financial statements, management has evaluated, for potential recognition or disclosure, significant events or transactions that occurred during the period subsequent to December 31, 2009, the most recent consolidated statement of financial position presented herein, through May 3, 2010, the date the accompanying consolidated financial statements were available to be issued. No significant such events or transactions were identified.

2. INVESTMENTS

The following table summarizes the cost and fair value of investments at December 31:

| | <u>2009</u> | | <u>2008</u> | |
|---------------------------|----------------------|----------------------|----------------------|----------------------|
| | <u>Cost</u> | <u>Fair Value</u> | <u>Cost</u> | <u>Fair Value</u> |
| Cash and cash equivalents | \$ 631,765 | \$ 631,765 | \$ 1,325,398 | \$ 1,325,398 |
| Fixed income | 5,045,263 | 5,223,672 | 4,933,618 | 4,788,070 |
| Equities | <u>16,648,902</u> | <u>18,953,394</u> | <u>14,655,058</u> | <u>13,814,170</u> |
| | <u>\$ 22,325,930</u> | <u>\$ 24,808,831</u> | <u>\$ 20,914,074</u> | <u>\$ 19,927,638</u> |

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Investment income (loss) for the years ended December 31, 2009 and 2008, is summarized as follows:

| | <u>2009</u> | <u>2008</u> |
|--|----------------------------|------------------------------|
| Investment income | \$ 464,144 | \$ 582,186 |
| Net realized and unrealized gains (losses) | <u>5,039,022</u> | <u>(7,504,070)</u> |
| Total investment income (loss) | <u>\$ 5,503,166</u> | <u>\$ (6,921,884)</u> |

3. UNCONDITIONAL PROMISES TO GIVE

Unconditional promises to give, net of allowance at December 31, consist of the following:

| | <u>2009</u> | <u>2008</u> |
|--|--------------------------|--------------------------|
| Less than one year | \$ 143,537 | \$ 158,944 |
| One to five years | 635,252 | 438,225 |
| More than five years | <u>143,431</u> | <u>125,267</u> |
| Total | 922,220 | 722,436 |
| Less unamortized discount (based on imputed interest rates ranging from 2.80% to 8.00% for both 2009 and 2008) | <u>(5,542)</u> | <u>(3,397)</u> |
| Net unconditional promises to give | <u>\$ 916,678</u> | <u>\$ 719,039</u> |

Included in unconditional promises to give is a future interest of approximately \$613,000 and \$588,000 at December 31, 2009 and 2008, respectively, in charitable remainder trusts. The contributions and related receivables were recorded at the present value of the future payments on the date of the gift, calculated using discount rates, ranging from 2.80% to 8.00%.

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4. NOTES RECEIVABLE (INCLUDING RELATED PARTY)

During 2002, the Foundation sold property with a carrying value of \$703,217 in exchange for a \$640,000 note receivable. The note was interest free for the first six months after occupancy, then interest only payments calculated at 4% were to be made through January 2016. As of December 31, 2009, the Foundation has not received any interest payments on this note. Management believed that the interest on the note may not be collectible and wrote off accrued interest receivable as of December 31, 2007. Interest was not recorded in 2009 or 2008. A lump sum principal payment is due February 2016. In the event of default on the loan, interest will accrue at 6%. Management believes the outstanding note is fully collectible.

During 2007, the Foundation issued a promissory note for \$2,670,000, with the proceeds to be used to renovate the Pere Marquette Depot. The note calls for interest payments of 1% monthly beginning April 2007, with the principal to be paid within 33 years after the substantial completion of the renovation of the Pere Marquette Depot. The note is secured by various assets.

The Foundation has issued various promissory notes to a related party, Great Lakes Holding, Inc (“Great Lakes”), in the amount of \$199,125 and \$86,230 as of December 31, 2009 and 2008, respectively. Great Lakes was scheduled to pay the Foundation \$34,000 on these notes receivable in 2009; however, the Foundation has agreed to allow Great Lakes to repay these notes receivable in 2010. Management believes the outstanding notes are fully collectible.

The following is a summary of payments anticipated to be received on notes receivable for the five years succeeding December 31, 2009 and thereafter:

| <u>Year</u> | <u>Amount</u> |
|-------------------------------|----------------------------|
| 2010 | \$ 82,125 |
| 2011 | - |
| 2012 | 17,000 |
| 2013 | 100,000 |
| 2014 | - |
| Thereafter | <u>3,310,000</u> |
| Total notes receivable | <u>\$ 3,509,125</u> |

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5. INVESTMENT IN PROPERTIES

Investment in properties consists of the following at December 31:

| | <u>2009</u> | <u>2008</u> |
|---------------------------------------|--------------------------|----------------------------|
| Pere Marquette Depot | \$ 346,287 | \$ 346,287 |
| 243, 245, and 247 Saginaw Street | 298,475 | 298,475 |
| Washington Avenue & Saginaw Street | - | 780,000 |
| 1115 and 1117 Washington Avenue | <u>-</u> | <u>276,962</u> |
| Total investment in properties | <u>\$ 644,762</u> | <u>\$ 1,701,724</u> |

Prior to 2009, the Foundation and the Bay Area Family YMCA (“YMCA”) negotiated a purchase agreement for the sale of the Washington Avenue and Saginaw Street property. Due to a decline in the fair value of the property, an other-than-temporary impairment loss of \$180,603 was recognized in 2008. During 2009, the YMCA exercised the option to purchase the property. The sale of the property resulted in a realized loss of \$315,770. The YMCA negotiated as part of the purchase agreement to pay the Foundation \$394,230 in cash with the remaining \$70,000 to be paid when the YMCA’s construction project is completed and the occupancy permit is received.

In 2009, the Foundation sold the 1115 and 1117 Washington Avenue property to an unrelated party, recognizing a realized gain in the amount of \$45,299.

6. FAIR VALUE

Investments are recorded at fair value on a recurring basis. The Foundation utilizes fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. Additionally, from time to time the Foundation may be required to record at fair value other assets on a nonrecurring basis, such as unconditional promises to give, notes receivable, investment in properties and certain other assets and liabilities. These nonrecurring fair value adjustments typically involve the application of lower of cost of market accounting or write-down of individual assets.

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Fair Value Hierarchy

Fair value measurement standards establish a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of fair value hierarchy are described as follows:

Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in an active market that the Foundation has the ability to access.

Level 2: Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability; and
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

The following is a description of the valuation methodologies and key inputs used to measure financial assets recorded at fair value on a recurring basis and an indication of the level of the fair value hierarchy in which the assets are classified.

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Investment Securities: Investment securities are recorded at fair value on a recurring basis. Fair value measurement is based upon quoted prices. Level 1 securities include those traded on an active exchange, such as the New York Stock Exchange, U.S. Treasury securities that are traded by dealers or brokers in active over-the-counter markets and money market funds. As of December 31, 2009 and 2008, the Foundation held investment securities that were classified as Level 1 and had a fair value of \$21,805,285 and \$17,747,031, respectively. As of December 31, 2009 and 2008, the Foundation held investments that were classified as Level 2 and had a fair value of \$3,003,546 and \$2,180,607, respectively.

Assets recorded at fair value on a nonrecurring basis for which impairment was recognized consist of investment in properties. The following is a description of the valuation methodology and key inputs used for assets recorded at fair value on a nonrecurring basis:

Investment in Properties: In 2008, an investment in property was recorded at fair value on a nonrecurring basis. The investment property was valued using a current appraised value of \$780,000 (classified as Level 2), resulting in an impairment loss of \$180,603. In 2009, this investment in property was sold (see Note 5).

7. NATURE CONSERVATORY

During 2003, the Foundation was notified they were the beneficiary of the Robert Carrier Estate, which included property located at 10 Carrier Lane. Therefore, the Foundation recorded \$190,900 based on initial estimates of the property value. During 2005, the property was legally transferred to the Foundation, and was valued at \$279,900 at the time of transfer. This property shall not be sold or developed by the Foundation but rather kept in its natural state and forever preserved as a nature conservancy.

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8. GRANTS PAYABLE

The following is a summary of grants authorized and payable at December 31:

| | <u>2009</u> | <u>2008</u> |
|----------------------------------|--------------------------|--------------------------|
| To be paid in less than one year | \$ 35,000 | \$ 44,928 |
| To be paid in two to five years | <u>70,000</u> | <u>100,000</u> |
| Total grants payable | <u>\$ 105,000</u> | <u>\$ 144,928</u> |

9. OBLIGATIONS FOR AGENCY ENDOWMENTS

The Foundation is the fiscal agent for 22 various not-for-profit organizations including the Saginaw Basin Land Conservancy, the Historical Society of Bay County, the State Theatre and other local organizations. The Foundation is responsible for receiving and depositing funds on behalf of these organizations. As of December 31, 2009 and 2008, the amount held by the Foundation on behalf of these organizations was \$858,987 and \$590,742, respectively.

The following table summarizes the activity in such funds for the years ended December 31:

| | <u>2009</u> | <u>2008</u> |
|---|--------------------------|--------------------------|
| Beginning fund balances | \$ 590,742 | \$ 699,737 |
| Investment income, net | 7,538 | 9,889 |
| Unrealized and realized investment gains (losses) | 186,957 | (233,831) |
| Gifts | 106,920 | 131,988 |
| Grants distributed | <u>(33,170)</u> | <u>(17,041)</u> |
| Ending fund balances | <u>\$ 858,987</u> | <u>\$ 590,742</u> |

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10. DEBT

At December 31, 2008, the Foundation had a note payable to a non-profit organization with an unpaid principal balance of \$735,316 with an effective interest rate of 3.25%. The note was collateralized by real estate and promises to give designation for the Pere Marquette Depot construction. The note was paid in full in 2009.

11. LIFE-INCOME PAYABLE

During 2005, the Foundation received \$475,000 in investments in exchange for an obligation to pay the donor an annual annuity of approximately \$43,000 over his lifetime. The obligation for the life-income payable was reported at the present value of the future payments based on life expectancy tables and an implied rate of discount of 11.5%. In 2009, the Foundation fulfilled its obligation to pay the donor.

12. LEASES (INCLUDING RELATED PARTY)

Leasing Expense

The Foundation moved to the Pere Marquette Depot in June of 2008 and entered into an operating lease with related parties that expires in December 2015. The Foundation also entered into an operating lease with related parties for the occupancy of the Welcome Center of the Pere Marquette Depot that expires in December 2015. The Foundation has also entered into contracts with related parties that terminate in June 2011 for office equipment. Total rent expense was \$88,556 in 2009 and \$52,332 in 2008.

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The following is a summary of annual future lease payments anticipated to be paid on non-cancelable operating leases for the five years succeeding December 31, 2009 and thereafter:

| <u>Year</u> | <u>Amount</u> |
|---|--------------------------|
| 2010 | \$ 89,625 |
| 2011 | 85,649 |
| 2012 | 81,742 |
| 2013 | 84,194 |
| 2014 | 86,720 |
| Thereafter | <u>89,322</u> |
| Total minimum future lease payments to be paid | <u>\$ 517,252</u> |

Leasing Revenue

The Foundation's leasing operations consists of a non-cancellable lease agreement terminating on December 31, 2010, and a lease agreement with a related party that terminates in 2057. Total lease revenue received was \$64,401 and \$72,616 in 2009 and 2008, respectively.

The following is a summary of annual future lease payments anticipated to be received on non-cancelable operating leases for the five years succeeding December 31, 2009 and thereafter:

| <u>Year</u> | <u>Amount</u> |
|---|--------------------------|
| 2010 | \$ 60,600 |
| 2011 | 1,200 |
| 2012 | 1,200 |
| 2013 | 1,200 |
| 2014 | 1,200 |
| Thereafter | <u>50,400</u> |
| Total minimum future lease payments to be received | <u>\$ 115,800</u> |

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13. RESTRICTIONS ON NET ASSETS

Temporarily Restricted Net Assets

Temporarily restricted net assets consist of the following at December 31:

| | <u>2009</u> | <u>2008</u> |
|--|----------------------------|----------------------------|
| Pledges receivable | \$ 303,875 | \$ 130,652 |
| Beneficial interest in charitable trusts | 612,803 | 588,387 |
| Beneficial interest in life insurance policies | 30,018 | 27,012 |
| Donor-restricted term endowment funds: | | |
| Field of interest | <u>1,542,647</u> | <u>1,087,424</u> |
| Temporarily restricted net assets | <u>\$ 2,489,343</u> | <u>\$ 1,833,475</u> |

Permanently Restricted Net Assets

Permanently restricted net assets consist of the following at December 31:

| | <u>2009</u> | <u>2008</u> |
|--|----------------------------|----------------------------|
| Carrier Estate Nature Conservatory | \$ 279,900 | \$ 279,900 |
| Donor-restricted term endowment funds: | | |
| Field of interest | <u>1,124,000</u> | <u>1,094,000</u> |
| Permanently restricted net assets | <u>\$ 1,403,900</u> | <u>\$ 1,373,900</u> |

Permanently restricted net assets consist of the Carrier Estate Nature Conservatory, the Kellogg Youth Fund, and the Husband Fund. See Note 7 for further information on the Carrier Estate Nature Conservatory.

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14. ENDOWMENT

The Foundation's endowment consists of 236 individual funds established for a variety of purposes. Its endowment includes both donor-restricted term endowment funds and funds designated by the Board of Trustees to function as endowments. As required by generally accepted accounting principles ("GAAP"), net assets associated with endowment funds, including funds designated by the Board of Trustees to function as endowments, are classified and reported based on the existence or absence of donor-imposed restrictions.

Interpretation of Relevant Law

The Foundation has interpreted UPMIFA as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted term endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Foundation classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment without granting the Foundation variance power, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument, if any, at the time the accumulation is added to the fund. The remaining portion of the donor-restricted permanent endowment fund related to earnings is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the Foundation in a manner consistent with the standard of prudence prescribed by UPMIFA. The Foundation classifies as unrestricted net assets (a) the original value of gifts donated to the Foundation without granting the Foundation variance power, (b) the original value of subsequent gifts to the endowment, and (c) accumulations to the endowment made in accordance with the direction of the applicable donor gift instrument, if any, at the time the accumulation is added to the fund. See Note 1 for further discussion related to the net asset classifications.

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The following is a summary of the Foundation's endowment and changes therein:

| | Unrestricted | Temporarily Restricted | Permanently Restricted | Total |
|---|-----------------------------|----------------------------|----------------------------|-----------------------------|
| Endowment net asset comparison by type of fund as of December 31, 2009 | | | | |
| Donor-restricted term endowment funds | \$ 18,338,073 | \$ 1,542,647 | \$ 1,124,450 | \$ 21,005,170 |
| Board-designated endowment funds | <u>2,836,650</u> | <u>-</u> | <u>-</u> | <u>2,836,650</u> |
| Total endowed net assets | <u>\$ 21,174,723</u> | <u>\$ 1,542,647</u> | <u>\$ 1,124,450</u> | <u>\$ 23,841,820</u> |
| Changes in Endowment Net Assets for the Year Ended December 31, 2009 | | | | |
| Investment return: | | | | |
| Investment income | \$ 382,417 | \$ 48,470 | \$ - | \$ 430,887 |
| Net appreciation (realized and unrealized) | <u>4,476,608</u> | <u>561,946</u> | <u>-</u> | <u>5,038,554</u> |
| Net investment return | <u>4,859,025</u> | <u>610,416</u> | <u>-</u> | <u>5,469,441</u> |
| Contributions and other revenue | 536,552 | 7,083 | 30,350 | 573,985 |
| Administrative and investment fees | (283,506) | (52,946) | - | (336,452) |
| Appropriation of endowment assets for expenditure | <u>(1,059,631)</u> | <u>(109,331)</u> | <u>-</u> | <u>(1,168,962)</u> |
| Changes to endowment net assets | <u>4,052,440</u> | <u>455,222</u> | <u>30,350</u> | <u>4,538,012</u> |
| Endowment net assets: | | | | |
| Beginning of year | <u>17,122,283</u> | <u>1,087,425</u> | <u>1,094,100</u> | <u>19,308,808</u> |
| End of year | <u>\$ 21,174,723</u> | <u>\$ 1,542,647</u> | <u>\$ 1,124,450</u> | <u>\$ 23,841,820</u> |
| Endowment Net Asset Comparison by type of Fund as of December 31, 2008 | | | | |
| Donor-restricted term endowment funds | \$ 14,764,267 | \$ 1,087,425 | \$ 1,094,100 | \$ 16,945,792 |
| Board-designated endowment funds | <u>2,358,016</u> | <u>-</u> | <u>-</u> | <u>2,358,016</u> |
| | <u>\$ 17,122,283</u> | <u>\$ 1,087,425</u> | <u>\$ 1,094,100</u> | <u>\$ 19,308,808</u> |
| Changes in endowment net assets for the year ended December 31, 2008 | | | | |
| Investment return: | | | | |
| Investment income | \$ 478,909 | \$ 62,916 | \$ - | \$ 541,825 |
| Net depreciation (realized and unrealized) | <u>(6,608,231)</u> | <u>(889,877)</u> | <u>-</u> | <u>(7,498,108)</u> |
| Net investment loss | <u>(6,129,322)</u> | <u>(826,961)</u> | <u>-</u> | <u>(6,956,283)</u> |
| Contributions and other revenue | 1,463,043 | 46,066 | 94,100 | 1,603,209 |
| Administrative and investment fees | (297,841) | (47,762) | - | (345,603) |
| Appropriation of endowment assets for expenditures | <u>(939,436)</u> | <u>(116,035)</u> | <u>-</u> | <u>(1,055,471)</u> |
| Changes to endowment net assets | <u>(5,903,556)</u> | <u>(944,692)</u> | <u>94,100</u> | <u>(6,754,148)</u> |
| Endowment net assets: | | | | |
| Beginning of year | <u>23,025,839</u> | <u>2,032,117</u> | <u>1,000,000</u> | <u>26,057,956</u> |
| End of year | <u>\$ 17,122,283</u> | <u>\$ 1,087,425</u> | <u>\$ 1,094,100</u> | <u>\$ 19,308,808</u> |

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Funds with Deficiencies

From time to time, the fair value of assets associated with individual donor-restricted term endowment funds may fall below the level that the donor or UMIFA (“Uniform Management of Institutional Funds Act”) requires the Foundation to retain as a fund. In accordance with GAAP, deficiencies of this nature that were reported in temporarily restricted net assets were \$175,926 and \$243,957 as of December 31, 2009 and 2008, respectively. These deficiencies resulted from significantly unfavorable market fluctuations during 2008. Management believes that these deficiencies are temporary in anticipation of a future recovery in the market.

Return Objectives and Risk Parameters

The Foundation has adopted investment policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while seeking to maintain the purchasing power of the endowment assets, which includes those assets of donor-restricted term endowment funds as well as board-designated funds. Under this policy, the endowment assets are invested in a manner that is intended to produce results that meet or exceed the price and yield results of established indexes for differing investment classes while assuming a moderate level of investment risk. The Foundation expects its endowment funds, over time, to provide an average rate of return of 8.0% to 10.0% annually. Actual returns in any given year may vary from this range.

Strategies Employed for Achieving Objectives

To satisfy its long-term rate-of-return objectives, the Foundation relies on a total return strategy in which investment returns are achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The Foundation targets a diversified asset allocation that places a greater emphasis on equity-based investments to achieve its long-term return objectives within prudent risk constraints.

Spending Policy and How the Investment Objectives Relate to Spending Policy

The Foundation has an annual spending policy of 5.0% of its endowment fund’s average fair value over the prior 12 quarters through September 30th of the preceding fiscal year in which the distribution is planned. In establishing this policy, the Foundation considered the long-term expected return of its endowment. Accordingly, over the long

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term, the Foundation expects its current spending policy to allow its endowment to grow at an average of 3.0% to 5.0% annually. This is consistent with the Foundation's objective to maintain the purchasing power of the endowment assets as well as to provide additional real growth through new gifts and investment return.

15. GRANTS AND SCHOLARSHIP AWARDS

Unconditional grants are recognized as an expense at the time of formal approval by the Board of Trustees, regardless of the year in which the grant is paid. Conditional grants, if any, are expensed when such conditions are substantially met.

The following summarizes the grant and scholarship awards at December 31:

| | <u>2009</u> | <u>2008</u> |
|---|--------------------------|----------------------------|
| Grants paid | \$ 850,590 | \$ 1,079,465 |
| Grants payable | <u>105,000</u> | <u>144,928</u> |
| Total grant and scholarship awards | <u>\$ 955,590</u> | <u>\$ 1,224,393</u> |

16. EMPLOYEE BENEFIT PLANS

Effective January 1, 2005, the Foundation established a SIMPLE IRA retirement plan for all eligible employees. Any employee who earned at least \$5,000 in the previous year and is reasonably expected to earn \$5,000 in the current year is eligible to participate. The cost to the Foundation was approximately \$8,600 and \$7,900 for the years ended December 31, 2009, and 2008, respectively.

17. CONTINGENCY

Effective October 2, 2006, the Foundation entered into an agreement to receive TEA-21 grant reimbursements in relation to the restoration of the Pere Marquette Railroad Depot. This agreement specified that if the Foundation is found to be in default of any of the specific restrictions noted in this agreement the grant amounts received totaling approximately \$707,000 would have to be returned. Management has asserted that the Foundation is not in violation in relation to any of the requirements noted in the aforementioned agreement.

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