

CENTRAL INDIANA COMMUNITY FOUNDATION, INC.

**CHARITABLE ORGANIZATION NON-PERMANENT FUND AGREEMENT FOR
LEGAL NAME OF THE ORGANIZATION**

THIS AGREEMENT, made and entered into on _____, 20__, by and between Central Indiana Community Foundation, Inc. (the “Community Foundation”), and _____ (the “Founding Contributor”),

WITNESSETH:

WHEREAS, the Founding Contributor desires to create a charitable organization non-permanent fund in the Community Foundation (the “Fund”);

WHEREAS, the Community Foundation is a public charity exempt from taxation under Internal Revenue Code (“Code”) Section 501(c)(3), a public charity described in Section 170(b)(1)(A)(vi) of the Code, and therefore is an appropriate institution within which to establish such a charitable fund; and

WHEREAS, the Community Foundation is willing and able to create such a fund, subject to the terms and conditions hereof.

NOW THEREFORE, the parties agree as follows:

GENERAL PROVISIONS:

1. **GIFTS** The Founding Contributor hereby transfers irrevocably to the Community Foundation the property described on the attached Exhibit A to establish the Fund. Subject to the right of the Community Foundation to reject any particular gift, any person (whether an individual, corporation, trust, estate or organization, a “Donor”) may make additional gifts to the Community Foundation for the purposes of the Fund by a transfer to the Community Foundation of property acceptable to the Community Foundation in whole or in part for the Fund. All gifts, bequests and devises to this Fund shall be irrevocable once accepted by the Community Foundation.

2. **PURPOSE** The primary purpose of the Fund shall be to provide support, as directed by the Board of Directors of the Community Foundation (the “Board”), to the Founding Contributor, an organization described in Code Section 509(a)(1), (2), or (3), to be used to further the charitable or other exempt purposes of Founding Contributor within the meaning of Code Section 170(c)(1) or 170(c)(2)(B) consistent with the mission and purposes of the Community Foundation.

3. **DISTRIBUTION** The total assets of the Fund, net of investment and administrative costs, as provided in paragraph 9 hereof, may be committed, granted or expended for purposes described

in Code section 170(c)(1) or 170(c)(2)(B) to the Founding Contributor and its successors in interest in accordance with the Community Foundation's policies and procedures for charitable organization non-permanent funds in effect from time to time. If any gifts to the Community Foundation for the purposes of the Fund are received and accepted subject to a Donor's conditions or restrictions as to the use of the gift or income therefrom, said conditions or restrictions will be honored, subject, however, to the authority of the Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community served by the Community Foundation. No distribution shall be made from the Fund to any entity if such distribution will in the judgment of the Community Foundation endanger the Community Foundation's Code section 501(c)(3) status.

4. **ADMINISTRATIVE PROVISIONS** Notwithstanding anything herein to the contrary, the Community Foundation shall hold the Fund, and all contributions to the Fund, subject to the provisions of the applicable federal and Indiana laws and the Community Foundation's Bylaws and Articles of Incorporation. The Board shall monitor the distribution of the Fund, and shall have all powers of modification and removal specified in United States Treasury Regulation Section 1.170A-9(f)(11)(v)(B).

Upon request, the Board agrees to provide the Founding Contributor with a copy of the annual examination of the finances of the Community Foundation as reported upon by independent certified public accountants employed by the Community Foundation.

This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

5. **CONDITIONS FOR ACCEPTANCE OF FUNDS** The Founding Contributor agrees and acknowledges that the establishment of the Fund herein created is made in recognition of, and subject to, the terms and conditions of the Bylaws and the Articles of Incorporation of the Community Foundation as from time to time amended, and that the Fund shall at all times be subject to such terms and conditions, including but not by way of limitations, provisions for:

- (a) Presumption of a Donor's or Donors' intent;
- (b) Variance from a Donor's or Donors' direction;
- (c) Amendments.

6. **NOT A SEPARATE TRUST** The Fund shall be a component part of the Community Foundation. All money and property in the Fund shall be held as general assets of the Community Foundation and not segregated as trust property of a separate trust; provided that the Fund shall be allocated its pro rata share of the net earnings of the Community Foundation's long-term pool, such

percentage interest being subject to adjustment at the time of each addition to, or reduction of, assets in the long-term pool.

7. **ACCOUNTING** The receipts and disbursements of this Fund shall be accounted for separately and apart from those of other gifts to the Community Foundation.

8. **INVESTMENT OF FUNDS** The Community Foundation shall have all powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund and the power to commingle the assets of the Fund with those of other funds for investment purposes.

The Community Foundation's long-term pool is a well-diversified investment pool with a long-term investment return objective. Funds invested in this pool are subject to the volatility of market conditions and there is no guarantee of investment return or preservation of principal. The Community Foundation shall not be responsible for any loss or reduction in value with respect to any assets held in the Fund unless any loss or reduction in value is due to the intentional misconduct or gross negligence of the Community Foundation or its employees or agents.

9. **COSTS OF THE FUND** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs of the Community Foundation. Those costs annually charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Community Foundation as applicable to funds of this type, as such schedule may be amended by the Community Foundation from time to time. Any costs to the Community Foundation in accepting, transferring or managing property donated to the Community Foundation for the Fund shall also be paid from the Fund.

SPECIFIC PROVISIONS:

10. **NAME OF THE FUND** The name of the Fund shall be the _____ **Non-Permanent Fund** (the "Fund").

11. **DISTRIBUTION POLICY** In accordance with the Community Foundation's current procedures governing distributions from the Fund, the Founding Contributor may request distributions from the Fund upon written request to the Community Foundation from the Fund's Designated Representative. After the second distribution from the Fund in one calendar year, a \$500 transaction fee per distribution will be imposed on the Fund for all subsequent distributions in that calendar year. Thirty days' written notice to the Community Foundation from the Designated Representative shall be required in advance of any distribution of \$500,000 or more.

12. **CONTINUITY** The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Founding Contributor, and its

successors cease to exist, the Community Foundation shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- (a) Are within the scope of the charitable purposes of the Community Foundation's Articles of Incorporation and Bylaws; and
- (b) Most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

13. DESIGNATED REPRESENTATIVE OF THE FOUNDING CONTRIBUTOR

The _____ shall be the designated representative of the Founding Contributor in all dealings with the Community Foundation regarding the Fund. As of this date, the _____ is the _____.

14. ORIGINAL AND ENTIRE AGREEMENT This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement. Signatures by the parties electronically transmitted shall be deemed to be original signatures for all purposes. This Agreement supersedes all other prior discussions, representations, and agreements, whether oral or written, express or implied, between the parties relating to the matters contemplated herein and constitutes the entire agreement between the parties relating to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Founding Contributor and the Community Foundation each has caused this Agreement to be approved by their respective Boards of Directors and to be executed by their respective duly authorized officers, all as of the day and year first above written.

[ORGANIZATION NAME]

Central Indiana Community Foundation, Inc.

[Name of Authorized Signatory, Title]

Brian Payne, President and CEO or
Robert A. MacPherson, VP for Development

12/2016 smw

EXHIBIT A

LIST OF INITIAL DONATIONS TO FUND