

**CENTRAL INDIANA COMMUNITY FOUNDATION, INC.**

**ADVISED PASS-THROUGH FUND AGREEMENT FOR**

**Legal Name of Donor**

**THIS AGREEMENT**, made and entered into on \_\_\_\_\_, 20\_\_, by and between Central Indiana Community Foundation, Inc. (the “Community Foundation”) and \_\_\_\_\_ (“Donor” [or “Donors”]),

**WITNESSETH:**

**WHEREAS**, Donor desires to create an advised pass-through fund (the “Fund”) in the Community Foundation with respect to which Donor can recommend recipients of charitable grants;

**WHEREAS**, the Community Foundation is a non-profit organization 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 accordingly an appropriate institution within which to establish such a charitable fund; and

**WHEREAS**, the Community Foundation is willing and able to create such an advised fund, subject to the terms and conditions hereof:

**NOW THEREFORE**, the parties agree as follows:

**GENERAL PROVISIONS:**

**1. GIFT** Donor hereby transfers irrevocably to the Community Foundation, the property described in the attached Exhibit A to establish the Fund. Subject to the right of the Community Foundation to reject any particular gift, the Community Foundation may receive additional irrevocable gifts of property acceptable to the Community Foundation from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof. 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”) for any and all charitable or other tax-exempt purposes within the meaning of Code Sections 170(c)(1) or 170(c)(2)(B) that are consistent with the tax-exempt purposes of the Community Foundation.

**3. DISTRIBUTION** The total assets of the Fund, net of investment and administrative costs, as provided in paragraph 11 hereof, may be committed, granted or expended for purposes described in Code Section 170(c)(1) or 170(c)(2)(B) to organizations described in Section 509(a)(1), (2), or (3). 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 individual or entity if such distribution will in the judgment of the Community Foundation endanger the Community Foundation's Code Section 501(c)(3) status.

**4. RECOMMENDATIONS FOR DISTRIBUTION** Subject to the Community Foundation's policies and procedures for advised funds, the commitments, grants or expenditures from the Fund contemplated in paragraph 3 shall be made at such time or times and in such amount or amounts as may be determined solely by the Community Foundation to such organizations of the type described in paragraph 3 as may be designated by the Community Foundation; provided, however, that Donor may from time to time submit to the Community Foundation the names of specified organizations described in paragraph 3 to which it is recommended that distributions be made. All recommendations from Donor shall be solely advisory, and the Community Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto.

Except as provided in the Specific Provisions, below, after the death or incapacity of Donor or resignation of Donor as Fund Advisor, the assets of the Fund will be distributed to the unrestricted endowment fund for the Community Foundation, the Fund will be terminated, and the name of the Fund shall be listed in the Community Foundation's Alphonso Pettis Society in accordance with Community Foundation policy.

**5. 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).

The Board agrees to provide Donor a copy of the annual examination of the finances of the Community Foundation as reported upon by independent certified public accountants.

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.

**6. CONDITIONS FOR ACCEPTANCE OF FUNDS** Donor agrees and acknowledges that the Fund shall remain active, as defined by Community Foundation policy, for the life of the Fund, and 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 Donor's intent;
- (b) Variance from Donor's direction; and
- (c) Amendments.

**7. CONTINUITY OF THE FUND** The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated, 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 Bylaws and Articles of Incorporation; and
- (b) Most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

**8. 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 pool in which the Fund is invested, such percentage interest being subject to adjustment at the time of each addition to, or reduction of, assets in the pool in which the Fund is invested.

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

**10. 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.

Donor may elect to invest the Fund in the Community Foundation's long-term pool or the Community Foundation's short-term pool; provided, however, Donor acknowledges and accepts the following:

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.

Upon election by Donor of the long-term pool or the short-term pool, Donor may not change from one pool to the other without the Community Foundation's consent, which may be withheld in its sole and absolute discretion.

**11. 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. In the event the Fund balance declines below the required minimum amount to establish the Fund, the annual administrative fee shall be the Community Foundation's then-current minimum administrative fee for funds of its type.

**SPECIFIC PROVISIONS:**

**12. NAME OF THE FUND** The name of the Fund shall be the \_\_\_\_\_  
**Fund.**

**13. FUND ADVISOR** Donor shall be the designated Fund Advisor in all dealings with the Community Foundation regarding the Fund for the purpose of submitting, from time to time, the specific charitable purposes or the names of specified organizations for or to which it is recommended that distributions be made. All recommendations from the Fund Advisor shall be solely advisory, and the Community Foundation may accept or reject such recommendations, applying reasonable standards and guidelines with regard thereto. **[If married, EITHER:]** Either of Donors, as a Fund Advisor, may make recommendations for the distributions without the consent of the other Donor. **[OR:]** Donors' recommendations as Fund Advisors must be made jointly with each Donor giving his or her consent to each distribution recommendation.

After the death or incapacity of Donor or resignation of Donor as Fund Advisor or, if applicable, the death, incapacity or resignation of the last surviving successor fund advisor as set forth in paragraph 14, the assets of the Fund will be distributed to the unrestricted endowment fund for the Community Foundation, the Fund will be terminated, and the name of the Fund shall be listed in the Community Foundation's Alphonso Pettis Society in accordance with Community Foundation policy.

**OR**

**13. FUND ADVISOR** If Donor chooses not to serve as the fund advisor, Donor designates \_\_\_\_\_ (the "Fund Advisor") to serve as the Fund Advisor in all dealings with the Community Foundation regarding the Fund for the purpose of submitting, from time to time, the specific charitable purposes or the names of specified organizations for or to which it is recommended that distributions be made. All recommendations from the Fund Advisor shall be solely advisory, and the Community Foundation may accept or reject such recommendations, applying reasonable standards and guidelines with regard thereto.

After the death, incapacity or resignation of the Fund Advisor or, if applicable, the death, incapacity or resignation of the last surviving successor fund advisor as set forth in paragraph 14, the assets of the Fund will be distributed to the unrestricted endowment fund for the Community Foundation, the Fund will be terminated, and the name of the Fund shall be listed in the Community Foundation's Alphonso Pettis Society in accordance with Community Foundation policy.

**OR**

**13. ADVISORY COMMITTEE** If Donor chooses not to serve as the fund advisor, Donor designates a committee (the “Advisory Committee”) composed of the following persons (an uneven number):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with \_\_\_\_\_ serving as chair thereof, to serve as the fund advisor in all dealings with the Community Foundation regarding the Fund for the purpose of submitting, from time to time, the specific charitable purposes or the names of specified organizations for or to which it is recommended that distributions be made. Members of the Advisory Committee shall serve until their death, incapacity or resignation from the Advisory Committee. All recommendations from the Advisory Committee shall be solely advisory, and the Community Foundation may accept or reject such recommendations, applying reasonable standards and guidelines with regard thereto.

After the death, incapacity or resignation of the last surviving member of the Advisory Committee or, if applicable, the death, incapacity or resignation of the last surviving successor fund advisor as set forth in paragraph 14, the assets of the Fund will be distributed to the unrestricted endowment fund for the Community Foundation, the Fund will be terminated, and the name of the Fund shall be listed in the Community Foundation’s Alphonso Pettis Society in accordance with Community Foundation policy.

**14. SUCCESSOR FUND ADVISOR** If, at the time of the death or incapacity of Donor or resignation of Donor as Fund Advisor, the Fund balance equals or exceeds the sum of \$100,000.00, including any potential funding through Donor’s estate plans, \_\_\_\_\_ will serve as the fund advisor (the “Successor Fund Advisor”). After the death, incapacity or resignation of the Successor Fund Advisor, the Fund shall terminate in accordance with the provisions of paragraph 13, unless otherwise stated below.

If, at the time of the death, incapacity or resignation of the Successor Fund Advisor, the Fund balance equals or exceeds the sum of \$1,000,000.00, \_\_\_\_\_ will serve as the fund advisor (the “Second Successor Fund Advisor”). After the death, incapacity or resignation of the Second Successor Fund Advisor, the Fund shall terminate in accordance with the provisions of paragraph 13.

**15. AMENDMENT OF FUND AGREEMENT** Subject to the Community Foundation's policies and procedures for advised funds, Donor shall be permitted to amend this Agreement from time to time with the consent of the Community Foundation, which consent shall not be unreasonably withheld. **[[If Donors are married, EITHER:]** After the death or incapacity of one of Donors or resignation of one of Donors as Fund Advisor, the surviving Donor may amend this Agreement with the consent of the Community Foundation. **[OR:]** After the death or incapacity of one of Donors or resignation of one of Donors as Fund Advisor, the surviving Donor may not amend this Agreement.] **[If**

**ONE Donor:]** Upon the death or incapacity of Donor or resignation of Donor as Fund Advisor, the provisions of paragraphs 13 and 14 regarding continuation and/or disposal of the Fund shall control. **[If Donors are married:]** Upon the death or incapacity of the surviving Donor or resignation of the surviving Donor as Fund Advisor, the provisions of paragraphs 13 and 14 regarding continuation and/or disposal of the Fund shall control.

**16. INCAPACITY** “Incapacity,” as used herein, shall refer to an individual’s disability to perform any function assigned hereunder, as evidenced by the statement of a physician licensed to practice medicine in the jurisdiction where the individual resides.

**17. 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**, Donor has executed this Agreement and the Community Foundation has caused this Agreement to be approved by its Board of Directors and to be executed by a duly authorized officer, all as of the day and year first above written.

**Donor**

**Central Indiana Community Foundation, Inc.**

\_\_\_\_\_  
[Name of Donor]

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

12/16 smw

**EXHIBIT A**

LIST OF INITIAL DONATIONS TO FUND