

Pentacle Theatre Policy	SUBJECT: <b>Gift acceptance policy</b>
Approved By: <i>Nancy Moen</i> Nancy Moen, President Pentacle Theatre Governing Board	Effective Date:  February 22, 2016

Purpose: The purpose of this policy to provide a framework for the acceptance of gifts.

Definitions: Glogau. Pentacle Theatre's scene shop.

Policy: Decisions regarding acceptance and disposition of gifts shall be made by the Pentacle Theatre board of directors to accomplish the organization's long-term goals of the strategic plan.

Distribution of funds: The Pentacle Theatre will use planned gifts to sustain, support and enhance Pentacle Theatre's mission and vision as stated in the organization's strategic plan.

### **Section 1: General**

- A. Pentacle Theatre will observe and respect the confidentiality of all donor negotiations and gift arrangements. The interest of the prospective donor shall be a primary consideration with respect to any gift to the Pentacle Theatre. Representatives of Pentacle Theatre will avoid the use or appearance of using pressure techniques or undue persuasion when dealing with prospective donors. The role of a representative is to inform and assist the donor with his/her estate and financial planning concerns and in the fulfillment of his/her charitable objectives.
- B. Pentacle Theatre will not engage in the payment of finder's fees for planned gifts. Such payments lead to abusive practices and may violate certain state and federal regulations. Likewise, commission-based compensation for gift planners who are employed by a charitable institution is never appropriate.
- C. Representatives of Pentacle Theatre will advise donors to seek their own professional financial, tax and legal counsel. Congress has provided tax incentives for charitable giving, and the emphasis in this statement on philanthropic motivation in no way minimizes the necessity and appropriateness of a full and accurate explanation by the gift planner of those incentives and their implications.
- D. Pentacle Theatre will involve itself only in recognized legal and approved forms of planned gifts that are controlled by subsequent IRS guidelines and regulations or standard industry practices. Pentacle Theatre will not engage in doubtful arrangements that could jeopardize the donors' tax advantage or the tax-exempt status and financial stability of Pentacle Theatre.
- E. When a planned gift agreement states or implies an obligation, commitment or management responsibility for Pentacle Theatre, the authority to represent Pentacle Theatre and execute such agreements is granted to the executive director. Agreements

are subject to approval by the board of directors when such agreements are outside the scope of the executive director's authority, as defined by the board. The executive director shall have the authority to negotiate such agreements on behalf of Pentacle Theatre with the assistance of the Planned Giving Committee upon request.

- F. The theater's board of directors will approve and adopt gift acceptance policies to cover specific types of gifts. The board of directors may appoint a Planned Giving Committee to market, promote and help solicit planned gifts for Pentacle Theatre.
- G. The principal basis for making a charitable gift should be a desire on the part of the donor to support the work of charitable institutions. Costs incurred in the creation or completion of a planned gift to Pentacle Theatre will be the responsibility of the donor.
- H. Pentacle Theatre intends to partner with the Oregon Community Foundation which will hold and distribute Pentacle Theatre's endowment funds. Other trusts or advised funds established for and on behalf of Pentacle Theatre may be managed by the donor's financial institution.

## **Section 2: Conflict of interest**

- A. The interests of the prospective donor shall be a primary consideration with respect to any gift to Pentacle Theatre. Employees of Pentacle Theatre shall provide information to the donor concerning planning techniques available to achieve a donor's charitable goals. Pressure techniques are not to be used, and no program, agreement, trust or contract shall be presented which would benefit Pentacle Theatre at the expense of the donor's best interests and charitable motivations.
- B. Any Pentacle Theatre employee, director or representative who might reasonably be expected to derive material benefit, directly or indirectly, from any contract or other transaction pertaining to the maintenance or conduct of Pentacle Theatre business shall promptly so declare to the Pentacle Theatre board president. The president may obtain an advisory opinion from the Pentacle Theatre's legal counsel.
- C. If it is determined that the employee, director or representative stands to receive a material benefit, directly or indirectly, from the transaction, or if a reasonable person might conclude that he or she may be perceived to receive a material benefit, he or she shall remove himself/herself from all actions, recommendations and discussions regarding the transaction.

## **Section 3: Gift acceptance**

- A. **Board commitment.** The board of directors of Pentacle Theatre is committed to actively seeking planned gifts to sustain, support and expand the activities of Pentacle Theatre. This may be accomplished by establishing a Planned Giving Committee which will lead and support the board and staff in the enhancements of Pentacle Theatre operating, capital improvement and endowment funds.

- B. **Ethics.** Pentacle Theatre will only accept gifts when the gift is in the best interest of both the donor and Pentacle Theatre. All donors will be advised to seek their own counsel for legal, tax and financial matters.
- C. **Valuing.** Gifts will be recorded at their fair market value. Full responsibility rests on the donor for claiming any tax deductions, appraisals or other documentation. Donors will be expected to give Pentacle Theatre a written statement of value for non-cash and marketable gifts. The IRS requires an appraisal of any gift valued at more than \$5,000; that appraisal will be paid for by the donor.
- D. **Gifts.** The following are acceptable as gifts:
1. **Cash.** Gifts of cash are the most desirable donation because they are both liquid and free of any liability. Approval by the Board of Directors is not needed to proceed with an unrestricted deferred gift funded with cash.
  2. **Securities.** Gifts of publicly traded securities, including stocks, mutual funds, municipal and corporate bonds and Treasury bills and notes are generally acceptable gifts to Pentacle Theatre, including title to securities deemed to be readily transferable. There may be some limitation on the transfer of warrants, stock options and stock appreciation rights that should be reviewed on a case by case basis. Approval by the board of directors is not needed to proceed with an unrestricted deferred gift funded with marketable securities.
    - a) All readily marketable securities will be sold immediately upon receipt. The executive director or designated staff is authorized to immediately enact the sale. The date of the gift will be the date the stock certificate and signed stock power are mailed or hand-delivered to Pentacle Theatre or the date the shares are transferred to a brokerage as the agent of Pentacle Theatre.
    - b) Gifts of publicly traded securities or mutual fund shares are generally valued by one of the following methods:
      - The mean between the highest and lowest selling prices on the valuation date
      - The mean between the bid and asked prices on the valuation date
      - The public redemption price
      - Open-end mutual funds valued at net asset value
    - c) Gifts of closely held securities, S corporation stock or other privately held securities not sold on an exchange are subject to the review and approval of Pentacle Theatre's board of directors.
    - d) Donors gifting stocks or securities to Pentacle Theatre may work directly with the Oregon Community Foundation.

3. **Real estate.** Gifts of real estate, including leasehold interests, may be accepted upon completion of appropriate due diligence and approval of the board of directors.

- a) Condition of the Title Pentacle Theatre will obtain a preliminary title report to ascertain nature of title being conveyed by donor and to review all liens on record, including mortgages, deeds of trust, easements, current and deferred taxes. Title insurance must be obtained at time of closing by the donor. If the property is subject to a mortgage, further research should be done to determine its terms, including any potential payment acceleration upon transfer, prepayment, penalties, and restrictions on obtaining additional loans.
- b) Condition of Property Pentacle Theatre shall conduct an onsite inspection to determine the nature of the property (agricultural, industrial, residential, commercial, etc.) and general condition of property, (i.e., readily sellable or potential expense to make property marketable, nature of surrounding properties that might impede sale, ADA compliance, etc). Donor will be asked to disclose any known defects.
- c) Environmental Inspection An on-site inspection must be made on all property prior to accepting title. A "Property Inspection Environmental Checklist" must be completed by a qualified inspector. If any significant concerns are discovered, then a Phase One inspection must be conducted by a professional environmental firm, if Pentacle Theatre is still interesting pursuing the gift. While Pentacle Theatre would prefer to have the donor pay the cost of a Phase One inspection, it is likely Pentacle Theatre will need to absorb those costs if there is interest in the property. Hence, a bid for such inspection should be obtained and board approval obtained prior to ordering. Results should be reviewed with the board to determine potential liability, whether a Phase Two examination is necessary, and whether the donor is willing to pay costs of Phase Two inspection and clean up. No real estate should be accepted until all environmental concerns and potential liability are addressed.
- d) Value of Property Pentacle Theatre shall obtain county tax statements as well as a copy of a certified fee appraisal, the past three years of operating statements, income tax returns and a replacement schedule on rental property if available. Asking sales price and minimum sales price should be determined in consultation with real estate professionals and approved by the board of directors.
- e) Property Management Issues The board should understand fully what the management issues are related to maintaining the property pending a sale. Is management in place or can it be hired, and, if so, what is the cost? Once the gift is made can Pentacle Theatre obtain necessary

insurance, and, if so, what will be the cost? What are the ongoing costs to maintain the property?

- f) Deed of Conveyance Pentacle Theatre would prefer to receive a warranty deed from the donor to protect Pentacle Theatre and maximize the sale price. A bargain and sale deed may be accepted but only with a clean title report. Because Pentacle Theatre will be holding real estate for only a short period of time pending sale, Pentacle Theatre would prefer to transfer title to a purchaser by bargain and sale deed rather than warranty deed. If property is received by Pentacle Theatre with a bargain and sale deed, only a bargain and sale deed will be provided to the eventual purchaser.
- g) Closing Costs and Related issues A clear understanding should be reached with the buyer as to who will be responsible for paying closing costs, including appraisal fees, title insurance, legal and escrow fees.
- h) After Pentacle Theatre leadership has considered all of the due diligence issues noted or required, the proposed gift shall be referred to the board of directors. The board will make all decisions concerning gifts of real estate and reserves the right to refuse any offers.

4. **Tangible personal property.** Potential contributions of tangible personal property (for example, art collections, antiques, jewelry, vehicles, etc.) are acceptable.

- a) The conditions for accepting gifts include salability, physical condition, and cost of storage or condition involved in the transfer. There can be no restrictions on resale or other use of the gifted property.
- b) Pentacle Theatre will convert gifts such as these to cash as soon as possible.
- c) The gift will be reviewed by Pentacle Theatre's executive director before recommending acceptance to the board of directors.

5. **Planned gifts.** These gifts include bequests, charitable trusts, pooled income funds, charitable gift annuities, life insurance gifts and life estate agreements.

- a) **Bequests.** Unless otherwise restricted by the donor, all bequests from wills or trusts will be placed in the board-directed fund for endowment; their ultimate use will be governed by Pentacle Theatre endowment policy and its fund transfer agreement with the Oregon Community Foundation. A bequest may consist of cash, securities, real estate or tangible personal property. The liquidation of non-cash bequests will follow the appropriate policies for these items as outlined in this document. Staff and professional advisors will review the marketability, accuracy of appraisal and the capabilities of Pentacle Theatre to safeguard all non-cash bequests. In some cases, it may be best for Pentacle Theatre to not accept a bequest.

- b) **Charitable remainder trusts (unitrust or annuity trust).** These trusts are irrevocable in nature. A gift placed in an annuity trust provides a fixed income to the donor(s), while a unitrust pays the donor a fixed percentage of the annual value of the trust. The donor may designate any recognized professional trustees, trust company, trust department or individual to serve as trustee. Pentacle Theatre will not serve as trustee for the charitable remainder trusts. However, the Oregon Community Foundation will act as trustee of charitable remainder trusts, if the Pentacle Theatre endowment fund of Oregon Community Foundation is irrevocably designated as the primary-named charitable remainder beneficiary. Unless otherwise restricted by the trust document, any distribution to Pentacle Theatre from the remainder of the charitable trust will be placed in the general operating fund and their ultimate use will be governed by Pentacle Theatre's policies and its fund transfer agreement with Oregon Community Foundation. Minimum acceptable value of a charitable trust is \$100,000.
- c) **Charitable lead trusts.** These trusts provide Pentacle Theatre an annual payment rather than the remainder interest. The donor irrevocably transfers assets to a trustee and designates Pentacle Theatre as the income beneficiary for a term of years. After that time, the remainder reverts to the donor or to one or more individuals named in the trust document. The donor may designate any recognized professional trustees, trust company, trust department or individual to serve as trustee. The Oregon Community Foundation could serve as trustee for charitable lead trusts with \$100,000 minimum gift. Unless otherwise restricted by the trust document, any distribution to Pentacle Theatre of the income from the charitable trust will be placed in the board-directed fund for endowment, and their ultimate use will be governed by Pentacle Theatre endowment policy and its fund transfer agreement with Oregon Community Foundation.
- d) **Charitable gift annuities.** A charitable gift annuity is a contractual arrangement between the donor and Pentacle Theatre. The donor transfers money or property to the theater in exchange for a promise to pay an annuity to the donor and/or other named beneficiaries for a specified period of time. The rate of return to the donor is based on tables provided by the American Council on Gift Annuities. The minimum recommended contribution for a charitable gift annuity is \$50,000.
- e) **Donor-designated fund.** This fund allows the donor to establish a fund designating Pentacle Theatre as the beneficiary of funds distribution. Gifts to the fund are fully deductible for income-tax purposes. Compared to a private foundation, there are minimal administrative and legal costs associated with a donor-designated fund. The Oregon Community Foundation is a primary partner for the establishment of

donor advised funds for Pentacle Theatre. The board suggests a minimum gift of \$50,000 to establish a donor-designated fund.

- f) **Donor-advised fund.** This fund allows the donor, family members or selected advisors an ongoing advisory role in directing distribution from an established advised fund. Pentacle Theatre can benefit as directed by the donor. Gifts to the fund are fully deductible for income tax purposes. Compared to a private foundation, there are minimal administrative and legal costs associated with a donor-advised fund. The Oregon Community Foundation is a primary partner for the establishment of donor advised funds for Pentacle Theatre. The board suggests a minimum gift of \$50,000 to establish a donor-advised fund.
- g) **Life insurance gifts.** Gifts to Pentacle Theatre through life insurance policies can be a beneficial gift option for donors and Pentacle Theatre. Life insurance often enables a donor to provide what is ultimately a much larger gift when compared to a cash gift. Life insurance can be utilized as a charitable gift to benefit Pentacle Theatre in three different ways.
  - i. Transfer an existing policy to Pentacle Theatre as owner/beneficiary (in whole or in part). Paid-up or self-sustaining policies require little administration, contain a cash value and provide a guarantee of the ultimate value of the gift. This gift is accomplished with an absolute assignment form obtained from the insurance company.
  - ii. Purchase a new policy with Pentacle Theatre as applicant, owner and irrevocable beneficiary. The premium payments are cash donations by the donor to Pentacle Theatre which, in turn, makes the premium payments to the insurance company. The donor pledges to make regular gifts to cover the premium payments. Cash or marketable securities may be accepted for premium payments. These plans should be carefully monitored as to the options available if the donor is unable to continue premium payments.
  - iii. Unless otherwise restricted by the donor, any distributions to Pentacle Theatre from a life insurance policy will be placed in the theater's general operating fund.
- h) **Life estate agreements.** A life estate agreement is a charitable instrument by which a personal residence, vacation home, or farm is transferred by deed to a charitable organization during a donor's lifetime and the donor retains usage of the property for life. A deed with a life estate provision is executed. The donor retains the rights and privileges of having the use of the home or property. The donor receives any income the property produces, and that income must be

reported for income-tax purposes. Unless specific terms are agreed upon prior to the establishment of the agreement, approved by the board of directors, the donor remains responsible for the upkeep and maintenance costs, property taxes and insurance associated with the property. Donor must annually provide Pentacle Theatre with proof of insurance (fire and liability), and Pentacle Theatre must verify that real estate taxes are current. If donor fails to maintain insurance or pay real estate taxes, then Pentacle Theatre shall, at a minimum, obtain insurance coverage and ensure minimum tax payments are made to prevent foreclosure. Legal counsel should be consulted to explore potential remedies.

- i) Upon the donor's death, Pentacle Theatre receives the property to use as needed or as directed in the life estate agreement. The property passes directly to Pentacle Theatre, avoiding delays, entanglements and unnecessary estate settlement expenses. At the donor's passing the property is entirely owned by Pentacle Theatre.
  - ii) Properties being considered for inclusion in a life estate agreement must be approved by the board of directors in accordance with the policies relating to real estate gifts. The development committee will review proposed life estate agreements on a case-by-case basis and will recommend acceptance by the board of directors if the condition of the property, the projected term of the donor's interest, the number of life estate holders and the circumstances of the property's remainder value provide a positive gift value for Pentacle Theatre.
6. **Other assets and gifts.** Other types of gifts not mentioned in this policy may be acceptable within reason for the purpose given and in an amount appropriate for the gift type, if approved by the Board of Directors.



**Pentacle Theatre**  
**Donor's Property Donation Disclosure Statement**

Property Address: \_\_\_\_\_

**Instructions to the Donor**

Please complete the following form. Do not leave any spaces blank. Please refer to the line number(s) of the question(s) when you provide your explanation(s). If you are not claiming an exclusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page of this disclosure statement and each attachment.

## Pentacle Theatre Property Donation Disclosures

The following Gift Acceptance Policies are intended to help guide the marketing efforts of the organization to enhance annual and planned giving programs for Pentacle Theatre and to establish basic guidelines for acceptance of charitable contributions.

### **Flood Zones**

According to LSI Flood Services, NFIP#41047C-0344H, the property  is/  may or may not be located in a flood zone. Many lenders require flood insurance for property located in flood zones and government authorities may regulate development and construction in flood zones. Whether or not located in a flood zone, properties can be subject to flooding and moisture problems, especially properties on a slope or in low-lying areas. Buyers and tenants should have their experts confirm whether the property is in a flood zone and otherwise investigate and evaluate these matters.

Flood Zone Designation: Zone X

### **Hazardous Materials and Underground Storage Tanks**

Due to prior or current uses of the property or in the area of the construction materials used, the property may have hazardous or undesirable metals (including but not limited to lead-based paint), minerals (including but not limited to asbestos, chemicals, hydrocarbons, petroleum-related compounds, or biological or radioactive/emissive items (including but not limited to electrical and magnetic fields) in soils, water, building components, above or below ground-ground tanks/containers or elsewhere in areas that may or may not be accessible or noticeable. Such items may leak or otherwise be released. Asbestos may have been used in items such as fireproofing, heating/cooling systems, insulation, spray-on and tile acoustical materials, floor tiles and coverings, roofing drywall and plaster. If the property was built before 1978 and has a residential unit, sellers/landlords must disclose all reports, surveys and all other information known to them regarding lead-based paint to buyers and tenants for inspections (42 United States Code Sections 4851 et seq.)

### **Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act (42 United States Code Sections 12101 et seq.) and other federal, state and local requirements may require changes to the property. Buyers and tenants should have experts of their choice investigate and evaluate these matters.

### **Taxes**

Sales, leases and other real estate transactions can have federal, state and local tax consequences. In sales transactions, Internal Revenue Code Section 1446 requires buyers to withhold and pay to the IRS 10% of the gross sales price within 10 days of the date of sale unless the buyers can establish that the sellers are not foreigners, generally by having the sellers sign a Non-Foreign Seller Affidavit. Depending on the structure of the transaction, the tax withholding liability can exceed the net cash profits to be paid to the sellers at closing. California imposes an additional withholding requirement equal to 3 1/3% of the gross sales price not only on foreign sellers but also out-of-state sellers and sellers leaving the state, if the sales price exceeds \$1,000,000. Withholding generally is required if the last known address of the seller is outside

California, if the proceeds are disbursed outside of California or if a financial intermediary is used. Have your experts investigate and evaluate these matters.

**Seller / Landlord Disclosure, Delivery of Reports and Compliance with Laws**

Seller/landlords are hereby requested to disclose directly to buyer/tenants all information known to the seller/landlord regarding the property, including, but not limited to, hazardous materials, zoning, construction, design, engineering, soils, title, survey, fire/life safety, and other matters and to provide buyer/tenants with copies of all reports in the possession of or acceptable to seller/landlords regarding the property. Seller/landlords and buyers/tenants must comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Americans with Disabilities Act.

## Property Inspection Environmental Checklist

Donor Name: \_\_\_\_\_

Property Description: \_\_\_\_\_

	Yes	No	N/A
<b>A. Site Use/History:</b>			
Has anyone observed evidence of site clearing in the past, which could indicate vacant site had previous improved use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do any adjacent sites or facilities within one mile have any known or the potential for environmental problems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B. Asbestos:</b>			
Do any building or other improvements located on the property appear to potentially contain asbestos?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>c. Storage Tanks, Drums, Pipelines:</b>			
Have any underground storage tanks been observed or known to have been removed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have any tanks, drums or other containers which may contain chemicals or fuel storage been observed on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>d. Air Emissions:</b>			
Have any distinctive chemical odors been noted on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>e. Water/Wastewater, Pesticides/Herbicides, and Agricultural Chemicals:</b>			
Have any signs of stains or seepage on the ground or improvements been observed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are there inadequate storm and surface water disposal systems in place?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have any unexplained areas of vegetation stress been observed at the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>f. Waste Generation, Storage, and Disposal:</b>			
Does the site appear to have ever been used for waste disposal, treatment or storage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>g. Endangered/Protected Animals, Vegetation, Sensitive Areas:</b>			
Are there any known or observed endangered/protected animals, vegetation, or environmentally sensitive areas on-site or adjacent to property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The answers provided for completion of this checklist are based on visual observations undertaken as part of the normal property inspection by Pentacle Theatre or otherwise supportable indications of the site conditions. The Individual is not qualified to confirm or deny the existence of hazardous conditions, and completion of this checklist is not to be construed as such confirmation or denial. Confirmation of site conditions relative to hazardous materials and/or waste would require assessment by a duly qualified professional with training and experience in environmental assessment of real property.

Inspected By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_