

Coastal Maine Botanical Gardens

FUNCTIONAL AREA: Philanthropy

POLICY#:
EFFECTIVE DATE:
REVISED:

AUTHORIZATION:

President and CEO

COASTAL MAINE BOTANICAL GARDENS

CHARITABLE GIFT ACCEPTANCE POLICY

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CHARITABLE GIFT ACCEPTANCE POLICY

- I. **PURPOSE.** This policy is established to govern the acceptance and disposition of all gifts made to Coastal Maine Botanical Gardens and any of its subsidiaries or affiliated organizations (collectively, “CMBG”) in accordance with CMBG’s mission, Articles of Incorporation, bylaws, and charitable purposes.
- II. **POLICY.** The Chief Philanthropy Officer and the Executive Committee of the Board of Directors reserve the right to decline any gift that CMBG considers inappropriate, burdensome, financially adverse, or contrary to the mission, Articles, bylaws or charitable purposes of CMBG. Additionally, gifts that are inconsistent with, or do not comply with, local, state and federal laws and regulations, including without limitation tax laws, or with applicable legal or equitable principles, or that involve an unacceptable risk of liability, will not be accepted.
- III. **DEFINITIONS.** As used in this policy, the following terms have the following meanings:
- A. **Code.** The Internal Revenue Code of 1986, as amended from time to time (Title 26 of the United States Code).
- B. **Endowment Funds.**
1. *Permanent Endowment Funds* will be used to support the mission of Coastal Maine Botanical Gardens for the life of the organization. Use of the funds will be guided by donor intent and applicable law. The annual level of spending will be determined by the Spending Policy that has been approved by the Board of Directors and by applicable law.
 2. *Term Endowment Funds* are funds received from a donor with an expiring restriction, such that income from the fund may be used during the period of the restriction, and the principal may also be expended after a stated period of time or upon the occurrence of a certain event.
 3. A *Quasi-Endowment Fund* is a Board-Designated Fund which is not donor-restricted and which is funded by unrestricted net assets of the organization for an unspecified period.
- C. **Gift(s).** A voluntary transfer of assets by a person or entity (“donor”) to CMBG, made without consideration, that is, for which no value is expected or paid in return. Gifts usually take the form of checks, cash, securities, real property, or personal property. A gift may be unrestricted, temporarily restricted or permanently restricted. In the event of a below-market-value sale (“bargain sale”) of property to CMBG, the gift is limited to the net difference between the bargain sale price and the fair market value of the property.
- D. **Fair Market Value.** The price that would be arrived at as the result of arm’s-length bargaining between a willing seller and a willing buyer, neither being under any

compulsion to deal. The methods of determining fair market value depend upon the nature of the property being valued.

- E. **In-Kind Gift.** A gift of goods or services.
- F. **Permanently Restricted Gift.** A gift to CMBG upon which the donor has imposed specific permanent restrictions or conditions that must be complied with for CMBG to use or expend all or part of the gift.
- G. **Tangible Personal Property.** Tangible personal property (furniture, art, cars, boats) and intangible property.
- H. **Real Property.** Real estate including land and/or buildings or other improvements located there on the land.
- I. **Temporarily Restricted Gift.** A gift to CMBG upon which the donor has imposed specific temporary restrictions, which CMBG must fulfill before it may use the gift, such as waiting for a specific period to elapse, or one or more readily ascertainable events to happen. Once the temporary restrictions are met, the gift is deemed unrestricted thereafter.
- J. **Unrestricted Gift.** A gift to CMBG upon which the donor places no restrictions and CMBG has complete power and control over its disposition.

IV. **GENERAL GUIDELINES**

- A. CMBG will accept gifts only in a manner that complies with all applicable requirements for public charitable organizations.
- B. CMBG's preference is to receive gifts for unrestricted, general purposes. Therefore, CMBG will encourage such gifts because of the flexibility provided to CMBG in meeting the most pressing needs of the organization.
- C. CMBG will comply with the *Model Standards of Practice for the Charitable Gift Planner* promulgated by the National Committee on Planned Giving.
- D. CMBG will acknowledge all gifts in a manner that respects and honors the donor as CMBG deems appropriate, within a reasonable time, and in accordance with any legally required period of time. CMBG will respect the wishes of any donor who requests to be anonymous.
- E. In the case of internships and scholarships, a CMBG department supervisor will select department recipients of internships and scholarships. A donor may not designate the recipient of an internship and scholarship but can select the area of focus.
- F. If the intended purpose of a gift becomes illegal, impracticable, obsolete, or impossible to carry out, CMBG will work with the donor to find some acceptable

way for the use of the gift to continue in accordance with the donor's intent and CMBG's charitable purposes.

- G. In the event that CMBG accepts a gift with restrictions, the restrictions must be in writing to be enforceable, and additional restrictions may not be added after the gift is conveyed.

V. **FINANCIAL GUIDANCE TO DONORS.** Although CMBG staff or other contracted representatives of CMBG may meet with prospective donors and their financial advisors to discuss types of gifts and possible benefits to the donor, the ultimate responsibility lies with the donor and their tax, financial and legal advisors to determine the tax or other benefits, if any, to the donor. As an integral part of the process, CMBG will strongly encourage potential donors to obtain independent advice by consulting with their own tax, financial and legal advisors both verbally and in written correspondence.

VI. **CONFIDENTIALITY.** Donors may be recognized by name and amount (or range of amount) of the donor's gift, unless the donor requests to remain anonymous. Any other personal donor information will be held in confidence, subject only to any disclosure requirements to which CMBG may be subject.

VII. **GIFT ACCEPTANCE.** The Chief Philanthropy Officer of CMBG will review all gifts to make a determination of appropriateness of acceptance under this policy. Unless otherwise indicated in this Policy, whether a gift will be accepted will be determined by the Chief Philanthropy Officer of CMBG and will be determined in accordance with the following:

A. **Unrestricted Gifts.** CMBG shall accept unrestricted gifts offered to it in the form of negotiable instruments or tangible assets. CMBG may accept unrestricted gifts in other forms if the gift is consistent with its mission and complies with all applicable laws and regulations.

B. **Temporarily Restricted or Permanently Restricted Gifts ("Restricted Gifts").**

1. *Approval.* Approval must be obtained from the President and CEO and Chief Financial Officer and/or the Finance Committee of CMBG before accepting any gift that would require a major capital expenditure on the part of CMBG or the submission of an application for regulatory approval in order to comply with a donor's restriction, or if the proposed gift is not a priority or part of the strategic plan.
2. *Gifts Benefiting Specific Individual(s).* Gifts may not be accepted which are restricted for the benefit of a specific individual(s).
3. *Cy Pres Clause.* CMBG will strongly encourage the inclusion of a *cy pres* clause in all restricted gifts to permit CMBG to alter the use of the gift in accordance with its charitable purposes if sometime in the future the original purpose of the gift becomes difficult, impracticable, or impossible to carry out. A *cy pres* clause is language providing that if, at some future time, the purpose for which the gift was given no longer exists, or is no longer

necessary, legal, possible, or in the best interest of CMBG, then the donor agrees that, at the direction of the President and CEO and Chief Philanthropy Officer of CMBG, the gift or distributions therefrom may be used for a substantially similar purpose, or for such other purposes as will further the business objectives, mission and charitable purposes of CMBG, giving due consideration to the donor's original intent.

4. Restrictions. In the event that CMBG accepts a gift with one or more restrictions, CMBG must comply with the restriction(s) so long as the restriction(s) remains validly in effect. Restrictions may be removed by: (i) the expiration of the restriction, if it is temporary in nature; (ii) the consent of the donor, (iii) the application of *cy pres*, with the consent of the Office of the Maine Attorney General; or (iv) as otherwise allowed by law.

C. Real Property. An interest in real property may be accepted only with approval of the Board of Directors, following review by legal counsel and following approval and recommendation by the President, the CEO, the Finance Committee and the Chief Philanthropy Officer.

D. In-Kind Gifts and Gifts of Tangible Personal Property. CMBG may accept in-kind gifts of goods or services, or gifts of tangible personal property only after a thorough review indicates that the goods, services or property is: (i) readily marketable, or (ii) needed by CMBG for use in a manner which is related to one of the charitable purposes of CMBG.

1. Title. Title to tangible personal property must be clear, properly documented, and carefully reviewed for undisclosed contingent liabilities. Title to gifts of tangible personal property must be transferred to CMBG by written transfer of title. Gifts of encumbered tangible personal property will not be accepted unless (i) a clear potential for gain or benefit can be demonstrated; (ii) a source of funds to meet all requirements is dedicated to that purpose; (iii) the terms of the encumbrance are acceptable; and (iv) acceptance is approved by the President and CEO, Chief Financial Officer and/or Finance Committee.
2. Establishment of Value. Establishment of value is always the responsibility of the donor. If the item is not usable by the Gardens, but is salable, the Organization will inform the donor, if it is of the opinion that the value placed on the item by the donor cannot be realized by its sale. The law requires non-cash charitable contributions valued in excess of \$5,000 to meet certain criteria:
 - The donor must pay for an appraisal by a qualified appraiser.
 - CMBG must acknowledge the gift in writing, which is for the donor's tax records and will not state a value for the gift.
 - CMBG is required to notify the Internal Revenue Service of the sale price of any property gift sold within two years of the date of the gift.
 - See Section IX: *Tax Considerations* for further information.

3. Works of Art. Gifts of works of art, both self-created and purchased, will be accepted by CMBG with the following stipulations:
- Gifts of art must be made to CMBG. CMBG will work in conjunction with the Interpretation and Exhibits Coordinator and/or Director of Education, or artwork consultant employed by CMBG and/or the Art Committee specific to the project at the time of the gift to determine if the gift will be accepted, and if it will be displayed or sold.
 - If a donor makes a gift to purchase artwork, the donor may not specify style, framing, matting, artist, nor insist on display location. Rather, CMBG's Interpretation and Exhibits Coordinator and/or current professional designer or artwork consultant, in coordination with the Organization and/or Art Committee members specific to the project, will select the artwork to coordinate with the intended space.
 - If a gift of art is retained, CMBG, in its sole discretion, will determine where it will be displayed.

E. Life Insurance. Gifts of life insurance policies, including whole life, variable and universal life policies, which are paid-up and for which CMBG is designated as a beneficiary, may be accepted by the Chief Philanthropy Officer and President and CEO of CMBG. Gifts of paid-up life insurance policies naming multiple beneficiaries will be referred to the Chief Financial Officer and/or the Finance Committee for their consideration before acceptance. CMBG cannot accept a gift of a term life insurance policy without cash value unless the donor of the policy agrees to maintain the policy in force by remaining responsible for payment of future premiums.

All other gifts of life insurance policies must be reviewed and approved by the Chief Financial Officer and/or the Finance Committee, to determine if acceptance of the gift of life insurance is economically advantageous to CMBG.

F. Endowment Fund. A named endowment fund may be established only with an *initial* gift of at least \$250,000. Once an endowment fund has been established, subsequent gifts of any amount may be added to the same fund. Use of the funds will be guided by donor intent and applicable law. The annual level of spending will be determined by the Spending Policy that has been approved by the Board of Directors and by applicable law.

G. Securities. All readily marketable securities will be sold immediately upon receipt. If the number of shares involved is sufficient to have a depressing impact on the price of the stock, the sale may be extended over a period of time necessary to avoid such impact. Stock controlled under Securities and Exchange Commission Rule 144 will be held until the restriction on sale expires and then the stock will be immediately sold.

Gifts of securities which are not readily marketable may be accepted only by the Chief Financial Officer and/or Finance Committee and upon such conditions that the Chief Financial Officer and/or Finance Committee may establish. Gifts of bonds that require a holding period will be accepted and cashed when the holding period has expired.

Without limiting CMBG's right to refuse *any* gift, the following gifts of securities will NOT be accepted:

- Securities that in any way could create a liability to CMBG.
- Securities that, by their nature, may not be assigned (such as E savings bonds or closely held stock).
- Securities that, upon investigation, have no apparent value.

H. Miscellaneous Property Interests. Gifts of unusual property rights, such as mortgages, non-marketable notes, assignments of rent due under leases, oil and gas interests, patents, copyrights, royalties, frequent flyer miles and easements can be accepted only by CMBG with the approval of the President and CEO, Chief Financial Officer and Chief Philanthropy Officer.

I. Planned Gifts. At the discretion of the Board unrestricted planned gifts may be added to the endowment.

1. *Bequests in Wills.*

It is the policy of CMBG to accept gifts made by will in accordance with the other provisions of this policy.

2. *Split-Interest Trusts.*

It is the policy of CMBG to be proactive in the protection of its interest once aware of its designation as an actual or contingent beneficiary of a split-interest trust. The Organization will attempt to obtain all relevant information regarding such trusts from the donor or any other appropriate source. Such information may include, but is not limited to, the ages of those who provide measuring lives for such a trust. In addition, CMBG will undertake reasonable steps to ensure compliance with all applicable laws regarding fiduciaries in their role in the administration of such trusts for the benefit of CMBG, including but not limited to the Maine Uniform Trust Code, the Uniform Principal and Income Act, the Uniform Prudent Management of Institutional Funds Act, or any other laws or regulations, all as adopted and enacted by the state of Maine or any other relevant governmental authority. CMBG will also revalue its interest in such trusts no less frequently than annually and will request that it receive a copy of all governing instruments and amendments thereto upon execution, as well as periodic statements describing the activities of the trust and the assets held therein no less than annually.

3. Charitable Remainder Trusts.

It is the policy of CMBG not to serve as trustee of charitable remainder annuity trusts or charitable remainder unitrusts of which it is a beneficiary. This policy is intended to assure that such trusts receive the full-time investment management that they deserve and to eliminate any possibility of a conflict of interest in investment choices or any other subject between the current annuity or unitrust beneficiaries of such trusts and CMBG as remainder beneficiary. Representatives of CMBG are, however, available to cooperate with any potential donor to a charitable remainder trust in tailoring the provisions of those trusts to the donor's particular situation.

CMBG reserves the right to decline remainders under trust instruments created without its knowledge if the nature of the property or the conditions on its use are not consistent with the best interests and other activities of CMBG. Decisions on whether to accept trust remainders that consist of property other than cash or marketable securities or which are subject to use restrictions are made by the Chief Financial Officer and/or the Finance Committee. Unrestricted remainders consisting of cash or marketable securities may be accepted by the Chief Philanthropy Officer.

4. Charitable Lead Trusts.

It is the policy of CMBG not to serve as trustee of charitable lead trusts of which it is a beneficiary. As with remainder trusts, however, representatives of CMBG are available to cooperate in the establishment of such trusts to assure that payments to CMBG from any such trust can be used by CMBG in accordance with the donor's wishes and expectations.

CMBG reserves the right to decline distributions from charitable lead trusts in the drafting of which CMBG has not been consulted if the distributions consist of property other than cash or marketable securities or if the uses to which the distributions are to be put are restricted under the terms of the trust instrument to purposes not consistent with the mission and programs of CMBG.

5. Charitable Gift Annuities.

Charitable gift annuities and deferred charitable gift annuities shall be approved by the President and CEO, Chief Financial Officer and Chief Philanthropy Officer. CMBG may engage legal counsel when appropriate to consider each agreement for a prospective annuity gift. The minimum gift in respect of which an annuity will be established is \$10,000. Payout rates for annuities offered by CMBG will be at or below the maximum payout rates recommended from time to time by the American Council on Gift Annuities, a nonprofit organization whose function is, among other things, to assure that annuity rates, while fair to donors, are also reasonable enough to assure

that donee charities do not have to pay out more as annuity payments than they take in as gifts.

Once CMBG enters into a charitable annuity agreement, the obligation to pay the annuity becomes a general obligation of CMBG backed by its assets. Assets contributed to purchase the annuity are immediately added to the CMBG unrestricted endowment funds and are not preserved as a separate fund. It is the policy of CMBG not to purchase private annuities to make the annuity payments that CMBG, by issuing annuities, becomes obligated to make. Transferring the liability for the annuity payments to a private company would divert funds to that company and away from the charitable purposes of CMBG.

CMBG cannot accept gifts of tangible personal property to fund a gift annuity. Gifts of real property to fund such annuities will be carefully considered by the President and CEO, Chief Financial Officer, and Chief Philanthropy Officer, and their acceptance will depend on the likelihood that CMBG will be able to sell the donated real property promptly and whether, as in the case of any other gift of real property, the gift is accompanied by sufficient cash or other liquid assets to enable CMBG to carry the real property until it is sold without diverting other funds to the purpose. CMBG is unable to accept gifts of real property subject to mortgages or other liens to fund charitable gift annuities.

6. *Retirement Plan Beneficiary Designations.*

Donors and supporters of CMBG will be encouraged to name CMBG as beneficiary of their retirement plans. Such designation will not be recorded as a gift to the charity until such time as it becomes irrevocable. For its internal purposes, CMBG may then record the designation at its present value, even if not payable until a future date.

7. *Perpetual Trusts.*

Income received from perpetual trusts is used in accordance with the designation assigned by the donor. Undesignated income is expended as the Executive Committee of the Board directs and recorded as a donation in the non-operating revenue.

VIII. NAMING POLICY.

General Statement

The goal of CMBG when recognizing substantial donors is to recognize individuals, families or organizations that provide significant charitable financial support to CMBG by naming a department, program, garden, building, campus, or endowment.

The governing board of CMBG is responsible for evaluating not only the level of gift in relation to the particular naming opportunity but each also must act to ensure that naming a

particular department, program, building, campus, garden or endowment will support and advance, and not detract from, CMBG's values, reputation and mission.

Naming of a Department, Program, Building or Campus

A favorable vote of CMBG's Board is required to approve the naming of a department, program, building, campus, garden or endowment. The grant of naming rights for any of the items listed above require significant contributions generally requiring a minimum contribution of \$500,000 and greater amounts of financial support. The Chief Philanthropy Officer may, in his/her discretion seek approval of any other gifts as he/she deems appropriate.

Eligibility for Grant of Naming Rights

To be considered for a significant naming opportunity an individual(s), family, business, corporation or organization must (a) commit to a donation of \$500,000 or more and (b) be known as an individual, family, corporation or organization of good reputation and integrity. CMBG upon a recommendation from the Board, and/or in its sole discretion, may reject a gift that qualifies for a naming opportunity or discontinue the use of a name in connection with any department, program, building, campus garden or endowment if the stature of the donor is diminished or compromised due to poor judgment, unethical or inappropriate behavior, impropriety or legal matters, or the donor does not fulfill their or its obligation under the Gift Agreement.

Naming Opportunity Process

Generally. The Chief Philanthropy Officer of CMBG will review all naming requests and make an initial determination of appropriateness under this policy. It shall be the policy of CMBG that every building, addition to a building, space in a building, outdoor spaces such as gardens, court or plaza, and other tangible and relatively permanent feature or location on any CMBG property may be named in recognition of the generosity of an individual, organization, or family on behalf of CMBG. All approved naming designations must be in writing.

During the planning phase of each capital campaign the Campaign Cabinet will be formed and will be responsible for developing a naming opportunity program that establishes minimum charitable contributions of \$500,000 or more and identifies naming opportunities. The membership of the Committee may include CMBG Board Members, donors, philanthropy staff and the President and CEO or their respective designees. Once the Committee has reached consensus with respect to specified naming opportunities that involve a minimum charitable donation of \$500,000, together with a minimum charitable contribution amount assigned to each prominent placement on CMBG's campus within its facilities or associated with its prominent programs and endowment, the Committee, through the Chief Philanthropy Officer of CMBG or the Chair of the Campaign Cabinet, shall present the naming opportunities program to CMBG's Board for their approval prior to the start of the capital campaign.

During the capital campaign, the Cabinet may approve and accept a grant of naming rights involving charitable contributions of less than \$500,000 without the need for action by either CMBG or the Board.

When not engaged in an active capital campaign, the President and CEO, Chief Financial Officer and Philanthropy Officers will serve as the Committee. The Chief Philanthropy Officer of CMBG will present naming opportunities to the Chair of the Board, or his or her designee, who will present the naming opportunities to the Board for its consideration and approval on an annual basis. After a prospective donor commits in writing to a particular gift, a naming opportunity associated with that gift will be presented to CMBG and the Board for their approval.

Exceptions

Under certain circumstances CMBG and/or the Board may act to approve deviations from this Policy.

Branding

The grant of naming rights does not automatically entitle any donor to branding rights to the department, program, building, campus, or endowment. Branding is a particular benefit which is negotiated between CMBG (Chief Executive Officer, Chief Financial Officer, Chief Philanthropy Officer) and the donor. A grant of branding rights may involve:

- Use of donor name when answering the phone or referring to the named entity.
- Use of donor name in any marketing materials and in press, radio, television, and internet

Each branding arrangement must be agreed to in writing and signed by both parties.

Duration of Naming Actions. Except as otherwise set forth in a Gift Agreement setting a specific duration for a naming opportunity, names assigned are intended to be enduring. A named garden or building exists through the “life of a garden, building, room” and the name would not transfer to a new building. CMBG reserves the right to remove or transfer a name, in its discretion, if the following circumstances occur:

1. A significant renovation of the addition or space;
2. Alleged or actual conduct by an honored person(s) or organization that brings discredit to the institution;
3. Failure by the honored person(s) or organization to fulfill agreed upon philanthropic obligations; or
4. The demolition or sale of a facility or garden or the discontinuation of an activity.

Gift Agreements and Naming Opportunity Forms

Gift Agreements

Any gift that is made with a pledge over time must be made in writing with the amount and payment dates specified. Gift Agreements created by CMBG are used for that purpose.

Naming Opportunity Form

If a proposed gift makes a donor eligible for the grant of naming rights under this Policy, a Naming Opportunity Form (a copy of which is attached) must be completed and filed with CMBG so that CMBG can accurately present the terms of the proposed gift and the nature of the proposed naming rights to the appropriate officer(s), the Committee and/or the governing boards of CMBG in accordance with this Policy. After the appropriate approvals

called for by this Policy are obtained, the donor and CMBG must enter into a written Gift Agreement which will be accompanied by the completed Naming Opportunity Form to ensure, among other things, that CMBG accurately fulfills the donor's wishes.

IX. TAX CONSIDERATIONS.

- A. Valuation of Gifts.** It is the policy of CMBG to comply with the valuation rules set forth in IRS Publication 561, "Determining the Value of Donated Property," and the relevant income, gift and estate tax laws and regulations. Copies of Publication 561 are available at www.irs.gov or at the CMBG. Valuation refers to the value placed on the gift for CMBG crediting purposes. It is the responsibility of the donor to substantiate to the IRS the gift value used on the donor's tax return. Personal property gifts to CMBG with a value of \$5,000 or more will require submission of an appraisal to CMBG (performed within IRS time requirements) from a qualified third-party appraiser for gift recording valuation purposes. The IRS requires donors to obtain an appraisal to substantiate their charitable tax deduction for gifts valued at \$5,000 or more. The cost of the appraisal will be the responsibility of the donor.
- B. Appraisals.** The fee for the appraisal referred to in Subsection IX(A) may not be based on the value of the appraised property, and the appraiser must be "qualified," as that term is used in IRS Publication 561. A "qualified appraiser" is one who is ordinarily in the business of appraising similar property, has appropriate educational and experiential background, performs appraisals for many different people and purposes (and not primarily either for CMBG or for the donor), and is not employed by CMBG, the donor, any relative of the donor or any entity controlled by the donor or members of the donor's family. Duplicate originals of each appraisal should be prepared, one for CMBG, unless CMBG deems it unnecessary, and one for the donor.
- C. Alteration of Value by CMBG.** CMBG reserves the right to alter the value of property contributed to it on the books and records of CMBG for accounting, tax-reporting, annual fund record-keeping or any other purpose if developments after the completion of the gift or information that comes to the attention of CMBG after the gift is completed are determined, in the discretion of the Chief Financial Officer and/or the Finance Committee or CMBG's auditors, to merit such an alteration.
- D. Forms 8283 and 8282.** Donors of property other than cash and marketable securities which have a value of \$500 or more are required to file IRS Form 8283 with their individual tax returns for the year in which such a gift is made, if they intend to take an income-tax deduction for the gift. The Code also requires that if CMBG sells property that it has received by gift within two years after the property is received, CMBG must report the fact of the sale and the amount of the proceeds to the Internal Revenue Service on Form 8282. It is the policy of CMBG to comply fully with this reporting requirement and all other applicable aspects of state and federal tax law.
- E. Receipt for Gift of Securities.** In compliance with IRS regulations, the receipt provided for a gift of securities will not show a dollar value. Instead, the receipt will

state the description, name of issue, number of shares of the securities given and the date of gift. Valuation for tax purposes is the responsibility of the donor.

Appendices:

Appendix A: *Model Standards of Practice for the Charitable Gift Planner*, National Committee on Planned Giving

Appendix B: IRS form 8283: “Non-cash Charitable Contributions”