

**COMMUNITY FOUNDATION *for* MUSKEGON COUNTY
ORGANIZATION ENDOWMENT FUND AGREEMENT**

_____ **FUND**

AGREEMENT made _____, 201_ between _____ (the "Donor") and the COMMUNITY FOUNDATION *for* MUSKEGON COUNTY (the "Foundation"), a Michigan non-profit corporation.

This agreement is made with reference to the following facts:

- A. The Donor is presently a tax-exempt charitable organization (as defined herein).
- B. The Foundation is a publicly-supported community foundation, meeting the public support test of IRC §509(a) and organized and operated exclusively for charitable purposes as provided in IRC §501(c)(3).
- C. The Donor desires to establish a permanent Endowment Fund with the Foundation which shall be known as the _____ **Fund** (the "Fund").
- D. The Foundation, pursuant to the terms of this agreement and the restrictions imposed hereby, desires to accept the initial contribution of Donor as well as any subsequent donations to the Fund, and to administer and distribute the same in accordance with the terms and conditions of this agreement.

- 1. **Establishment of Fund.** The Foundation acknowledges receipt of \$ _____ as the initial property of the Fund.
- 2. **Property of the Fund.** The Fund shall include the property received to establish the Fund, such property as may later be transferred to the Foundation by Donor or from any other source for inclusion in the Fund and accepted by the Foundation, and all undistributed income from the Fund. The Fund shall be the Foundation's property held by it in its corporate capacity and shall not be deemed a trust Fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived therefrom, in accordance with the Articles of Incorporation and Bylaws of the Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles and Bylaws.
- 3. **Designation of Purposes.** The Fund shall be used for the general support of the charitable or educational purposes of the Donor and its affiliated agencies.
- 4. **Distributions of Income.** All or a portion of the spendable income (as defined herein) of the Fund shall be distributed to Donor upon the written request of Donor, which may be submitted periodically to the Foundation. The request shall include a Board of Directors' written resolution approving the request for a distribution from the Fund.
- 5. **Other Distributions.** Distributions in excess of the spendable income of the Fund may be made to the Donor as the Foundation's Board of Trustees determines. Recommendations for such distributions may be made from time to time to the Foundation by the Donor's Board of Directors as provided in Paragraph 4 above. Excess distributions may be made only from the portion of the Fund's balance which represents contributions made by the Donor plus allocated investment realized/unrealized gains and/or losses to such portion. Recommendations of the Donor's Board shall be solely advisory and not binding on the Foundation.

6. **Successors to the Donor.**

- a. The Fund will continue for the exclusive use and benefit of the successor or surviving organization if the Donor merges or consolidates with another entity which is also a tax-exempt charitable organization under Internal Revenue Code Section 501(c)(3).
- b. Upon dissolution of the Donor, the Fund shall continue for the benefit of such other 501(c)(3) organization as identified by the Donor's Board of Directors, providing such identification is consistent with the charitable purposes of the Foundation. Any designation made under this section shall be in writing and shall be delivered by the Donor to the Foundation prior to the filing of legal dissolution of the Donor.
- c. If Donor fails to identify such other 501(c)(3) organization or such identification is not consistent with the tax-exempt status of the Foundation, the Fund shall become a part of the Unrestricted Endowment of the Foundation.

7. **Variance.**

- a. The Foundation agrees that if its Board of Trustees proposes to exercise the variance power under Article VIII, Section (8) of the Foundation's Bylaws, the exercise of such power shall not be effective earlier than at least 30 days after the Foundation notifies Donor in writing of (i) its intent to exercise such power and (ii) the manner in which the Foundation proposes to vary the purposes, uses, or methods of administration of the Fund. During the notice period, Donor may advise the Foundation of its views regarding the proposed exercise of the power and take such other action as it deems appropriate. If the Foundation becomes aware of any other action instituted or proposed by any person to vary the purposes, uses, or methods of administration of the Fund, it will promptly notify the Donor's Board of Directors.
- b. If the Foundation ceases to be a qualified charitable organization or if the Foundation proposes to dissolve, the assets of the Fund shall, after payment or making provision for payment of any liabilities, properly chargeable to the Fund, be distributed to Donor. If Donor is not then a qualified charitable organization, said assets shall be distributed in such manner and to such organization or organizations in Muskegon County as satisfies the requirements of a qualified charitable organization and serves purposes similar to those of the Donor.
- c. Notwithstanding anything in this agreement or in the Foundation's Articles or Bylaws to the contrary, the Foundation agrees not to exercise the modification provisions contained in Article VIII of its Bylaws except to the extent and as may be required from time to time by the laws of the State of Michigan or by the Internal Revenue Code, including the rules and regulations with respect thereto, in order to qualify the Organization Endowment Fund as a component part of the Foundation. Internal Revenue Service regulations presently require that any restriction or condition may be modified if it becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Muskegon County area.

8. **Definitions and Construction.**

- a. As used in this agreement:
 - i. "Qualified charitable organization" means an organization described in §501(c)(3) and which is other than a private foundation under §509(a) of the Internal Revenue Code.
 - ii. References to any provision of the Internal Revenue Code shall be deemed references to the U.S. Internal Revenue Code of 1986 as the same may be amended from time to time and the corresponding provision of any future U.S. Internal Revenue Code.

- iii. "Spendable income" means the amount determined under the spending rule policy being used by the Foundation for its component Funds (less fees).
 - b. It is intended that the Fund shall be a component part of the Foundation and that nothing in this agreement shall affect the status of the Foundation as an entity which is a qualified charitable organization. This agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Internal Revenue Code and any regulations issued pursuant thereto applicable to the intended status of the Foundation.
 - c. Each Fund is charged two fees. One is the investment manager fee, which is negotiated with the various managers and may vary from year to year. This fee is currently included in the total net investment gains and/or losses that are applied to the Fund quarterly. The second is a Foundation administrative fee for the Fund which is currently at .5% and reviewed annually. The administrative fee is deducted from the Fund. If Donor transfers property to the Fund on any day after the first day of the Foundation's fiscal year, only a pro-rata portion of the annual fees will be charged against the Fund.
9. **Gift Acknowledgments.** The Foundation shall make all Donor information with respect to the Fund available to Donor during normal business hours of the Foundation, or online, with authorization, but not limited to, name, address, amount of gift and restrictions on gift, if any.
10. **Copies of Agreement.** The Donor and the Foundation may furnish copies of this agreement to other potential Donors to the Fund to demonstrate the protocol and procedures that have been put in place with regard to the administration and disbursement of the Fund.

The Parties execute this Agreement by its duly authorized officers effective as of the day and year above as evidence of their agreement.

_____ FUND

By: _____
Name & Position

COMMUNITY FOUNDATION *for* MUSKEGON COUNTY

By: _____
Chris A. McGuigan, President/CEO