



Lake County's Community Foundation

**DISCRETIONARY NONPERMANENT FUND AGREEMENT  
BETWEEN  
LEGACY FOUNDATION, INC.,  
AND  
\_\_\_\_\_ (“DONORS”)**

**THIS AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_, 20\_\_, by and between Legacy Foundation, Inc. (“Legacy Foundation”), and \_\_\_\_\_ (“Donors”).

**Recitals**

**WHEREAS**, Donors desire to establish a discretionary nonpermanent fund for charitable and similar exempt purposes in Legacy Foundation; and

**WHEREAS**, Legacy Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a discretionary nonpermanent fund; and

**WHEREAS**, Legacy Foundation is willing and able to hold and administer such a discretionary nonpermanent fund, subject to the terms and conditions hereof.

**General Provisions**

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

**1. GIFT AND FUND DESIGNATION.** Donors hereby transfer irrevocably to Legacy Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish a discretionary nonpermanent fund to be known as the \_\_\_\_\_ Fund (the “Fund”). Subject to the right of Legacy Foundation to reject any particular gift, from time to time Legacy Foundation may accept additional irrevocable gifts of property from Donors or 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 Legacy Foundation.

**2. PURPOSE.** The purpose of the Fund shall be to provide support as directed by the Board of Directors (the “Board”) of Legacy Foundation for programs or activities that fulfill

charitable or other exempt purposes within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and that are consistent with the mission and purposes of Legacy Foundation.

**3. DISTRIBUTIONS.** The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended solely for purposes described in this Agreement (i) to pay expenditures of charitable or other exempt programs and activities conducted or sponsored by Legacy Foundation itself, (ii) to other organizations described in Code section 170(b)(1)(A), or (iii) to other exempt organizations that are not public charities (such as organizations described in Code sections 501(c)(4) or 501(c)(6)), provided that Legacy Foundation exercises due diligence similar to that required by private foundations exercising expenditure responsibility, to ensure such distributions are used for exclusively charitable purposes.

If any gift to Legacy Foundation for the Fund is accepted subject to conditions or restrictions as to the use of the gift or income therefrom, such 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 or other exempt purposes of Legacy Foundation or the needs of the community served by Legacy Foundation. No distribution shall be made from the Fund that may in the judgment of Legacy Foundation jeopardize or be inconsistent with Legacy Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

**4. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, Legacy Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and Legacy Foundation's Articles of Incorporation and Bylaws, as amended from time to time. The Board shall oversee distributions from 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) or corresponding provisions of any subsequent federal tax laws.

The Board agrees to provide Donors a copy of any annual examination of the finances of Legacy Foundation as reported 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.

**5. CONDITIONS FOR ACCEPTANCE OF GIFTS.** Donors agree and acknowledge that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of Legacy Foundation, as amended from time to time, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for:

- a. Presumption of Donors' intent;
- b. Variance from Donors' direction; and
- c. Amendments.

**6. CONTINUITY OF THE FUND.** 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 Fund is terminated, Legacy Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

- a. are within the scope of the charitable and other exempt purposes of Legacy Foundation; and
- b. most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

**7. NOT A SEPARATE TRUST.** The Fund shall be a component part of Legacy Foundation. All money and property in the Fund shall be held as general assets of Legacy Foundation and not segregated as trust property of a separate trust.

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

**9. INVESTMENT OF FUND ASSETS.** Legacy Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or Legacy Foundation's general assets. **Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value.**

**10. COSTS OF THE FUND.** It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of Legacy Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by Legacy Foundation as applicable to funds of this type, as such schedule may be amended by Legacy Foundation from time to time. Any costs and expenses incurred by Legacy Foundation in accepting, transferring, or managing property donated to Legacy Foundation for the Fund, including without limitation Legacy Foundation's costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which Legacy Foundation is prevailing party, also shall be paid from the Fund.

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**Execution**

**IN WITNESS WHEREOF**, Donors and Legacy Foundation, by a duly authorized officer, have executed this Agreement as of the day and year first above written.

DONORS:

\_\_\_\_\_  
Donor

\_\_\_\_\_  
Donor

LEGACY FOUNDATION, INC.:

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Board Approval Date:** \_\_\_\_\_

**EXHIBIT A**

**LIST OF INITIAL DONATIONS TO FUND**

Cash: \_\_\_\_\_

Publicly Traded Securities:

Other:

Governance Committee: 1/20/2016  
Board Approval of Template: 2/2/2016