

## GIFT GUIDELINES

### Gift Acceptance

Gift acceptance is governed by the Board of Directors, which has the ultimate responsibility for developing and applying gift acceptance and fund administration policy. The Board of Directors is charged with the responsibility to review any gifts not adequately addressed in The Park City Foundation, dba Park City Community Foundation (hereinafter, the “Community Foundation” policies, to properly screen and to accept or refuse those gifts, and, where appropriate, to make recommendations on gift acceptance issues. The Board of Directors may refuse any offered gift that is not judged to be in the best interest of the Community Foundation.

### Legal and Financial Considerations

The Community Foundation and any prospective donor considering a gift should be fully advised of the legal and tax implications of the transaction. Prior to making any gift, prospective donors should be urged to review the transaction with trusted legal or financial advisors.

### Confidentiality

All information concerning donors or prospective donors of any gift shall be held in strict confidence by the Community Foundation staff and Board of Directors. This includes names of donors, names of beneficiaries, the amount and kind of gifts, and the size and nature of donors’ estates.

### Outright Gifts

#### *Gifts of cash*

Gifts of cash to the Community Foundation can be made by check, credit card or wire transfer. These outright gifts of cash do not require Board review and approval.

#### *Marketable securities*

Publicly traded securities (stocks, bonds, mutual funds, and exchange-traded funds) may be gifted to the Community Foundation. Because such securities fall outside of the Community Foundation’s investment policy, all publicly traded securities will be liquidated upon acceptance or as appropriate given the size of the holding and market liquidity. Liquid securities will generally be sold within three trading days of receipt.

The Community Foundation will review all stock gifts prior to acceptance. The donor is responsible for relaying any prior commitments to sell the stock or whether there is an outstanding tender offer for the stock. In such situations, the acceptance of securities will be made on a case-by-case basis.

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Donors will indicate the fund to which their gift of marketable securities should be donated (the “Receiving Fund”). The Community Foundation will recognize the gift in the Receiving Fund at fair market value on the date of receipt. For stocks this is generally the average of the high and low trading price on the date of receipt times the number of shares received. For funds and bonds this is generally the closing NAV or price on the date of receipt times the number of units received. The Receiving Fund will then be allocated any transaction costs associated with the liquidation of the securities including commissions and/or any loss (or gain) in market value between the date of receipt and the final liquidation.

The Community Foundation will acknowledge all gifts of marketable securities according to IRS guidelines. The acknowledgement will provide the details of the gift including date of receipt and a description of the securities received. The donor is responsible for calculating the value of his/her tax deduction relating to the contribution. The value of the deduction will depend upon the holding period and other issues known only to the donor and his/her tax advisor.

#### *Closely held stocks and other business interests*

Donors may make gifts of closely held stock, limited partnership interests and limited liability company interests. The Community Foundation can accept such gifts as long as it assumes no liability in receiving them—such as capital calls or adverse tax consequences—and the property can be sold within a reasonable period of time. In determining whether to accept gifts of closely held stock and other business interests, the Board of Directors will consider whether such interests have any transfer restrictions and whether the ownership of such interests will give rise to Unrelated Business Income Tax (UBIT).

Outright gifts of closely held stock, tangible personal property, partnership interests, company interests and other property interests, real and personal, not readily negotiable must be reviewed and approved by the Board of Directors. To be considered for acceptance, limited partnership interests must not subject the Community Foundation to cash calls or other liability and must not have adverse tax consequences for the Community Foundation.

Closely held stock may be accepted if the probability exists of selling it within a reasonable period of time to the corporation, other stockholders, or to others interested in acquiring the corporation. Contributions of “S” Corporation stock will be carefully discussed with the donor(s) and their advisors. Royalty interests will be considered but working interests will not be accepted.

The Community Foundation, except in extraordinary circumstances, will not pay for legal assistance, appraisals or other services on behalf of the donor. The Community Foundation will not establish or corroborate the value of any property for the purpose of substantiating the donor’s income tax charitable deduction. In many cases, upon the subsequent sale of closely held stock, there will be a stock purchase agreement setting forth the proposed terms and conditions of sale. The Community Foundation cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.

#### *Life insurance*

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Life insurance policies can also be used as charitable gifts. There are various methods by which a life insurance policy may be contributed to The Community Foundation. A donor may:

- Irrevocably assign a paid-up policy to the Community Foundation
- Irrevocably assign a life insurance policy on which premiums remain to be paid as long as the Community Foundation is owner and beneficiary
- Name the Community Foundation as a primary or successor beneficiary of the proceeds
- Establish a new life insurance policy with the Community Foundation as the applicant, owner and beneficiary

Accordingly, the Board of Directors will conduct a thorough evaluation on the policy, underwriter and benefit to the Community Foundation.

The Community Foundation will not accept any gift of a life insurance policy unless a “guarantee analysis” is available and provided it is under no prearranged obligation to expend its assets to maintain the policy. No portion of the proceeds may be paid to anyone or any organization that is not qualified as a tax-exempt entity under IRS Code Section 501(c) (3). The Community Foundation must have the unrestricted right to fully exercise its powers as the owner, including the power to surrender, select payment options, designate beneficiaries and withdraw or borrow cash values.

In the event a policy is contributed on which premiums remain to be paid, the donor must pledge to continue paying premiums or give the Community Foundation permission to surrender the policy for cash value. Under extraordinary circumstances, as approved by the Board of Directors, the Community Foundation may choose to provide for a payment of premium or premiums for the policy.

The Community Foundation will not participate in split dollar or reverse split dollar plans, or other partial interest programs. Any charitable insurance program, such as those promoted by the life insurance industry or individual insurance agent(s), shall be entered into only after a thorough explanation has been provided to the Board of Directors and the Board has voted to proceed with the program.

#### *Retirement plans*

A donor can name the Community Foundation as a beneficiary for part or all of an Individual Retirement Plan (IRA), Keogh plan, 401(k), 403(b), or other qualified pension plan. The Community Foundation must be notified when named as beneficiary. The Board of Directors will review retirement plans prior to acceptance.

#### *Real estate or other tangible personal property*

Gifts of tangible personal property and real estate should be considered on a case-by-case basis because the Community Foundation’s ability to accept such gifts depends on a number of factors including the potential benefit to the Community Foundation and the community. Real estate and other tangible personal property

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acceptance will be determined by the Board of Directors on a case-by-case basis. Real estate can be, but is not limited to the following forms: a residence, vacation home, ranch or land.

Other guidelines include:

1. All property gifts must be independently appraised before acceptance as a contribution.
2. In general, all associated expenses of a gift of property to the Community Foundation should be borne by the donor, unless otherwise approved by the Board.
3. The Community Foundation (or trustee in case of a charitable remainder trust) should require documentation be provided of clear title or perform a title search at the cost of the donor.
4. The donor should be required to secure a Phase I environmental audit. No property containing toxic wastes shall be accepted prior to the removal or other remedies assuring that the Community Foundation assumes no liability whatsoever in connection with such toxic wastes.
5. Ordinary mortgaged property will not be accepted as an outright gift, however, exceptions may be made when the property has sufficient equity to justify assumption of the liability and the property is marketable.
6. Mortgaged property shall not be accepted for a charitable remainder trust unless the trust would not be disqualified and the income from the property is sufficient to cover all liabilities.
7. If a donor wants to give real estate and retain income, a “net-income”, “net-income with make-up provision”, or a “Flip” charitable remainder unitrust is the preferred instrument. Usually real estate will not be accepted for a charitable remainder annuity trust or a charitable gift annuity.
8. The Community Foundation will not manage real property and the property must be readily marketable.

#### *Retained life estate*

A life estate is created when an individual transfers title to the Community Foundation of a personal residence or farm, and the donor or another person retains use of the property for a term of years or the life of the donor and/or another person. Typically, the donor shall continue to be responsible for real estate taxes, insurance, utilities, and maintenance after transferring title to the property to the Community Foundation. Each retained life estate gift will be individually negotiated and approved by the Board of Directors. In addition, the requirements 1-9 identified in the real estate section apply to retained life estates.

#### *Bargain sale*

A “bargain sale” is a sale of property or securities to the Community Foundation for an amount less than current fair market value. The excess of the value over the sales price represents a contribution. In order to determine fair market value of the asset, it must be adequately appraised. Ordinarily, the price paid for the property should not exceed 60 percent of its appraised value. Each bargain sale will be individually negotiated and approved by the Board of Directors.

A gift of mortgaged property will constitute a bargain sale. Since the amount of indebtedness is treated as a relief of liability, there could be adverse tax consequences to the donor. The donor should be informed of this in writing and urged to consult with a tax advisor.

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In order to determine the true, fair market value of the asset, it must be adequately appraised.

A gift should not be encouraged from a donor unless it is clear that there is charitable intent. In addition, requirement 1-9 identified under the real estate section apply to bargain sales.

#### Planned gifts

In addition to the above asset types, the Community Foundation accepts certain planned gifts. Planned gifts offer the donor an income source as well as tax advantages in estate planning that an outright gift cannot provide.

#### *Bequests*

One of the simplest ways to make a gift to the Community Foundation is through a will. The donor can name the Community Foundation as the direct beneficiary of identified assets, to receive a portion of the donor's estate, or to receive a residual estate after the donor's loved ones have been provided for.

#### *Charitable gift annuity*

A charitable gift annuity is a contract between the Community Foundation and the donor whereby the Community Foundation agrees to pay the donor (and/or other person named by the donor) a lifetime annuity in return for a gift of cash, securities, or other property. The payment may continue for the life of a second individual, such as a spouse. The annual payment is a fixed sum, the amount of which is based on the size of the gift and the number and ages of the beneficiaries.

Upon the death of the donor, the remainder of the gift can either be designated directly to the Community Foundation as unrestricted funds, a donor-advised fund or a field of interest fund. Gift annuities issued in the donor's state of residence must comply with that state's law and meet the disclosure requirements under the Philanthropy Protection Act of 1995.

Guidelines include:

1. The minimum amount for accepting an annuity agreement is \$100,000.
2. Annuity rates should never exceed the suggested rates recommended by the American Council on Gift Annuities.
3. Agreements shall be limited to two lives. In most instances, the minimum age to fund and receive income payments for the immediate payment gift annuity will be 60. The minimum age to fund deferred gift annuities shall be 50. The minimum age for income payment shall begin at age 60 or later.
4. Gift annuities may be managed by the Community Foundation staff and /or agents and advisors hired by the Community Foundation.
5. Gift annuities must meet governing individual state laws.
6. The Community Foundation prefers to provide quarterly payments to gift annuity donors.

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### *Charitable remainder trust*

A charitable remainder trust is a separately administered trust established by the donor. It provides for payments to the donor and/or other named beneficiary(ies) either for life or for a term of years (not exceeding 20), whereupon the remaining trust assets are distributed to one or more charities.

A charitable remainder annuity trust pays a fixed amount (at least five percent) of the original fair market value of the assets initially contributed to the trust. This amount does not change, and no additional gifts may be made to the annuity trust after its creation. Payments made in any one year by a charitable remainder annuity trust to individual beneficiaries may not exceed 50 percent of initial fair market value of the trust.

A charitable remainder unitrust pays a fixed percentage (at least five percent) of the fair market value of trust assets, as valued annually. Because the value of assets can be expected to change from year to year, the unitrust payment will vary in amount each year. Additional contributions may be made to the trust after it is established. Payments made in any one year by a charitable remainder unitrust to individual beneficiaries may not exceed 50 percent of the fair market value of the trust on the most recent valuation date. The present value of the Community Foundation's remainder interest in the charitable remainder unitrust must equal 10 percent (or more) of the initial fair market value of the trust. This rule also applies to additions to existing charitable remainder unitrusts.

There are three traditional varieties of a unitrust. A "straight" unitrust pays the stipulated amount, even if it is necessary to invade principal to do so. A "net-income" unitrust pays the lesser of the stipulated amount or the actual net income so that the principle is not invaded. A "net-income with make-up provision" unitrust is similar to the net income unitrust except that excess earnings can be applied to cover accrued deficiencies that result from the net income being less than the stipulated amount. A newer variety, the "Flip" unitrust, should be considered for trusts funded with real estate or family corporations.

Other guidelines include:

1. The Community Foundation will not serve as sole trustee or co-trustee of a charitable lead trust. The Community Foundation will work with a financial institution to become a trustee.
2. The portion of the remainder contributed to the Community Foundation must be irrevocable and at least 50 percent of the amount contributed must be designated to the Community Foundation's unrestricted fund.
3. The Community Foundation recommends that beneficiaries be age appropriate unless the trust is for a term of years.
4. The Community Foundation recommends limiting the number of beneficiaries to two where payments are to be made for the life of the beneficiaries.
5. Ordinarily, the Community Foundation will not accept responsibility for a charitable remainder trust instrument that is or will be funded with the following assets:
  - encumbered real estate
  - margined securities
  - sole proprietorships

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- limited partnerships
- working interests in oil and gas fields
- general partnership interests

#### *Charitable Lead Trust*

A charitable lead trust is a trust in which the income, or “lead” interest, is paid to the Community Foundation, and the “remainder” interest is given to one or more non-charitable beneficiaries, who could be either the donor or family members. The amount paid to the Community Foundation is either a fixed sum (an “annuity trust” interest) or a percentage of trust assets as valued each year (a “unitrust” interest).

Guidelines include:

1. The Community Foundation will not serve as sole trustee or co-trustee of a charitable lead trust. The Community Foundation will work with a financial institution to become the trustee.
2. The trust term is subject to the approval of the Community Foundation or other trustee.

### **ADDENDUM**

#### **The Community Foundation Gift Acceptance Policy Treatment of Excess Business Holdings**

Under the Pension Protection Act of 2006 (PPA), the private foundation excess business holdings rules now apply to donor advised funds as if they were private foundations<sup>i</sup>. That is, the holdings of a donor advised fund in a business enterprise, together with the holdings of persons who are disqualified persons with respect to that fund, may not exceed any of the following:

- Twenty percent<sup>ii</sup> of the voting stock<sup>iii</sup> of an incorporated business
- Twenty percent of that profits interest of a partnership or joint venture of the beneficial interest of a trust or similar entity

Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

Donor advised funds receiving gifts of interests in a business enterprise after the date of the PPA’s enactment (August 17, 2006) will have five years to divest holdings that are

above the permitted amount, with the possibility of an additional five years if approved by the Secretary of the Treasury. Funds that currently hold such assets will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969<sup>iv</sup>

Divestiture is consistent with the policy of the Community Foundation to divest of any gifts of stock, publicly traded or private, as soon as is practicable without unduly affecting the ultimate realized value of the asset.

#### **What is a business enterprise?**

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A “business enterprise” is the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services. Specifically excluded from the definition are:

- Holdings that take the form of bonds or other debt instruments unless they are a disguised form of equity,
- Income from dividends, interest, royalties and from the sale of capital assets,
- Income from leases unless the income would be taxed as unrelated business income,
- “Functionally-related” businesses and program-related investments, and
- Businesses that derive at least 95 percent of their income from passive sources (dividends, interest, rent, royalties, capital gains). This will have the effect of excluding gifts of interests in most family limited partnerships, and other types of holding company arrangements.

#### **What is a disqualified person?**

Donors and persons appointed or designated by donors are disqualified persons if they have – or reasonably expect to have – advisory privileges with respect to the donor-advised fund by virtue of their status as donors. Members of donors’ and advisors’ families are also disqualified, but the section does not define “family” and does not cross-reference either section 4958 or 4946 for the definition. Finally, the term includes 35-percent-controlled entities as defined in section 4958(f)(3).

#### **The Community Foundation Policy with regard to assets categorized under the PPA as “excess business holdings”**

The Community Foundation will identify and monitor any new gift to a donor advised fund of any interest qualifying as an “excess business holding” under the PPA. The Community Foundation will exercise its best effort to dispose of the contributed interest at the best possible price within five years of the date of the gift, as required under the PPA. In any event, the Community Foundation will dispose of any excess business holding prior to the five-year time limit, except in the event that the Treasury Department grants an additional five year holding period. The Community Foundation will notify potential donors of such interests of this requirement prior to the contribution of such interest.

*Approved by the Board of Directors on 06-26-2013*

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