



Lake County's Community Foundation

**DONOR ADVISED 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. (the “Legacy Foundation”), and _____ (“Donors”).

Recitals

WHEREAS, Donors desire to establish an advised nonpermanent fund in the Legacy Foundation with respect to which Donors can recommend appropriate expenditures or recipients of grants for charitable and similar exempt purposes; and

WHEREAS, the 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 an advised nonpermanent fund; and

WHEREAS, the Legacy Foundation is willing and able to hold and administer such an advised 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 the Legacy Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish an advised nonpermanent fund to be known as the _____ Fund (the “Fund”). Subject to the right of the Legacy Foundation to reject any particular gift, from time to time the 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 the Legacy Foundation.

2. PURPOSE. The purpose of the Fund shall be to provide support as directed by the Board of Directors (the “Board”) of the 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 the 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 the 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 the Legacy Foundation exercises expenditure responsibility pursuant to Code section 4945(h), to ensure such distributions are used for exclusively charitable purposes. Distributions may be made from the entire Fund balance, including both income and principal, and the Fund may be spent down in its entirety and retired.

If any gift to the 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 the Legacy Foundation or the needs of the community served by the Legacy Foundation. No distribution shall be made from the Fund that may in the judgment of the Legacy Foundation jeopardize or be inconsistent with the 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 (e.g., taxes on Code section 4966 taxable distributions to “disqualified supporting organizations”).

4. RECOMMENDATIONS FOR DISTRIBUTIONS. Subject to the Legacy Foundation’s principles and procedures for advised funds, the commitments, grants, or expenditures from the Fund contemplated in this Agreement shall be made at such time or times and in such amount or amounts as may be determined by the Legacy Foundation; provided, however, that Donors (or any one individual designated by the Donors as the Fund advisor) may from time to time submit to the Legacy Foundation recommendations regarding appropriate expenditures or the names of specified organizations described in Code section 170(b)(1)(A) to which it is recommended that distributions be made. All recommendations from Donors or the designated advisor shall be solely advisory, and the Legacy Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto (including policies and procedures implemented to comply with applicable law). If both spouses sign this Agreement as Donors, each shall be equally entitled to advise as to Fund distributions while both survive. After the first of the Donors to die, the surviving Donor may make all such recommendations. After the death of both Donors or the last properly designated advisor (if later), the assets of the Fund shall be added to, and maintained, expended, or distributed as part of, the general assets of the Legacy Foundation. Moreover, in the event that no grant recommendations are made from

the Fund for a period of **three years** and, during such time the Donors (or the Fund advisor, if applicable) do not reply to the Legacy Foundation's attempts to contact them, the Legacy Foundation will begin making grants from the Fund pursuant to the spending policy of the Legacy Foundation and consistent with the Fund's purpose. If no purpose is identified in the fund agreement the spendable assets in the Fund will become part of the Foundation's unrestricted endowment. See Legacy Foundation's Inactive Fund Policy for details on grantmaking activity and exceptions.

5. ADMINISTRATIVE PROVISIONS. Notwithstanding anything herein to the contrary, the 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 the 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.

Upon request, the Board will provide Donors a copy of any annual examination of the finances of the Legacy Foundation as reported by independent certified public accountants; provided, however, that the Donors provide contact information to the Legacy Foundation and update such contact information as needed.

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 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 the 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.

7. 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, the 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 the Legacy Foundation; 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 Legacy Foundation. All money and property in the Fund shall be held as general assets of the Legacy Foundation and not segregated as trust property of a separate trust.

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

10. INVESTMENT OF FUND ASSETS. The 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 the 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; provided, however that the Legacy Foundation is not required to invest the assets in the Fund.**

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 and expenses of the Legacy Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Legacy Foundation as applicable to funds of this type, as such schedule may be amended by the Legacy Foundation from time to time. Any costs and expenses incurred by the Legacy Foundation in accepting, transferring, or managing property donated to the Legacy Foundation for the Fund, including without limitation the Legacy Foundation's costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which the Legacy Foundation is prevailing party, also shall be paid from the Fund.

Execution

IN WITNESS WHEREOF, Donors and the 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: _____

EXHIBIT A

LIST OF INITIAL DONATIONS TO FUND

Cash: _____

Publicly Traded Securities:

Other: