National Conference on Philanthropic Planning

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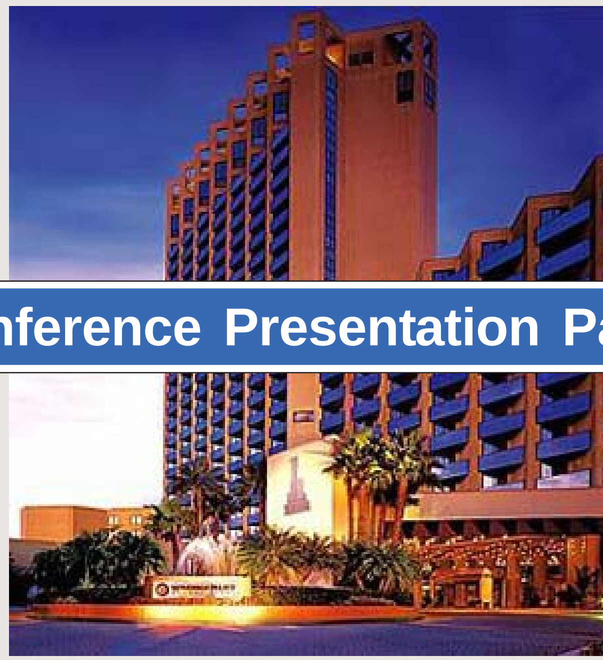

Conference Presentation Paper

Pledges:
Good Understandings Make Good Gifts

1) Pledges perform many purposes for charities.

   a) They can make it possible for a donor to give.

      i) Pledges are ideally suited to spreading out payments on a gift over time. The agreement can state a donor's intention to make a substantial gift.

   b) They can combine outright gifts with deferred gifts.

      i) Not all donors can or wish to make their entire gift in cash, even if the payments are sequenced.

         (1) A pledge agreement can spell out what assets the donor intends to use, and establish that they are acceptable to the institution.

      ii) Many donors consider a major gift to be part of their estate planning. This means that their gifts may need to be realized in stages, and some of those stages may include the release from a life-income gift, after an initial period of retaining the income, or a bequest.

   c) Pledges also serve to make the terms of a gift clear.

      i) One of the fundamental decisions is whether to make a pledge enforceable.

         (1) The bottom line is to discuss it with your donor, and make your joint decision explicit in the document.

         (2) If your agreement is silent on a fundamental point like this, you create an ambiguity that might be litigated—just what you were trying to avoid.

      ii) You *can* make pledge agreements enforceable.

         (1) Enforceability secures the stream of payments necessary to complete the gift, and it also ensures that the donor's intent in making the gift will be clear to the institution and therefore likely to be implemented as intended.

         (2) The most straightforward way to do this is to state it in the agreement.

         (3) Alternatively, you can take some action in reliance on the donor's promise to give: detrimental reliance.

            (a) Normally, promises to make a gift aren't enforceable.

            (b) However, if someone promises to perform an action and the person who will benefit reasonably relies on that promise, the person who promised is bound to complete the action.

            (c) A promise to make a gift can be a promise to perform.

(d) If the benefitted person begins, for instance, to build a building in reliance on the expectation of receiving a gift to cover the costs, the promise becomes enforceable.

(e) The benefitted person can't have known it was a joke or impossible for the promisor to perform, however. In that case, his reliance wouldn't be reasonable.

(4) Another alternative is to rely on state statutes, if available to you, that provide for gifts to be enforceable.

iii) *Should* you make them enforceable?

(1) An enforceable pledge gives your institution some assurance that the gift will be made, but it also creates an obligation for your institution to enforce the agreement should the donor not perform.

(a) The pledge becomes an asset of the institution. The institution may have a fiduciary obligation to its students, patients or other benefitted classes who will benefit from the gift.

(i) An exception may apply where the donor no longer has the means to satisfy the pledge. If performance would be impossible, enforcement is excused.

(b) It can mean suing your donor.

(i) In California, the prudent investor rule will help determine whether or not you must enforce the pledge. [Cal. Prob. Code sec. 16045 et seq.]

1. In general, trustees of trusts have a duty to review trust assets and to establish reasonable standards of risk and return for the trust portfolio.

2. Part of reviewing and evaluating a charity's portfolio includes enforcing pledges that are assets of your institution.

(ii) If you have a duty to enforce, it can lead to very unpleasant situations.

1. For example, what if you had to evict a deceased donor's elderly daughter from her home in order to sell the one remaining asset of the estate that would satisfy the pledge?

2. If you use other assets of the institution to pay her rent at another location, will that be justified as necessary to avoid litigation, or will it be prohibited as private inurement?

3. How will you manage the unfavorable publicity that will inevitably result?

(c) It can even mean suing your own board of trustees.

(i) Your board has a duty to invest your institution's assets wisely. This can include enforcing agreements that benefit the institution. However, agreements have a limited time for enforcement, referred to as the statute of limitations. It is possible for the board to breach its fiduciary duty to the institution if it lets the statute run without taking action or at least determining that action wasn't advisable.

(d) Your institution's obligation doesn't stop with enforcing the pledge. You also must carry through with your promises. The donor or his or her heirs may have standing to enforce these promises.

(i) Years after the donor's obligations under a pledge have been completed, the charity continues to be obligated to use the gift for the agreed-upon purposes.

(ii) In the past, the attorney general was the person with standing to enforce a charity's promises. [E.g., Cal. Govt. Code 12580 et seq.]

1. The attorney general acted on behalf of the benefitted classes, such as students and patients. He or she wasn't acting on behalf of the charity.

(iii) In recent years, however, donors and their heirs have been recognized as litigants with standing to appear in actions to enforce promises made by charities. [*See, e.g., Robertson v. Princeton*, filed in the Superior Court of New Jersey Chancery Division, settled on December 12, 2008.]

1. When a donor enforces a charity's performance, it is sometimes referred to as enforcing "donor intent," but it can also be termed carrying through on the mutual agreement of both parties.

2. This case, although settled, is often credited with significantly furthering "donor rights."

(iv) The possible outcomes of a successful challenge by a donor include clarifying the required actions by the original charity or moving the funds to another charity. Courts may have wide discretion.

(v) Some donors reserve assets in a private foundation to be available to enforce gifts made to public charities.

(e) Writing off a binding pledge is not always a good option.

(i) If your donor is a disqualified person for the purposes of excess benefit transactions, the donor may incur a penalty tax. [*See* IRC sec. 4958.] An excess benefit occurs when an economic benefit provided to such a person exceeds any amount that person provided to the organization in consideration for the benefit. Disqualified persons arguably include large donors, and the rule can reach managers of the organization as well. If your donor receives a forgiveness of an obligation while your institution receives nothing in return, the benefit to the donor may be "excess."

1. Reynolds Cafferata reports informal conversations with the IRS suggesting that the IRS may not seek a penalty if the decision to forgive was a reasonable business decision made by disinterested directors. [Cafferata, Reynolds T., *Should Pledges be Enforceable? And Other Questions To Ask About Gift Agreements*, The Journal of Gift Planning, Vol. 11, No. 1, 1st Quarter 2007.] For instance, if the donor was unable to complete the pledge payments, it might be reasonable to forgive the pledge. Or, if the pledge agreement were fatally ambiguous, it might be reasonable to avoid incurring the costs of trying to enforce it.

(2) On the other hand, the donor may ask you to accept a binding pledge.

(a) Some donors are intent on benefiting the institution. Should you refuse?

(b) If the gift is testamentary, you will only need to enforce a pledge in your donor's estate, and that may be easier than suing during life.

(i) If the donor's estate is being probated in court, you can file a creditor's claim. [*E.g.*, Cal. Prob. Code sec. 9150.]

(ii) If the donor's estate is being distributed through a revocable trust, you can make a claim with the trustee. Court proceedings are available in cases where the trustee disputes or ignores the request. [*E.g.*, Calif. Prob. Code sec. 850 et seq.]

(iii) These actions are routine and not considered to indicate that there is a dispute. An enforceable pledge is a debt of the estate and as such the representative must pay it as a priority, before distributing bequest gifts.

(iv) If the pledge is enforceable, the estate will be able to claim an estate tax deduction. [IRC sec. 2053(c)(1)(A).]

(v) Enforceability in a donor's estate may be one of the few practical reasons to enter into binding pledges.

(c) To secure a pledge made during the donor's lifetime, you can take an intermediate position: the revocable enforceable pledge.

(i) A pledge can be revocable during the donor's life but irrevocable upon his or her death.

(ii) The donor's ability to revoke the pledge would not reach to revoking scheduled payments that had already come due.

(iii) If the donor makes an initial payment when the pledge is signed, the agreement will be partially completed and is more likely to be viewed as enforceable.

(iv) If the donor revokes the pledge, the action promised by the charity will be forgiven. For example, a building may no longer be named after the donor or an endowed fund may become expendable.

(v) For stewardship purposes, the charity should calendar the payment schedule and remind the donor ahead of the time for each payment.

(vi) Sample language, reprinted with Reynolds Cafferata's permission, is attached to the end of this outline.

(3) If you decide to make the pledge enforceable, then the donor should not use funds from a private foundation or a donor advised fund to satisfy the pledge.

(a) If a private foundation uses its assets to satisfy an obligation of a disqualified person of the foundation, the use will be an act of self-dealing. [IRC secs. 4941(d); Treas. Reg. sec. 53.4941(d)-2(f)(1).]

(i) Disqualified persons include substantial contributors to the foundation, and self-dealing penalties can also reach foundation officers and directors. [IRC secs. 4946(a)(1)(A), 507(d)(2).]

(ii) Self-dealing results in penalty taxes assessed against the donor and perhaps against the managers of the private foundation that approved the payment.

(b) If a donor advised fund satisfies an obligation of its donor, it may thereby provide an excess benefit to the donor. [IRC sec. 4958(a).]

(i) An excess benefit is any benefit to a disqualified person that exceeds the value of consideration received from that individual, including payments made "for the use of" any disqualified person. [IRC 4958(c)(1)(A).]

(ii) The donor must pay a penalty tax. [IRC sec. 4958(a).]

(4) You can, of course, make the pledge unenforceable.

(a) Enter into a nonbinding gift agreement that states the donor's intention to make future gifts and the charity's willingness to use the gifts for the stated purpose.

(b) Before the payments are made, both parties are free to modify the agreement or ignore it all together.

(c) Very often, though, donors will follow through on nonbinding pledges because they have thought it through, made a mental promise to themselves, and appreciated the good they will do for the charity.

(d) All the drafting rules for enforceable pledges apply equally to unenforceable pledges: be clear, be clear, be clear.

(i) Provide for what the charity will do with gifts made toward a pledge that is not completed.

2) The mechanics.

a) Booking pledges.

i) For accounting purposes, if a pledge is binding, the institution must include it as an asset in its financial statements. [Financial Accounting Standards Board Statement No. 116, Unconditional Promises to Give.]

(1) Auditors will value at fair value discounted to the present value of estimated cash flow using a discount rate commensurate with the risks involved.

ii) For campaign reporting purposes, guidelines issued by the Partnership for Philanthropic Planning distinguish between irrevocable and revocable pledges. [National Committee on Planned Giving, *Guidelines for Reporting and Counting Charitable Gifts*, 2008.]

(1) Irrevocable pledges collectible during the reporting period are reported in Category A for outright gifts, and are reported at face value.

(a) The reporting period is the period set by the institution as its campaign term.

(b) However, the pledge payment period should not exceed five years. Therefore, a pledge may be paid entirely within the campaign period, but a pledge received on the last day of the campaign may be paid five years after the campaign concludes.

(2) Revocable pledges may also be counted, but in Category C for revocable deferred gifts.

(a) PPP recommends counting revocable gifts separately from outright gifts so that differing benefit to the charity is transparent to the public.

(b) If they are so reported, then they may be reported at face value.

(c) The same logic is recommended for irrevocable deferred gifts like charitable remainder trusts and gift annuities.

(d) If a revocable pledge is paid off, the pledge is usually moved from Category C to Category A.

iii) For stewardship purposes, many institutions recognize both enforceable and unenforceable pledges at full face value.

(1) Institutions can increase the likelihood that a pledge will be paid in full by reporting to the donor on the use of funds received to date.

b) Drafting pledge agreements.

i) Be clear, be clear, be clear.

(1) Attorneys are often criticized for scuttling client agreements. Actually, their efforts to draft written agreements just uncover the fact that no agreement has been arrived at during the verbal discussion stage. There's no meeting of the minds if any of the terms of an agreement are vague or ambiguous. Terms must be defined; defined terms must always mean the same thing; the logic of each succeeding sentence must be tight.

(a) This doesn't mean your agreements have to be stuffy. You may use a donor's first name or full name ("Sandra" or "Sandra Bullock" instead of "Donor"); the institution's short name ("Pomona" instead of its full name or "the Charity"); and a descriptive term for the fund being created ("the Bullock Scholarship" instead of "the Fund").

(i) At the end of the agreement, however, be careful to use the donor's and the institution's full, legal names.

(b) You can use an introductory paragraph to good effect.

(i) Provide a setting for the gift and a place to record the donor's connection to the institution.

(ii) An example is contained in the sample pledge agreement from Pomona College attached to the end of this outline.

ii) Restricted purposes.

(a) Pledges used within a campaign usually have restricted purposes that support campaign purposes.

(b) Most donors these days know to ask the charity to help define the use of their gifts.

(i) They aren't offended by your suggesting changes to their proposed language.

(ii) You will have specialized terms that mean something to your business office but that the donor and his or her advisers aren't aware of. Consult early and often with your business office, and be prepared to explain your terms clearly to your donor so that you can convey terms' meanings. If communicating this way with your business office isn't a common practice in your institution, get to know your staff better and create easy relationships.

(c) Keep it simple: don't create a problem for your business office or stewardship office.

(i) If there are many contingencies, it will be difficult to implement them correctly.

(ii) An example of a somewhat complicated set of restricted purposes is attached to the end of this outline.

(d) Have you dealt with perpetuity?

(i) There's probably no problem in naming a fund for scholarships in perpetuity. The purpose is one that can continue indefinitely. (Nevertheless, see considerations of changing circumstances below.)

(ii) It's harder to name a building in perpetuity. Buildings have natural lives that come to an end. That period may or may not continue as long as the donor's life.

1. Consider naming a building for so long as the charity continues to use the building for the purpose stated, or recognizing the donor for a minimum period of time, e.g., 50 years. It could be a combination: for the natural life of the building or 50 years, whichever is greater.

(iii) If you address this issue in the pledge agreement, children and heirs are likely to understand why you rename a building in later years.

(e) Use restrictions that you expect the institution will be able to use for years and years to come.

(i) E.g., scholarship aid, faculty research and support, student travel for research purposes.

(f) Use models so that you don't forget to include terms and the institution knows that the language has been reviewed and used before.

iii) Endowed funds.

(a) In addition to being restricted to specific purposes, spending can be limited to income, thereby preserving principal in perpetuity.

(i) In years past, "income" meant earned income, such as interest on bonds or dividends from securities.

(ii) In more recent years, charities have invested their endowments for total return (as have other fiduciaries like conservators and trustees) and income has come to mean a combination of earnings and appreciation, limited by a spending policy. [*See, e.g.,* Cal. Prob. Code sec. 18500 et seq., Uniform Management of Institutional Funds Act.]

1. An institution "may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent…" [Cal. Prob. Code sec. 18502.]

2. The standard of care is that of the prudent person: "….the members of the governing board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims…." [Cal. Prob. Code sec. 18506.]

(b) Spending policies often use a formula.

(i) For example: "Each year, spend between 4.5% and 5.5% of the average endowment unit market value during the previous 12 quarters. The precise amount is determined by applying a 4% growth rate to the previous year's spending amount, subject to the 4.5%-5.5% lower and upper limits."

1. (Formulas may have changed since the mortgage crisis and recession that began in 2008.)

(ii) You can simply refer to your institution's endowment spending policy in a pledge agreement without spelling out the entire formula.

(iii) Provide for discretion by the board of trustees to modify the spending policy from time to time.

(c) Donors should understand that spending "income" only can mean invading principal if the dollar value of the endowed fund decreases below the original gift amount.

(i) In the past, recommended uniform laws didn't recommend that charities spend out of endowed funds that declined in value below the historic dollar value, or the original gift amount. Funds that fell below that amount were known as "underwater endowments." [*See*, Uniform Management of Institutional Funds Act of 1972.]

(ii) New provisions, however, allow spending principal up to the amount that the institution considers to be prudent. [*See*, Uniform Prudent Management of Institutional Funds Act of 2006; Cal. Prob. Code sec. 18501-18510.]

1. In California, for instance, the institution may "appropriate for expenditure or accumulate" so much of an endowment fund as it determines is prudent while acting in good faith and considering various factors. The factors include the possible effect of inflation or deflation and the expected total return from income and appreciation. This flexibility, however, is still practiced in the context of the creation of endowment funds "of permanent duration." [Cal. Prob. Code sec. 18504.]

a. A rebuttable presumption of prudence is provided for some charities if the institution spends no more than 7% of the value of a fund as averaged over the prior three years. This presumption doesn't apply to private or public postsecondary institutions. [*Ibid.*]

2. Donors may limit expenditures beyond those provided for legislatively if the charity agrees and the terms are explicitly written into a pledge agreement.

(d) Provide for changed circumstances.

(i) Even with careful planning for the use of a fund, restricted uses can become impossible to implement after many years.

1. In years past, a charity could change the use of a fund if the purpose became impossible to carry out. Impossibility provided an excuse for failure to perform under a contract. (The old examples often included the unforeseen inability of one party to obtain sufficient raw materials to complete a project.)

   a. For instance, a college may stop teaching botany as a distinct field, incorporating it into the study of biology. The institution will need to determine whether funds in support of botany may be used for biology.

2. In recent years, many states have legislated the circumstances where non-performance will be excused. [*See,* Cal. Prob. Code sec. 18506.]

   a. Many states have adopted the Uniform Prudent Management of Institutional Funds Act, promulgated in 2006, which allows the charity to "release or modify" a restriction, if the donor consents.

   b. If the donor isn't available, the court may modify a restriction that has become impracticable or wasteful in a manner that is consistent with the charitable purposes expressed in the original gift instrument.

   c. An institution may even release or modify a restriction if the endowed fund is small (less than $20,000 under the Uniform Act, but less than $100,000 in California) and old (more than 20 years) and the change is consistent with the original intention.

3) Taking pledges a step further.

a) Pledges are usually agreements to make outright gifts over time.

i) As such, they are a basic building block of capital campaigns.

b) Some of the same benefits, however, can be achieved through deferred gifts.

i) Short-term charitable remainder trusts and charitable lead trusts can provide benefit to the charity within the time-frame of a capital campaign, rather than years later as is common with deferred gifts.

ii) Retention of the income interest can solve a problem for the donor, who may want an immediate charitable deduction or to catch the financial markets at a favorable moment but who needs to retain income for a specific purpose for a few years.

iii) Restrictions on purpose don't pose a problem because the agreement will release to the institution by the end of the campaign, or at least within a reasonable time after.

c) For instance, you might enter into a charitable remainder trust that has a five-year term and a minimum 5% distribution rate. After the five-year period in which the donor retains the income interest, the trust principal releases to the charity. The trust can provide for one of the restricted purposes of the campaign.

i) You might call this a "5 and 5 Trust."

ii) It could be a net income unitrust, a basic unitrust or a “flip” unitrust that changes character from net income to basic after an event occurs. Using a flip trust permits the charity to accept real property that the donor doesn’t wish to give outright.

d) Another similar approach is to establish a charitable remainder trust that would have an eight-year term, be funded with at least $800,000, and would create an endowed fund on release.

i) You might call this an “8 and 8 Trust.”

ii) The distribution rate would still be the minimum 5%.

iii) The endowed fund would support one of the campaign goals, e.g., Junior Faculty Support Fund.

iv) You might project a release of $1,000,000.

e) Another possibility is to create a short-term charitable lead trust that would make payments to the charity within the footprint of the campaign.

i) It could be a grantor lead trust or a non-grantor lead trust.

(1) A grantor lead trust will return the assets to the donor at the end of the charitable payment period.

(a) The donor may claim a charitable deduction for the value of the income stream expected by the charity.

(b) The donor’s charitable deduction thereby moves up into the initial year of the pledge, rather than being spread over the course of the payments as with a structured outright gift.

(2) A non-grantor lead trust will transfer the assets to the donor’s heirs or other beneficiaries at the end of the charitable payment period.

(a) The donor may not claim a charitable deduction, but he or she may achieve estate planning purposes in addition to supporting the charity’s campaign goals.

ii) You might call this a “Dare to Lead” trust.

4) In summary, pledge agreements form a fundamental building block for charitable institutions.

a) This is true whether you are in a capital campaign or just carrying on good fundraising work.

b) Usually, they are used to provide gift agreements for structured outright gifts, but they can also combine deferred and outright gifts and, with a little imagination, the same purpose can be achieved using short-term deferred gifts.

c) The secret ingredient is clarity.

   i) Think through whether you want to make a pledge irrevocable or revocable.

   ii) Once that is decided, word your agreements carefully so that no one is surprised by the implementation.

   iii) Good work on the front end will give the donor and the institution years of satisfaction.

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Sample Language for
Revocable Enforceable Pledge

Reprinted with permission from Reynolds T. Cafferata, Esq., of Rodriguez, Horii & Choi, Los Angeles, California, as published in *Should Pledges be Enforceable? And Other Questions To Ask About Gift Agreements,* The Journal of gift Planning, Vol. 11, No. 1, 1st Quarter 2007.

Donor and Charity agree that prior to the due date for any payment due under this Agreement, Donor may revoke his obligation to make any further payments under this Agreement by notifying Charity of such revocation in writing. If Donor does not notify Charity of the revocation of this Agreement before the due date of a payment under this Agreement, Donor and Donor's estate shall be irrevocably obligated to make such payment. If donor revokes this Agreement prior to the payment of all amounts due under this Agreement, Charity shall not be obligated to recognize the gift and may provide such recognition as Charity determines is appropriate for the amounts given by Donor prior to revocation of this Agreement. If donor revokes this Agreement, Charity shall retain all amounts given by Donor before such revocation and shall use such amounts consistent with the purposes set forth in this Agreement. While donor is living, only Donor individually may exercise the right to revoke this Agreement, and it may not be exercised by any other person, including, but not limited to, Donor's personal representative or Donor's agent under a power of attorney. Donor's pledge shall become irrevocable upon donor's death if the Agreement is not revoked by the donor during his lifetime. If Donor does not revoke this Agreement, Donor's estate shall be liable for the difference, if any, between $_____________ [the amount of the gift] and the sum of the amounts paid by Donor to Charity during donor's lifetime. If Donor revokes this Agreement during his lifetime, Donor's estate shall be liable for all amounts that became irrevocable prior to Donor's revocation and which were not paid by Donor during his lifetime.

GIFT AGREEMENT

between

________________ and ________________

And

Pomona College

Establishing the _________ [Family] Fund

This gift agreement describes a donor fund to be established by gifts from _____*Full Legal Names*____________ ("__*Defined Names:*__ *first names?*___ *Mr. and Mrs.?*_____") [and other members of the _________ family] to Pomona College, a California non-profit corporation ("Pomona"). It also acknowledges _______ and ______'s intention to continue making gifts to the Annual Fund as an additional type of support of Pomona.

*Tailor personal information to the donors. E.g.:*________ is a member of the Class of _____ and he and ________ are parents of ______________ of the Class of _____. ________'s father, _______________, is a member of the Class of _____. _______ is cognizant of the opportunities that have been provided by Pomona to [three generations of his family, leading him to become a dedicated volunteer]. ______ has provided leadership for Pomona College as a [reunion co-chair, a Torchbearer Board Member and as the National Chair of Annual Giving from ___________ to _________. He was elected to the Board of Trustees in _____.

The Annual Fund: _______ and ______ intend to continue their practice of making annual gifts to Pomona's Annual Fund. They have made gifts of $_________ to the Annual Fund on account of the fiscal years ending June 30, ______, ______, ______, and ______, and expect to continue to donate

$________ each year to the Annual Fund through June 30, ______, as part of Pomona's capital campaign *(Daring Minds).*

Capital Gift: In addition to the above gifts to the Annual Fund, _______ and _______ intend to establish the ________________________ [Family] Fund ("the ________ Fund") with gifts totaling $______________. _______ and _______ intend to fulfill their pledge according to the following schedule:

First payment:	$__________	on or before	___MM/DD/YY___
Second payment:	$__________	on or before	___MM/DD/YY___
Third payment:	$__________	on or before	___MM/DD/YY___
Fourth payment:	$__________	on or before	___MM/DD/YY___

If expenditures will not be restricted: Expenditures from the _________ Fund shall be made for the most needed purpose of the College as determined, in its sole discretion, by the board of trustees of Pomona.

If expenditures will be restricted: Expenditures from the _________ Fund shall be made for the following restricted purpose:

____

If the fund may be expended: The _________ Fund may be expended at the discretion of the board of trustees of Pomona.

If the gift will establish a new endowed fund: The _________ Fund shall establish a new endowed fund at Pomona in support of the above restricted purpose.

If the gift will be funded into an existing endowed fund: The _________ Fund shall be funded into the Pomona College Fund in Support of ________________ [*e.g.,* Scholarships] to support ______________________ [*e.g.,* students who have financial need] and gifts made under this Gift Agreement shall be used in furtherance of its purposes.

For both new and existing endowed funds: The gifts made in payment of this pledge may be merged with the general investment assets of Pomona College for investment and management purposes. Expenditures from the _________ Fund shall be made in accordance with the endowment payout rate established from time to time by the board of trustees of Pomona. If gifts to the Fund do not reach a value of $__________ by July 1, _____, then Pomona may expend the principal as well as the endowment payout rate for the restricted purpose outlined above. If, in the judgment of the board of trustees of Pomona, continued expenditure of all or part of the endowment payout rate from the _________ Fund for the restricted purpose described above would be unlawful, impracticable, impossible to achieve, or wasteful, then the board of trustees, in its sole discretion, may use the _________ Fund for such other purposes as it deems advisable for the best interests of Pomona, giving due consideration to _______ and _______'s special interests as evidenced in this Gift Agreement.

If the donors will have an ongoing advisory role: Pomona will seek _______ and _______'s advice on expenditures from the _________ Fund for the restricted purpose described above. Pomona will, however, have the final authority to expend such funds in its sole discretion for purposes it deems to be in the best interests of Pomona. The _________ Fund is not a donor advised fund as contemplated by Internal Revenue Code section 4966. The _________ Fund is for the benefit of one charitable beneficiary.

If appropriate: Gifts may be made to the _________ Fund by any member of the _________ family and by such other donors as may wish to make gifts from time to time.

Pomona shall report to _______ and _______ annually [*if appropriate:* after expenditures begin on July 1, _____, OR after the final payment provided for above] [and at such other times as may be agreed between the donors and Pomona,] on the uses it makes of the _________ Fund.

Pomona acknowledges that the pledges made in this agreement _are / are not_ binding on _______ and _______, their successors and assigns, and ____are / are not___ legally enforceable by Pomona. Pomona shall be bound by the terms of this agreement in so far as the gifts contemplated by it are completed.

Pomona will acknowledge these gifts in publications and for other purposes as follows:

Name of the Fund: The _________ [Family] Fund

Donor Names: ___Full Legal Names______, [and others as appropriate]

We agree to the above description of purposes and stewardship of the gifts provided for in this Gift Agreement, which agreement shall be effective on the date provided below.

Date: ______________________ **Donors:**

____
Typed name: __________________

____
Typed name: ____________________

Pomona gratefully acknowledges and accepts the gifts described in this Gift Agreement.

Pomona College:

____
Typed name: ______________________
Title: _____________________________

____
Typed name: ______________________
Title: _____________________________

Example of More Complicated Restriction of Purposes

The Donor Fund shall be governed by the following restrictions:

1. The _________ Fund may be commingled with any of the investment assets of Pomona, but it shall be entered in Pomona's books and records as a donor fund known as THE _________ FAMILY FUND.

2. Pomona shall not expend any funds from the _________ Fund during the first five years, which period shall end on July 1, 2015. During that time, the _________ Fund shall accumulate all earnings and income. Thereafter, Pomona shall make distributions in the amount of the endowment payout rate as that amount shall be determined from time to time by the Board of Trustees of Pomona College.

3. Beginning July 1, 2015, and so long as the market value of the _________ Fund is less than $250,000, the principal of the _________ Fund shall not be spent but expenditures in the amounts provided for in item 2. above shall be made by Pomona for one or more of the following purposes as determined by Pomona in its discretion. Pomona may change the purposes from time to time, but not more often than annually.

    a. Financial aid for students found by Pomona to have financial need; or

    b. Support of the Career Development Office; or

    c. Support of the new Studio Arts building; or

    d. If, in the judgment of the Board of Trustees, changed circumstances should at some future time render the above designated uses of the _________ Fund no longer appropriate, then the Board of Trustees shall, in its sole discretion, use distributions from the _________ Fund to further the objects and purposes of Pomona, giving consideration to the special interests described in this paragraph above.

4. Gifts may be made to the _________ Fund by any member of the _________ family and by such other donors as may wish to make gifts from time to time.

5. Pomona shall report to _______ and _______ annually after distributions begin on July 1, 2015, on the uses it makes of the Wrench Fund.

6. On or after the date on which the market value of the _________ Fund first reaches $250,000 (but not before July 1, 2015), Pomona may expend principal as well as the endowment takeout percentage for a capital use to be determined by the president of Pomona in consultation with _______ and _______. Recognition shall be given at that time to the _________ Fund for its support of Pomona. If the guidelines of Pomona then permit, the use shall be recognized by naming the purpose for ____________________ and, if appropriate, any other donors to the _________ Fund. If Pomona does not expend the entire principal as provided for in this paragraph, Pomona shall continue to expend the endowment takeout percentage as provided for in item 3. above.

7. Pomona will seek _______ and _______'s advice on expenditures from the _________ Fund for capital purposes. Pomona will, however, have the final authority to expend such funds in its sole discretion for capital purposes it deems to be in the best interests of Pomona.

8. If the _________Fund does not reach a value of $100,000 by July 1, 2015, then Pomona may spend the principal as well as the endowment takeout percentage for any of the purposes outlined in item 3. above.

The _________ Fund is not a donor advised fund as contemplated by Internal Revenue Code section 4966. It is for the benefit of one charitable beneficiary.