

## PROCEDURES FOR ESTABLISHMENT AND OPERATION OF FUNDS AND AFFILIATED ORGANIZATIONS

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# PROCEDURES FOR ESTABLISHMENT AND OPERATION OF FUNDS AND AFFILIATED ORGANIZATIONS

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KERN COMMUNITY FOUNDATION has established the following procedures in order to carry out its mission:

Connecting donors to the priorities they care about and to the needs of the community, increasing charitable giving and providing leadership on critical community issues.

## **PART A. RULES GOVERNING ALL FUNDS AND AFFILIATED ORGANIZATIONS**

### **Section 1. *Types of Donors, Funds, Affiliated Organizations and Split-Interest Arrangements***

A Donor may establish with Kern Community Foundation one or more Funds, Affiliated Organizations and Split-Interest Arrangements. A Fund is an integral part of Kern Community Foundation; grants are made from each Fund to carry out the charitable purposes specified by the Donor. Affiliated Organizations and Split-Interest Trusts are not Funds and generally constitute separate legal entities. Affiliated Organizations are generally grant-making charitable organizations and Split-Interest Arrangements are ways to make a deferred gift to establish a Fund. Included within these categories are:

#### a. Eligible Donors

Kern Community Foundation will accept contributions from the following types of Donors:

1. Individuals and family members
2. Companies/Corporations/Professional Corporations and Firms
3. Nonprofit Organizations
4. Private Foundations
5. Various Branches of Government
6. Collective private groups of concerned citizens and associations
7. Bequests and Trusts

#### b. Funds

1. Donor Advised Funds
2. Designated Funds
3. Nonprofit Organization Funds
4. Field of Interest Funds
5. Scholarship Funds
6. Unrestricted Funds

#### c. Affiliated Organizations

1. Affiliated Trusts, Corporations, Foundations and Funds
2. Supporting Organizations

#### d. Split-Interest Arrangements

1. Charitable Gift Annuities
2. Charitable Remainder Trusts
3. Charitable Lead Trusts
4. Retained Life Estate

## **Section 2. *Acceptance of Contributions***

### **a. General Policies and Approval**

Requests to establish Funds, Affiliated Organizations or Split-Interest Arrangements with Kern Community Foundation will be reviewed by the staff (and by the Board of Directors (or a designated committee) if the staff determines such a review is necessary) for consistency with Kern Community Foundation's charitable purposes and specific charitable needs. The senior management officers of Kern Community Foundation (i.e., President and Senior/Executive Vice Presidents) have the authority to approve the establishment of individual Funds and affiliated relationships/agreements/contracts. With respect to supporting organizations, the senior management officers have the authority to recommend approval of a particular supporting organization relationship to the Board of Directors, but the Board of Directors (or a designated committee) shall have the final authority to formally approve the relationship by appointing the requisite number of directors to the supporting organization's board.

### **b. Review and Approval of Contributions**

All contributions are subject to the review and approval by Kern Community Foundation prior to acceptance. Kern Community Foundation's staff generally has the authority to accept contributions of cash and marketable securities (those that are actively traded and sellable on the open market). A senior management officer of Kern Community Foundation (i.e., President or Senior/Executive Vice President) before acceptance will review contributions of all other assets that are not readily marketable and shall consider the value of the asset, the likelihood that the asset can be quickly liquidated, the charitable nature of the gift, potential risks to Kern Community Foundation, carrying costs, and unrelated business income tax consequences. Contributions of illiquid assets include but are not limited to closely held securities, limited liability corporations (LLC's), limited partnerships and tangible personal property and require prior approval per gift acceptance policies as established and approved by the Board of Directors (or a designated committee). Contributions of real estate shall be handled by the Kern Real Estate Foundation, a supporting organization of Kern Community Foundation, and are subject to the review and approval by the board of directors of the Kern Real Estate Foundation.

Contributions that would violate the excess business holdings rule for donor advised funds under the Pension Protection Act of 2006 are generally prohibited, but may be accepted in special circumstances if reviewed and approved by a senior management officer of Kern Community Foundation. Any interest in an entity in which any interest is owned by a donor advised fund, by a family member of any such person, or by an entity in which any of the foregoing persons has an interest shall be referred to Kern Community Foundation's senior management and corporate counsel for an opinion on the possible application of Code section 4943. *See Appendix: Section 5 for treatment of excess business holdings.*

### **c. Written Acknowledgment of Acceptance of Contributions**

Kern Community Foundation will provide written confirmation at the time of acceptance of any contribution that is required by the IRS to be documented by an acknowledgment for the Donor's tax return. Kern Community Foundation, in its discretion, may also provide written confirmation of contributions that are not otherwise required by the IRS to be acknowledged. Contributions not accepted will be returned as soon as practical. The confirmation will include the dollar amount of the contribution of any cash gifts and marketable securities such as publicly traded stocks, bonds and mutual fund shares. Acknowledgement of private securities and other illiquid assets will only include a description of the gift but will not include a dollar value of the donated asset. Donors should obtain a qualified independent appraisal prior to making such a contribution. (The IRS generally requires a donor to obtain a qualified appraisal for illiquid assets no earlier than 60 days before the date of the gift and no later than the due date (including extensions) for the return where the donor first claims a deduction for the gift.)

d. Donor's Counsel

Kern Community Foundation encourages each prospective Donor to have the terms of all proposed agreements reviewed by the Donor's legal and/or financial advisors. Kern Community Foundation does not provide legal, tax or financial advice. The Donor is advised that it is the Donor's responsibility to obtain any necessary appraisals, file appropriate tax returns, and defend against any challenges to claims of tax benefits.

e. Minimum Initial Contributions

Generally, there is no minimum amount to establish a named Fund.

The minimum amounts to establish a Split-Interest Arrangement are:

- |                                       |           |
|---------------------------------------|-----------|
| 1. Charitable Gift Annuity            | \$100,000 |
| 2. Charitable Remainder Annuity Trust | \$100,000 |
| 3. Charitable Remainder Unitrust      | \$100,000 |

The minimum amounts necessary to establish an Affiliated Organization will be mutually agreed upon by the Board of Directors (or its designated committee) and the Donor or the governing body of the Affiliated Organization.

f. Additional Contributions

Additional contributions of cash and actively traded marketable securities to an established Fund may be made in any amount at any time. Gifts of other assets (illiquid assets) require advanced approval per gift acceptance policies approved by the Board of Directors (or a designated committee) (see Section 2.b. above). However, federal tax laws prohibit additional contributions to a charitable remainder annuity trust or a charitable gift annuity. In these cases, a new trust or annuity agreement will be necessary.

g. Contributions are Irrevocable

Any contribution made to Kern Community Foundation, once accepted, represents an irrevocable charitable contribution to Kern Community Foundation. Contributions to Kern Community Foundation are not refundable.

h. Donor Restrictions on Use of Property

Federal tax laws provide that a Donor to Kern Community Foundation may not impose any "material restriction" (a term defined in the Treasury Regulations), which prevents Kern Community Foundation from freely and effectively employing the contributed assets, or the income derived there from, in furtherance of its charitable purposes. Any restriction (beyond the specified charitable purposes stated in the instrument of transfer) sought to be imposed by a Donor is subject to review and approval by Kern Community Foundation.

i. Policy to Sell Contributed Property

The general policy of Kern Community Foundation is to sell all contributed property as soon as practical after receipt so as to minimize market risk. For non-publicly traded securities or other assets for which no readily liquid market exists, Kern Community Foundation will exercise discretion as to the timing and price of sales. Closely held stock or other assets for which no readily liquid market exists that are retained for any reason and that are valued in excess of \$1,000,000 (or, in the aggregate, are of material value compared to the other assets of Kern Community Foundation), shall be revalued using a qualified appraisal every three (3) years from the date of the gift to Kern Community Foundation. The cost of the qualified appraisal shall

be an expense of the Fund, Affiliated Organization or Split-Interest Arrangement holding such asset. Any costs incurred by Kern Community Foundation necessary for the disposition of securities and other assets (i.e., legal and appraisal fees) and for the management of such assets prior to disposition will be an expense of the Fund. Exceptions to this general policy will be made only in unusual circumstances and only with the prior approval of a senior management officer of Kern Community Foundation (i.e., President or Senior/Executive Vice President) and in accordance with policies as established and approved by the Investment Committee.

j. Tax Deduction vs. Net Proceeds from Sale of Contributed Property

An individual for income tax purposes can deduct a charitable contribution only in the year in which the contribution is actually paid or ownership has transferred (excess contributions above adjusted gross income percentage limitations may be carried forward for up to five additional years). Tax laws generally provide rules on how the value of the contribution deduction is to be determined. Gifts to Kern Community Foundation are deductible at the highest "public charity" level allowed by law. Please see the Appendix for a further explanation of tax laws governing charitable contributions.

The value of the contribution for tax deduction purposes may vary from the net proceeds realized by Kern Community Foundation upon the sale of the contributed property. Donors are encouraged to consult with their professional tax advisors to determine the appropriate value for tax deduction purposes.

k. Confidentiality

All agreements with Donors and all information concerning Donors and prospective Donors shall be held in strict confidence by Kern Community Foundation, subject to legally authorized and enforceable requests for information by government agencies and courts. All other requests for or releases of information concerning a Donor will be honored or allowed only if permission is obtained from the Donor prior to release of such information.

**Section 3. *Investment Policies***

Kern Community Foundation's investment program shall seek to provide competitive market returns with reasonable levels of risk. The officers of Kern Community Foundation so empowered or the Investment Committee shall direct the investments of these Funds consistent with the objective. Copies of Kern Community Foundation's investment program and policies are available to any interested party upon request.

Generally, if a particular investment portfolio is not recommended by the Donor, Donor Advisor(s) or Advisory Committee as provided below, Funds shall be invested in Kern Community Foundation's money market pool. If a Donor, Donor Advisor(s) or an Advisory Committee is interested in having all or a portion of a Fund invested in a particular investment portfolio provided by Kern Community Foundation, then the current Donor, Donor Advisor(s) or Advisory Committee may make an appropriate recommendation to Kern Community Foundation in accordance with the policies and procedures approved by the Investment Committee. Such recommendations are advisory, and Kern Community Foundation will exercise independent authority over the investments of the principal and income of each Fund. Segregated asset accounts may be permitted, with advanced approval. The Fund holding such accounts shall pay the direct costs of such arrangements, including additional administrative costs.

**Section 4. *Administrative Expenses***

Each Fund, Affiliated Organization and Split-Interest Arrangement will be charged its equitable share of Kern Community Foundation's expenses in accordance with the current administrative fee schedule as approved by the Board of Directors (or a designated committee). If an expense is directly associated with a specific Fund, Affiliated Organization or Split-Interest Arrangement, then the expense will generally be directly charged to the



applicable fund. The current Kern Community Foundation fee schedule is available to any interested party upon request.

### **Section 5. Charitable Purpose**

For purposes of these Procedures, a "charitable purpose" is an educational, religious, scientific, literary, public or other purpose permitted to be carried on by organizations described in Sections 170(c)(1) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended.

### **Section 6. Educational Program**

Kern Community Foundation's mission and activities and the needs of the community will be well served by active promotion and community education concerning such activities and needs. Kern Community Foundation shall conduct an educational program by publicizing these procedures and the specific charitable needs to be supported by its Funds and Affiliated Organizations. The education program may be conducted as part of a larger effort of Kern Community Foundation to educate the public concerning the scope of the charitable activities and services of Kern Community Foundation.

### **Section 7. Amendments**

The Procedures for Establishment and Operation of Funds and Affiliated Organizations may be amended by a majority vote of the Board of Directors (or a designated committee) at any regular or special meeting.

## **PART B. FUNDS**

### **Section 1. Types of Funds**

Funds are categorized by their charitable purpose and by how the assets are administered.

#### a. Categorization by Charitable Purpose

1. *Donor Advised Funds*: the Donor, Donor Advisor(s) or Advisory Committee may recommend charitable grant recipients from time to time.
2. *Designated Funds*: this type of fund is created to ensure that support will be provided to one or more specific charitable organizations named by the Donor(s).
3. *Organization Funds*: this type of fund is established by nonprofit charitable organizations to help manage endowment assets and/or special project funds.
4. *Field of Interest Funds*: this type of fund allows the Donor to support an area of charitable interest, defined broadly (such as education) or narrowly (such as advanced vocal music training). A Donor can also select a defined geographic area or specific community to benefit from grant distributions.
5. *Scholarship Funds*: Donors can support worthy students at an institution (high school, college, technical), students in a particular field of study, students from a particular geographic area, or students who have attended a specific high school or school district, provided that the students are selected through an objective and non-discriminatory competitive selection process.
6. *Unrestricted Funds*: Donors may choose an unrestricted fund that allows Kern Community Foundation to determine where annual grant distributions will do the most good.

#### b. Categorization by Administration of Assets

1. Integral Funds, where the assets are managed by Kern Community Foundation (the general rule); and
2. Component Funds, where the Donor has designated a trustee, custodian, or agent to have custody of and administer the assets in the Fund and Kern Community Foundation has accepted this arrangement.

As is required by the federal tax regulations, the financial reports and audited financial statements will treat all Integral and Component Funds as funds of Kern Community Foundation.

## **Section 2. *General Policies***

Each Fund, whether administered directly by Kern Community Foundation or through a separate trust, custodial account or agency agreement, shall be considered part of (and legally owned by) Kern Community Foundation and shall be governed by its Articles of Incorporation, Bylaws and by these Procedures. Funds will generally be administered directly by Kern Community Foundation but a Donor may request to have a Component Fund. Regardless of the form of administration, Kern Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

## **Section 3. *Donor May Select Name of Fund***

Each Fund will be named as the Donor wishes. However, Kern Community Foundation reserves the right to reject names that it finds objectionable.

## **Section 4. *Distributions***

### a. Grants Shall Follow Donor's Intent

Grants will be made from each Fund consistent with the instructions given by the Donor at the time that the Fund was established. If, however, (1) the Donor's instructions are contrary to the Articles of Incorporation, Bylaws or Procedures, or (2) the "variance power" (described below in Sections B.5; B.8(b); B.9(b); B.10(b); and B.11(b)) is exercised, then the Donor's instructions shall be modified to a degree that is necessary for compliance with these Procedures. To the extent practicable or feasible, the Board of Directors shall distribute amounts for purposes that are consistent with the Donor's charitable interests. Kern Community Foundation is vested with ultimate authority and control over the principal and income of each Fund.

### b. Grants Will Normally Identify the Name of the Fund

Unless otherwise requested by the Donor Advisor, any distribution shall identify the name of the Fund from which it is made.

### c. Grants Must Not Provide a Financial Benefit to Donor

Kern Community Foundation will not make a grant that provides a financial benefit to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named, or any related party to such a person (for purposes of this Manual, a "related party" shall include (i) any family member of such person (i.e., such person's spouse, ancestors, children, grandchildren, great-grandchildren, brothers, sisters and any of their spouses) and (ii) any entity in which such a person or a combination of such persons owns more than 35% of the combined voting power, profits interest or beneficial interest). (The preceding sentence does not apply to grants made out of an Organization Fund to the Organization for which the Fund was established.)

Distributions from Kern Community Foundation may not be used in whole or in part for any pre-existing legally binding pledge or for any private benefit such as dues, membership fees, benefit tickets or tables at fund-raising dinners, or goods and services bought at charitable auctions.

Kern Community Foundation may make grants that provide a Donor, Donor Advisor(s), Advisory Committee member or related party with name recognition and such other benefits that the Internal Revenue Service has recognized as not providing the Donor with a financial benefit.

d. Other Limits on Distributions

Additional rules apply to funds classified as “donor advised funds” under the Pension Protection Act of 2006. The legal definition of a donor advised fund under this law is a fund or account that (i) is separately identified by reference to contributions of a donor or donors; (ii) is owned and controlled by a “sponsoring organization” (i.e., Kern Community Foundation); and (iii) the donor (or any person appointed or designated by the donor – a “donor advisor”) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor’s status as a donor. This definition could include funds that Kern Community Foundation has classified as Donor Advised Funds, Designated Funds or Field of Interest Funds.

Kern Community Foundation will not make any grant, loan, compensation or similar payment (including expense reimbursement) to a Donor, Donor Advisor, Advisory Committee member, any person in whose honor a Fund is created or named or any related party from any fund that is classified as a donor advised fund under the law.

Effective January 1, 2007, Kern Community Foundation will also not make any grant directly to an individual or to an organization for the benefit of a specified individual from any fund that is classified as a donor advised fund under the law.

Also effective January 1, 2007, if a distribution is proposed from any fund that is classified as a donor advised fund under the law to a non-charitable entity or to a Type III supporting organization that is not “functionally integrated” with Kern Community Foundation as defined by law, then such distribution will not be allowed until it has been reviewed by a senior management officer of Kern Community Foundation (i.e., President or Senior/Executive Vice President) and, if required by law, procedures are in place so that Kern Community Foundation can exercise “expenditure responsibility” over such distribution. Expenditure responsibility generally requires Kern Community Foundation to exert all reasonable efforts and establish adequate procedures to (i) see that the distribution is spent solely for the charitable purpose for which it is made, (ii) obtain full and complete reports from the distributee regarding the use of such distribution and (iii) make full and detailed reports regarding such distribution to the Secretary of the Treasury.

e. Donor Generally Cannot Control Timing of Grants

The ultimate right to direct the timing and amount of all distributions of income or principal from any Component Fund is vested in the Board of Directors. As is required by federal tax regulations, a Donor may not reserve the right to direct the timing of distributions from the Fund. However, a Donor can specify in the instrument of transfer:

1. That some or all of the principal (as opposed to income or specific assets) may not be distributed for a specified period of time.
2. That distributions are limited to income only.
3. That distributions should be made annually (or more frequently).

If distributions are limited to income, and unless otherwise specified in the instrument of transfer, income shall be annually computed based on the current spending policy of Kern Community Foundation (i.e. currently 4% of the average past three year-end Fund asset balances).

f. Board May Identify Specific Charitable Needs of the Community

In fulfilling that part of Kern Community Foundation's mission of providing leadership on critical community issues, the Board may enumerate specific charitable needs and specific organizations that it deems are most deserving of support.

**Section 5. *Variance Power And Monitoring Function***

a. Kern Community Foundation to Follow General Donor Intent if Variance Power is Exercised

If the Board of Directors exercises the variance power described in Section B.8(b), B.9(b), B.10(b), or B.11(b) to modify a Designated Fund, Organization Fund, Field of Interest Fund, or Scholarship Fund, or if the privilege of the Donor, Donor Advisor(s) or Advisory Committee and other persons designated to make recommendations from a Donor Advised Fund has been terminated in accordance with Section B.7, then the Board of Directors shall convert the Fund into its choice of either an Unrestricted Fund or a Field of Interest Fund. To the extent practicable or feasible, the Board of Directors shall distribute charitable grants from the converted Fund for purposes that are consistent with the original Donor's charitable interests.

b. Fund To Keep Donor's Name If Variance Power Exercised

Generally the Fund shall retain the name given by the Donor unless the Board of Directors, in its discretion, has chosen to deposit all of the Fund's assets into the General Fund.

c. Kern Community Foundation to Monitor Beneficiary's Performance of Terms of Grant.

In addition to the Monitoring Functions hereinafter stated, the Board of Directors through the Board Committees and the Staff may periodically review the effectiveness with which agencies that receive grants from Funds and Affiliated Organizations are performing their responsibilities in the utilization of these grants toward attainment of Kern Community Foundation's and the Donor's objectives. Where necessary, the Board shall initiate corrective action.

**Section 6. *Advisory Committees of Funds***

a. General Rules

A Donor or the Board of Directors may appoint an Advisory Committee for a Donor Advised, Designated, Nonprofit Organization or Unrestricted Fund.

With respect to a Field of Interest Fund, the Donor may recommend an Advisory Committee (which may include the Donor) to be appointed by Kern Community Foundation in which case the senior management officers of Kern Community Foundation (i.e., President and Senior/Executive Vice Presidents) shall have the authority to appoint the Advisory Committee on behalf of the Board of Directors of Kern Community Foundation.

The rules governing an Advisory Committee for a Scholarship Fund are set forth in Section B.11(a)3 below.

The Advisory Committee may make recommendations to the Board of Directors concerning grants from the Fund and any other matters that it deems of importance. Generally, each Advisory Committee should select one person who will have the authority to transmit the Advisory Committee's recommendations to Kern Community Foundation.

b. Usually Majority Vote Is Required

Unless contrary instructions have been made by the Donor or by Kern Community Foundation, whenever two persons are designated to make recommendations they shall act by unanimous consent; whenever more than two persons are so designated, then a recommendation by a majority of such persons shall constitute an effective recommendation for consideration by Kern Community Foundation. Otherwise, each committee may operate under such procedures as it finds appropriate.

c. Authority to Act as Agent of Kern Community Foundation Restricted

Kern Community Foundation generally encourages Donors to solicit contributions to Kern Community Foundation and its Funds. However, no person has the authority to act as the agent of Kern Community Foundation unless he or she has received express written authority from Kern Community Foundation. In particular, Kern Community Foundation does not authorize any volunteer or advisor to accept contributions on its behalf, to commit Kern Community Foundation resources to any activity, or to engage in fundraising activities in the name of Kern Community Foundation or on behalf of any of its Funds without written permission from the Board of Directors or an authorized employee.

Kern Community Foundation is generally supportive of charitable activities that benefit the residents of this region. The restrictions in this section are necessitated, in part, because of compliance with tax and other laws that require disclosure of benefits associated with charitable contributions as well as contemporaneous written acknowledgements to certain Donors of contributions (the failure for which could subject Kern Community Foundation and its Funds to fines and penalties). We need to be informed about activities being done in the name of Kern Community Foundation (and its Funds) and to monitor any obligations associated with those activities.

d. Fund raising

Kern Community Foundation will not sponsor any fund raising or other events for any Fund, and will not be responsible for the collection of any amounts from any benefit, ball, banquet or athletic event but will only be responsible for the proper disbursement of funds actually received. Any advertising, promotional or other materials must be consistent with this policy.

e. Divorce/Separation of Current Donor Advisors

This policy generally will only affect current Donor Advisors whereby either husband and/or wife (spouse) may request grant distributions from a Fund.

In the event a husband and wife serve as the only members of an Advisory Committee to a Fund, and a legal action for divorce, separation or annulment is pending between the husband and wife, Kern Community Foundation may, upon receiving notice of such action:

1. suspend processing any grant distribution recommendation for such Fund(s) unless and until the husband and wife both agree in writing to approve the grant distribution recommendation, or
2. suspend processing any grant distribution recommendations for such Fund(s) unless and until the husband and wife have jointly agreed in writing to an alternative procedure, acceptable to Kern Community Foundation, to provide for the future administration of such Fund(s). Subject to the approval of Kern Community Foundation, the husband and wife may jointly authorize Kern Community Foundation to bifurcate any Fund(s), designating husband or other successor Advisor to serve as the Advisory Committee to one of the successor Fund(s) and designating wife or other successor Advisor to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation.

In the event that husband and wife cannot jointly agree as provided above and no divorce decree, order of legal separation, order of annulment, property settlement agreement, agreement of the parties or other legal

order has been entered or approved which would otherwise resolve the issue to the satisfaction of Kern Community Foundation, Kern Community Foundation may, in its sole discretion, bifurcate any Fund(s) so affected into equal shares and designate husband to serve as the Advisory Committee to one of the successor Fund(s) and designate wife to serve as the Advisory Committee to the other successor Fund(s) created as a result of bifurcation. However, Kern Community Foundation shall not take such action until at least six months have transpired since the date upon which the action for divorce, separation or annulment was filed with the court of record.

## **Section 7. *Special Rules for Donor Advised Funds***

### a. Establishment and Purpose

A Donor may establish a Donor Advised Fund whereby the individual Donor(s) and/or designated Advisors, retain a lifetime privilege to recommend charitable grant recipients to Kern Community Foundation. Corporate Donor Advised Funds may continue to advise on charitable distributions as long as the Corporation continues to operate.

### b. Distributions from Donor Advised Funds

Donors and/or Donor Advisors may make written recommendations of grants to tax exempt charitable organizations described in Section 501(c)(3) of the Internal Revenue Code, other than private non-operating foundations. Charitable organizations must be public charities as described in Sections 509(a)(1) or 509(a)(2) of the Internal Revenue Code, supporting organizations described in Sections 509(a)(3) of the Internal Revenue Code or operating private foundations. As provided in the Internal Revenue Code and Regulations, the Board of Directors has the absolute right to direct all distributions of income and/or principal from Donor Advised Funds.

### c. Minimum Grant Amount from Donor Advised Funds

The Board of Directors may designate a minimum grant amount for Donor Advised Funds.

### d. Eligible Advisors During the Donor(s)' Lifetime

Recommendations for distributions shall be subject to the following rules:

1. Generally the Donor(s) may designate any adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout the lifetime of the Donor or his or her spouse, unless earlier terminated by resignation or incapacity. Donor(s) may designate additional and/or alternative Advisors at anytime during the Donor(s)' lifetime.
2. A Donor other than an individual, such as a corporation, partnership or trust, will not be subject to a time limit for its privilege to make recommendations.

### e. Successor Advisors After the Death of Donor(s)

1. The Donor(s) may designate one or more adult (i.e., at least age 18) person(s) to have the privilege of making recommendations throughout their lifetimes, unless earlier terminated by resignation or incapacity. If more than one person is named, then the successor Advisors shall operate under the rules governing Advisory Committees described in Section B.6.
2. Subject to the terms of the instrument of transfer, each successor Advisor to the Fund that was designated by the Donor may likewise designate a successor Advisor to act in his or her place (who in turn may designate a successor Advisor to act in his or her place, and so on).

3. After the Donor's death (or Donors' deaths), Kern Community Foundation will contact the successor Advisors in writing to inform them that they have been named as successor Advisors for the Fund. If after three years from the date of Kern Community Foundation's initial written correspondence to the successor Advisor(s) there has been no response or action from the successor Advisor(s), and Kern Community Foundation has tried to contact the successor Advisors at least annually during that three-year period, then Kern Community Foundation will become the successor Advisor for the Fund. In that case, Kern Community Foundation will endeavor to use the Fund in a way that is consistent with the original Donor's/Donors' charitable interests that may be known to Kern Community Foundation.

f. Option to Split Funds for Successor Advisors

If a Donor has designated successor Advisors and if the charitable interests of the successor Advisors are sufficiently diverse, then Kern Community Foundation may, with the consent of the successor Advisors and subject to the terms of the Donor's instrument of transfer, divide the Donor Advised Fund into multiple Donor Advised Funds and limit each successor Advisor's advisory privilege to a separate Fund.

g. Conversion of Donor Advised Fund After Advisory Privilege Ends

Upon termination of the advisory privilege, a Donor Advised Fund will be converted at the discretion of Kern Community Foundation to an Unrestricted Fund or a Field of Interest Fund as provided for in Part B, Section 5.

**Section 8. *Special Rules for Designated Funds***

a. Establishment and Purpose

A Donor may establish a Designated Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3) of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

b. Monitoring Function and Variance Power

Kern Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with Kern Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Charity as specified in the instrument of transfer or convert the Designated Fund to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

**Section 9. *Special Rules for Organization Funds***

a. Establishment and Purpose

A Donor is a Nonprofit Charitable Organization as described in Sections 509(a) (1) or (a)(2) of the Internal Revenue Code, which specifies the establishing organization as the grant recipient of the Fund. An Organization may establish an Organization Fund for one or more public charities described in Sections 509 (a) (1) or (a) (2) of the Internal Revenue Code or supporting organizations described in Sections 509 (a) (3)

of the Internal Revenue Code. Examples include a school, not-for-profit hospital, social service agency, performing arts organization, or a religious organization.

**b. Monitoring Function and Variance Power**

Kern Community Foundation shall monitor the performance of the designated charitable organization to determine that it is using payments for charitable purposes consistent with Kern Community Foundation's purposes and the Donor's intention at the time the contribution was made. If the Board of Directors determines that continued payments for the designated organization have become unnecessary, obsolete, incapable of fulfillment, impractical or inconsistent with the community's charitable needs the Board may, in its discretion, select an alternative public charity with a similar mission and charitable purpose of the original Designated Nonprofit Charitable Organization as specified in the instrument of transfer or convert the Organization Fund to an Unrestricted Fund or Field of Interest Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

**Section 10. *Special Rules for Field of Interest Funds***

**a. Establishment and Purpose**

A Donor or Kern Community Foundation may establish a Field of Interest Fund from which payments are made for a specific charitable purpose (field of interest). The specified purpose may be broad, such as support of education, health care or arts and humanities; or narrow, such as the prevention of child abuse. Field of Interest Funds may also be established for specific geographic areas such as neighborhood, section of city, county or metropolitan area. Any proposed Field of Interest Fund that is intended to provide aid to individuals who have suffered loss as a result of a catastrophic disaster shall be reviewed and approved in advance by Kern Community Foundation's corporate counsel to ensure compliance with additional Internal Revenue Service rules governing disaster relief funds. In short, disaster relief funds must have a sufficiently large or indefinite pool of grantees and recipients must be selected based on a written and objective determination of need that is reviewed by an independent selection committee that is controlled by a staff member of Kern Community Foundation in a manner similar to that described for Scholarship Funds below.

**b. Geographic Affiliates**

Kern Community Foundation's governing body will maintain oversight and control over any geographic affiliates. A geographic affiliate is a component fund (or collection of component funds), established within or by Kern Community Foundation, serving a defined geographic region under a common advisory board. Grants recommended by the advisory board of a geographic affiliate shall be subject to the same due diligence process exercised by Kern Community Foundation for all other Field of Interest funds.

**c. Monitoring Function and Variance Power**

The Board of Directors shall periodically evaluate all Field of Interest Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the field of interest of the Fund or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

**Section 11. *Special Rules for Scholarship Funds***

**a. Establishment and Purpose**

A Donor or Kern Community Foundation may establish a Scholarship Fund from which grants are made for travel, study or other similar purposes to support one or more worthy recipients, provided that the recipients are selected through an objective and non-discriminatory competitive selection process.



Scholarships must be awarded in accordance with a selection process that is consistent with Kern Community Foundation's tax-exempt status and consistent with the allowance of tax deductions for individuals making contributions to Kern Community Foundation. In addition, the selection process must include the following:

1. A sufficiently broad pool of potential grantees. The pool of scholarship applicants must be sufficiently broad so that the making of grants to the members of the group will be considered as furthering a charitable purpose and not merely benefiting private interests. However, if the scholarship program requires the selection of an exceptionally qualified individual to carry out its purposes and the pool of such individuals is small, the Fund shall include documentation of the efforts made to determine qualified members of the class of potential recipients. Any proposed limitation on the pool of grantees that is based on race or any other characteristic that the Internal Revenue Service might deem to be counter to public policy and inconsistent with Kern Community Foundation's tax exempt status shall be reviewed by Kern Community Foundation's corporate counsel.
2. Objective and non-discriminatory selection criteria. The criteria used in selecting scholarship recipients shall be objectively related to the purpose of the scholarship and applied equally to all applicants. Criteria might include, but need not be limited to: prior academic performance, recommendations from professors, financial need, or evidence of an applicant's motivation, character, ability and potential. The specified criteria may be broad, such as attending any institution of higher learning at the discretion of the student, or narrow, such as a specific major at a specified named institution. Scholarship Funds may also be established for specific geographic areas such as a neighborhood, section of city, county or metropolitan area. Scholarships may be awarded for students to attend a specific institution (elementary through high school, college, technical); students in a particular field of study or major; students from a particular geographic area; or students who have attended a specific high school or school district.
3. A sufficiently independent selection committee. The Donor may designate Kern Community Foundation to serve as the selection committee to review scholarship applications and select recipients. Alternatively, the Donor may recommend an Advisory Committee (which may include the Donor) to be appointed by Kern Community Foundation in which case the senior management officers of Kern Community Foundation (i.e., President and Senior/Executive Vice Presidents) shall have the authority to appoint the Advisory Committee on behalf of the Board of Directors of Kern Community Foundation. The Advisory Committee will review scholarship applications and select scholarship recipients, in which case the manager of scholarship funds for Kern Community Foundation shall control the Advisory Committee by having the equivalent of a supermajority vote on the Advisory Committee. The manager of scholarship funds for Kern Community Foundation shall have the ultimate authority to select the scholarship recipients and the Donor, Donor Advisor(s) and any persons related to the Donor or Donor Advisor(s) shall not directly or indirectly control the Advisory Committee. Donors who recommend Advisory Committees for Scholarship Funds shall strive to recommend individuals who are familiar with the community and who have expertise relevant to the selection process.

b. Employer-Sponsored Scholarship Funds

Any proposed Scholarship Fund that will be sponsored by an employer and awarding scholarships to employees or family members of employees shall be reviewed and approved in advance by Kern Community Foundation's corporate counsel to ensure compliance with additional Internal Revenue Service rules governing such scholarship programs.

c. Other Permitted Grants to Individuals

In addition to scholarship grants for study at an educational institution described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code (i.e., an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students at the institution), Scholarship Funds may also provide for (1) grants to individuals that constitute a prize or award if the recipient is chosen from the general public and without any action on the recipient's part, the recipient is not required to render substantial services as a condition of receiving the prize or award and the prize or award otherwise complies with Section 4945(g)(2) of the Internal Revenue Code; or (2) grants to individuals that are made for the purpose of achieving a specific objective, producing a report or other similar product, or improving or enhancing a literary, artistic, musical, scientific, teaching or other similar capacity, skill or talent of the recipient as provided in Section 4945(g)(3) of the Internal Revenue Code.

d. Monitoring Function and Variance Power

The Board of Directors shall periodically evaluate all Scholarship Funds. If the Board determines that continued payments for the specified charitable purpose have become unnecessary, obsolete, incapable of fulfillment, impractical, or inconsistent with the community's charitable needs, the Board in its discretion, may change the scholarship criteria of eligibility or convert it to an Unrestricted Fund. The Fund shall then continue in accordance with the provisions of Section B.5.

e. Conflict of Interest

No scholarship award shall be made to a Donor's family member including direct ancestors and direct lineal descendants, spouse, and other relatives including brothers, sisters, nieces, nephews, aunts, uncles, cousins, and their respective spouses and children. Non-donor Advisory Committee members shall also adhere to the same policy regarding scholarship recipients awarded to Advisory Committee family members.

**Section 12. *Special Rules for Component Funds***

The tax regulations provide that in order for a trust to be treated as a component part of a community foundation (rather than a separate trust), the following requirements must be met:

- a. The terms of the trust instrument and the Donor's instrument of transfer must subject the trust to the operation of the Articles of Incorporation and Bylaws of Kern Community Foundation;
- b. Kern Community Foundation must have the power to modify any restriction or condition on the distribution of assets for any specified charitable purpose or to any specified organization if, in the sole judgment of the Board of Directors, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served;
- c. Kern Community Foundation must have the power to replace the trustee for breach of fiduciary duty under state law;
- d. Kern Community Foundation must have the power to replace any participating trustee for failure to produce a reasonable return of net income over a reasonable period of time;
- e. The Donor may not impose any "material restriction" (as that term is defined in the Treasury regulations) with respect to the transferred assets; and
- f. Kern Community Foundation must accept the contribution.

## **PART C. AFFILIATED ORGANIZATIONS (OTHER THAN SUPPORTING ORGANIZATIONS)**

### **Section 1. *Establishment and Purpose***

#### a. Definition and Tax Status

A trust, foundation or corporation may become an Affiliated Organization by receiving services from Kern Community Foundation that further its charitable interests. Unless it becomes a Supporting Organization of Kern Community Foundation (described below in Part D), it will retain its independent tax status (for example, as a private foundation or as a public charity).

#### b. Process for Affiliation.

A trust, foundation or corporation may become an Affiliated Organization by applying to the Board of Directors. The Board, or its designated committee, will review the application to assure that the organization's purposes are consistent with the charitable purposes of Kern Community Foundation and its specific charitable needs. Specific details of the Affiliation are negotiable between the Board of Directors of Kern Community Foundation and the Trustees of the organization or trust seeking to affiliate with Kern Community Foundation. Once accepted, the Affiliated Organization will continue to retain control over charitable disbursements.

### **Section 2. *Services Available***

The scope of services shall be mutually agreed upon by the Board of Directors and the Trustees, Directors or Advisors (hereafter Trustees) of the Affiliated Organization or Trust of Kern Community Foundation. These services may include reviewing and investigating requests for funding, recommending a course of action on such requests, originating programs for consideration by the Trustees, making disbursements, monitoring and evaluating grants, and preparing reports.

### **Section 3. *Termination of Affiliation***

Either the Board of Directors of Kern Community Foundation or the Trustees of the Affiliated Organization may terminate the affiliation relationship upon such notice as is prescribed in the affiliation agreement.

## **PART D. SUPPORTING ORGANIZATIONS**

### **Section 1. *Establishment and Purpose***

#### a. Definition and Tax Status

A supporting organization is:

1. A charitable corporation or trust
2. Classified by the IRS as:
  - (a) a Section 501(c)(3) charity, and
  - (b) as a public charity (rather than a private foundation) because it supports a publicly supported charity, such as a community foundation.

The tax laws provide that a supporting organization will be a public charity, even if all contributions have come from related parties or even if it has not received any contributions over a period of years (either situation would normally cause a charity to be a private foundation).

b. Technical Requirements Under The Tax Laws

In order to be a supporting organization of Kern Community Foundation under Section 509(a)(3) of the Internal Revenue Code, the establishing Donor seeking supporting organization status must prove to the IRS that it:

1. Is organized to support Kern Community Foundation,
2. Is not controlled by "disqualified persons",

Disqualified persons include substantial contributors to the supporting organization (donors who gave more than 2% of the organization's total contributions), members of that person's family and businesses controlled by the person. By law, they cannot have 50% or more of the voting power of the governing body or a veto power over the actions of the organization since that would constitute "control."

3. Is operated, supervised, or controlled "by" or "in connection with" Kern Community Foundation.

(a) "by" means that Kern Community Foundation appoints a majority of the governing body of the supporting organization,

-or-

(b) "in connection with" is a much more complicated procedure by which the supporting organization must show that:

- i. Kern Community Foundation appoints at least one member of the governing body of the supporting organization, and
- ii. Through its operations, the supporting organization does either one of the following:
  1. Engages in activities that Kern Community Foundation would otherwise do itself but for the supporting organization, or
  2. Distributes 85% or more of its income to or for the use of Kern Community Foundation in such a way that Kern Community Foundation is "attentive" to the supporting organization.

c. Tax Advantages of Supporting Organization

1. Avoid Private Foundation Taxes and Administrative Requirements

By being rid of its private foundation status, a supporting organization is free from private foundation excise taxes and administrative requirements of a non-operating private foundation.

2. Greater Tax Benefits for Donors

A donor to a supporting organization can frequently claim greater tax benefits than if the same property was given to a private non-operating foundation:

- i. A larger tax deduction for gifts of real estate or closely held stock (fair market value vs. cost basis).

- ii. A larger deduction can be claimed each year, if the donor is subject to the annual charitable deduction limitation.

## **Section 2. *Policies Applicable to a Supporting Organization***

The terms of the relationship to become a supporting organization of Kern Community Foundation and the benefits and services that one organization may provide to the other shall be mutually agreed upon by the governing bodies of both organizations. In general, this relationship requires the active oversight and involvement of Kern Community Foundation. Consequently, the following information must be obtained from the supporting organization:

1. Copies of the organization's articles of incorporation and bylaws, if in corporate form, or trust instrument, if in trust form, and tax exemption letter from the Internal Revenue Service.
2. Copies of all board meeting notices and minutes of the board meetings;
3. Notification when any board member appointed by Kern Community Foundation finishes his or her term, resigns or otherwise ceases to serve;
4. Financial reports at least quarterly (unless all of the supporting organization's assets are already held at Kern Community Foundation);
5. Copies of all account statements upon request of Kern Community Foundation (if the supporting organization's assets are not all held at Kern Community Foundation);
6. Copies of the annual 990 reports to the Internal Revenue Service; and
7. Information concerning all grants so that the grants can be processed through Kern Community Foundation.

In return, Kern Community Foundation's role is to provide the supporting organization with the following primary services (additional services may be separately negotiated):

1. Appointment of the requisite number of members to the supporting organization's board as required by the organization's governing document(s);
2. Periodic financial statements;
3. Access to on-line tools provided to donors by Kern Community Foundation;
4. Information upon request regarding grant-making opportunities; and
5. The processing of all grants.

The tax laws require that organizational documents (articles of incorporation or trust instrument) of the supporting organization must (1) specify that Kern Community Foundation will be the supported organization and (2) specify charitable purposes that are supportive of, and not broader than, those of Kern Community Foundation. In addition, the supporting organization's activities must support Kern Community Foundation. This does not mean that the supporting organization must pay all (or any) of its income to Kern Community Foundation. It may, instead, make grants to other charities and for charitable programs that are in furtherance of Kern Community Foundation's charitable purposes. However, as discussed above, Kern Community Foundation generally requires a supporting organization to process all grants through Kern Community Foundation.

## **Section 3. *Termination of Relationship***

Either the Board of Directors or the Governing Body of the supporting organization may terminate the relationship upon such notice as is prescribed in the agreement between Kern Community Foundation and the supporting organization. Termination may cause the supporting organization to lose its public charity tax status and be reclassified as a non-operating private foundation.

## PART E. SPLIT-INTEREST ARRANGEMENTS

### Section 1. *Establishment and Purpose*

#### a. Overview of Advantages To Donors

Split-interest arrangements are sometimes referred to as "deferred gifts". They generally pay income to a Donor (or someone else who is named by the Donor) over the person's life and then distribute the assets to a charity upon death.

Such gifts produce estate tax savings when made as part of an estate plan. Lifetime gifts provide several tax benefits that make them very attractive to Donors who have appreciated property:

1. Estate tax savings, since the property will not be included in the Donor's taxable estate at the time of death (if it is, then there is an offsetting charitable deduction).
2. An income tax deduction for the present value of the remainder interest that will ultimately pass to the charity after the income interest has expired.
3. Probably of greatest importance, an annual income flow (which may be paid in more frequent intervals) to the Donor(s) during the Donor(s)' lifetime(s) that is not reduced by any capital gain tax that would have been imposed had the Donor sold the property.
4. No capital gains tax liability is incurred upon the transfer of appreciated property the deferred gift vehicle.
5. The Donor can diversify investments without incurring capital gains tax liability.
6. Provides great asset protection for the Donor and spouse.

#### b. Definitions

1. Charitable Gift Annuities (Immediate or Deferred)- A contract with Kern Community Foundation to receive a fixed dollar amount each year over a person's life; the annuity contract must meet the tax requirements of Section 514(c)(5) of the Internal Revenue Code. Payments are generally based upon the American Council on Gift Annuities approved tables in effect at the time that the gift is made.

The rate of return the Donor(s) receives depends upon the age (and, if applicable, the age of the spouse) at the time of the gift. The older the Donor, the higher the rate of return will be. Payments may be made annually or in more frequent intervals. The remaining proceeds are distributed to a named charitable Fund established by the Donor at Kern Community Foundation. (See Part B, Section 1)

2. Charitable Remainder Annuity Trust - A trust that pays a fixed dollar amount (at least 5% of the value of the property contributed to the trust). Payments are made annually (or more frequently) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at Kern Community Foundation. (See Part B, Section 1)
3. Charitable Remainder Unitrust - A trust that pays a fixed percentage (at least 5%) of the value of the trust's assets each year (as valued at the beginning of each year) to one or more income beneficiaries for life (or for a fixed term of years -- maximum 20). The remaining proceeds are distributed to a named charitable Fund established by the Donor at Kern Community Foundation. (See Part B, Section 1)
4. Charitable Lead Trust - This is the inverse of a charitable remainder annuity trust or unitrust. Income is distributed to Kern Community Foundation, into a named charitable Fund established by the Donor, (over a period of years or the lifetime of the Donor) and the remainder is usually

distributed to members of the Donor's family. Such a trust can be a useful part of an estate plan to keep a rapidly appreciating asset (such as real estate or stock) within a family.

Currently, Kern Community Foundation does not trustee charitable lead trusts. However, Kern Community Foundation will be will be pleased to work with the Donor to help find an appropriate trustee.

5. Retained Life Estate - Donors may leave their principal residence, vacation home or farm to a named charitable Fund established by the Donor or to an existing Fund at Kern Community Foundation and retain the right to live in the house or farm for the Donor's lifetime (the life of a surviving spouse can also be added). The Donor receives a sizable charitable income tax deduction the year the property is donated through the Retained Life Estate. The amount of the tax deduction is dependent on the age(s) of the Donor and the value of the home or farm. A gift of a personal residence now, with retained life residency for the Donor and/or spouse, gives the Donor the same estate tax benefits as a gift by will plus an immediate income tax deduction.
6. Testamentary Trust Transfer - Any of the above gift plans can be placed in a testamentary plan as provided in a living trust, will, or other testamentary device.

## **Section 2. *Kern Community Foundation as Trustee; Minimum Contributions; Other Conditions***

### a. Kern Community Foundation as Trustee of Split-Interest Gifts

Kern Community Foundation offers Charitable Gift Annuities to Donors. Kern Community Foundation can also serve as trustee for charitable remainder annuity trusts and charitable remainder unitrusts. Historical investment performance on a total return basis is available to any interested party upon request.

### b. Minimum Contributions

- |                                       |           |
|---------------------------------------|-----------|
| 1. Charitable Gift Annuity            | \$100,000 |
| 2. Charitable Remainder Annuity Trust | \$100,000 |
| 3. Charitable Remainder Unitrust      | \$100,000 |

Kern Community Foundation will not trustee Charitable Lead Trusts. However, Donors may designate a named charitable Fund at Kern Community Foundation as the income beneficiary of the lead interest.

### c. Other Conditions

#### 1. Charitable Gift Annuities

Under the tax laws, the entire remainder interest of a charitable gift annuity must be distributed to Kern Community Foundation. A Donor may recommend that the proceeds be used to establish a Donor-Advised, Designated, Organization, Field-of-Interest Scholarship or Unrestricted Fund or be added to any existing Fund. In the absence of such a recommendation, the proceeds will generally be used to establish (or be added to) a named Unrestricted Fund.

#### 2. Charitable Remainder Trusts

In order for it to serve as the trustee, Kern Community Foundation must be named as the beneficiary of the remainder interest of a charitable remainder annuity trust or a charitable remainder unitrust. A Donor may establish or add to an Unrestricted, Designated, Field-of-Interest, Scholarship or Donor-Advised Fund with the remainder proceeds of the charitable remainder trust. In the absence of such a designation, the proceeds will generally be used to establish (or be added to) a named Unrestricted Fund.

### 3. Policies Concerning Contributions

The general rules described in Part A (concerning contributions to Kern Community Foundation) generally apply to contributions to split-interest arrangements (particularly Section A.2 which gives Kern Community Foundation the authority to reject assets that are hard to sell or carry potential liabilities).

### 4. Independent Review by Legal Counsel

A Donor is advised to consult independent legal counsel concerning contributions to Split-Interest Arrangements including the drafting and review of all documents establishing the split-interest gift.



## APPENDIX

### TAX LAWS THAT GOVERN CHARITABLE CONTRIBUTIONS

#### Section 1. *Timing of Income Tax Deductions*

The tax laws generally provide that a contribution is deductible in the year that the property is delivered to Kern Community Foundation. Delivery is considered made under the following circumstances:

- (1) Unconditional delivery or mailing of a check to Kern Community Foundation which subsequently clears in due course will constitute an effective contribution on the date of delivery or, if the check is received in the ordinary course of the mails, on the date of mailing.
- (2) Unconditional delivery or mailing of a properly endorsed stock or bond certificate will constitute an effective contribution on the date of delivery or, if such certificate is received in the ordinary course of the mails, on the date of mailing.
- (3) If a contribution is made subject to compliance with certain conditions, then the contribution is not effective until Kern Community Foundation agrees to comply with such conditions.
- (4) Except as provided in paragraph (5), if a Donor delivers a stock certificate to his bank, broker, other agent or the issuing corporation for transfer to Kern Community Foundation, or instructs his bank, broker, other agent or the issuing corporation to transfer stock to Kern Community Foundation, then the gift is effective on the date the stock is transferred on the books of the issuing corporation.
- (5) If stock is registered in a nominee name by a bank, broker or other agent and such bank, broker or other agent agrees to hold the stock in such nominee name on behalf of Kern Community Foundation, so that the stock will not be transferred on the books of the issuing corporation, then the gift of such stock is effective on the earlier of the date on which such bank, broker or other agent (i) acknowledges in writing that it holds the stock on behalf of Kern Community Foundation, or (ii) makes the appropriate entry in its books and records to reflect that it holds the stock on behalf of Kern Community Foundation.
- (6) Delivery to Kern Community Foundation will be effective upon receipt by a senior management officer of Kern Community Foundation (i.e., President or Senior/Executive Vice President), or the employee or agent authorized by any such officer to accept the contributions.

#### Section 2. *Evidence of Deduction Required*

##### a. Any Contribution Of \$250 Or More

Donors will not be able to claim a charitable deduction for any gift of cash or property of \$250 or more to any charity unless a "contemporaneous written acknowledgement" from the charity can be produced; cancelled checks will not suffice. To meet the requirements, the receipt (1) must contain certain information and (2) must be received within certain time limits.

##### 1. Contents of Acknowledgment

The acknowledgment must state (a) the amount of cash and a description (but not value) of any property contributed and (b) whether the charity had provided any goods or services in exchange for the property described in clause (a) (if so, then it must state the value of the goods and services).

## 2. Time Limits

An acknowledgment will generally be considered to be "contemporaneous" if you obtain it before you file your tax return for that year.

### b. Appraisals Required For Gifts Of Property Over \$5,000; Exceptions for Cash and Publicly Traded Securities

Donors who contribute property (other than publicly traded securities) valued at more than \$5,000 in any year must substantiate the value with "qualified appraisals" from "qualified appraisers". The \$5,000 threshold is increased to \$10,000 in the case of non-publicly traded stock. The requirement does NOT apply to contributions of cash or publicly traded stock. By law, the cost of the appraisal must be born by the Donor.

The Donor must attach a copy of IRS Form 8283 ("Non-cash Charitable Contributions") to the tax return in the year of the contribution. A charitable organization (including a community foundation) that receives such property must sign a copy of the appraisal report (IRS Form 8283), which should then be attached to the Donor's income tax return.

If Kern Community Foundation sells the property listed on IRS Form 8283 within three years of receipt, it is required by law to disclose the sale price to the IRS and to the Donor on IRS Form 8282.

## Section 3. Amount of Income Tax Deduction

Generally the Donor can deduct the amount of cash or the fair market value of the long-term capital gain property contributed to Kern Community Foundation. Usually the best results are for gifts of appreciated long-term capital gain stock and real estate because a Donor can generally deduct the entire fair market value for gifts of such property to Kern Community Foundation.

## Section 4. Annual Deduction Limitations

### a. Individuals

#### 1. General Rule.

The maximum amount of the deduction depends on (1) the type of property contributed (either ordinary income or long-term capital gain property), (2) the nature of the charitable organization (public charity or private foundation), and (3) the amount of adjusted gross income ("AGI") shown on the IRS Form 1040. Deductions for amounts in excess of these annual limitations can usually be carried forward for five additional years.

#### 2. Specific Rules. The annual deduction limitations for INDIVIDUALS are:

Type of Charity	<i>Cash and Ordinary Income Property</i>	<i>Long-term Capital Gain Property (Stock &amp; Real Estate)</i>
<b>Public Charity</b> (including a Fund in Kern Community Foundation)	50% of AGI	30% of AGI
<b>Private Foundation</b>	30% of AGI	20% of AGI

Amounts that exceed the deduction percentage limitation may be carried forward for five additional years.

## b. Corporations

1. General Rule. Corporations may generally deduct up to 10% of their taxable income.
2. Special Rules.
  - a. S Corporations - the charitable deduction passes through to the corporation's shareholders.
  - b. Limited Liability Companies – the charitable deduction passes through to the members of the limited liability company if it is being treated as a partnership for tax purposes.
  - c. Personal Holding Companies - Sometimes the annual percentages that apply to individuals apply instead of the 10% limitation.
  - d. Insurance Companies - Special rules apply.
  - e. Foreign Corporations - Deductions are affected by Section 882(c).
  - f. Corporations Subject to the Accumulated Earnings Tax - A deduction can be taken for all charitable contributions made that year without regard to the 10% limitation.

## c. Trusts and Estates

Estates and trusts are eligible for an unlimited income tax charitable deduction, provided that the contribution came from income rather than corpus and was made pursuant to the governing instrument.

## **Section 5. *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>1</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>2</sup> of the voting stock<sup>3</sup> of an incorporated business
- Twenty percent of the profits interest of a partnership or joint venture or 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 held such assets on August 17, 2006 will have a much longer period to divest under the same complicated transition relief given to private foundations in 1969<sup>4</sup>.

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

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

- 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).

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

Kern 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. Kern 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, Kern 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. Kern Community Foundation will notify potential donors of such interests of this requirement prior to the contribution of such interest.

<sup>1</sup> The language is clear that it is only the donor advised fund—not the sponsoring charity—that is to be treated as a private foundation. Accordingly, it appears that this section does not apply to assets held by the sponsoring charity’s investment pools, or assets held by funds that are not donor advised.

<sup>2</sup> Thirty-five percent if it can be shown that persons who are not disqualified persons have effective control of the business.

<sup>3</sup> Additionally, the donor advised fund will be barred from holding non-voting stock of an incorporated business unless the disqualified persons collectively own less than 20 percent of the voting stock. Under the *de minimis* rule, the donor-advised fund could continue to hold an interest that did not exceed two percent of the voting stock and two percent of the value. Additional rules apply to cover situations such as mergers, redemptions, and acquisitions.

<sup>4</sup> Excess holdings acquired by purchase must be disposed of immediately. If purchases by disqualified persons cause the donor advised fund to have excess holdings, the donor advised fund will have 90 days to dispose of the excess.

***The above Appendix is intended to provide a general overview of charitable tax law. The above does not constitute tax or legal advice. Donors should consult their professional tax advisor and/or legal counsel before making a charitable gift to Kern Community Foundation.***