

**DISCRETIONARY SCHOLARSHIP ENDOWMENT FUND AGREEMENT
BETWEEN
COMMUNITY FOUNDATION OF ST. JOSEPH COUNTY, INC.,
AND
JOHN A. AND MARY P. SMITH (“DONORS”)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of _____, 20__, by and between the Community Foundation of St. Joseph County, Inc. (the “Community Foundation”), and **John A. and Mary P. Smith** (“Donors”).

Recitals

WHEREAS, Donors desire to establish a discretionary scholarship endowment fund in the Community Foundation; and

WHEREAS, the Community 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 scholarship endowment fund; and

WHEREAS, the Community Foundation is willing and able to hold and administer such a discretionary scholarship endowment 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 Community Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish a discretionary scholarship endowment fund to be known as the **John and Mary Smith Fund** (the “Fund”). Subject to the right of the Community Foundation to reject any particular gift, from time to time the Community 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 Community Foundation.

2. PURPOSE. The purpose of the Fund shall be to provide support as directed by the Board of Directors (the “Board”) of the Community Foundation for educational scholarships for students who are accepted into and attend accredited two- or four-year public or private institutions of higher learning as described in Code section 170(b)(1)(A)(ii), and in particular to such students who meet the following qualifications [such as students who graduate from a particular high school, district, or county, students enrolled in a particular field of study, etc.]:

In the event that the above criteria are too restrictive (because no student acceptable to the Community Foundation meets the criteria, or for other reasons), the purpose of the Fund shall include the support of educational scholarships for deserving students who most closely satisfy the criteria. All support provided from the Fund shall further the educational, charitable, or other exempt purposes of the Community Foundation within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and shall be consistent with the mission and purposes of the Community 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 pursuant to the distribution (or spending) policy of the Community Foundation, as such policy may be amended from time to time by the Community Foundation, solely for the purposes described in this Agreement. In addition, all Fund assets shall be available to make payments in support of previously approved educational scholarships (for example, a four-year scholarship awarded with the understanding that scholarship payments will continue as long as the recipient remains in good standing with a particular grade point average). The Community Foundation's distribution (or spending) policy, as applied to endowments such as the Fund, shall be designed to take into account total return concepts of investment and spending, with the goal of preserving the real spending power of endowments over time while balancing the need for consistent spending to support the educational, charitable, and similar purposes of such endowments.

If any gift to the Community 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 educational, charitable, or other exempt purposes of the Community Foundation or the needs of the community served by the Community Foundation. No distribution shall be made from the Fund that may in the judgment of the Community Foundation jeopardize or be inconsistent with the Community 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, the Community 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 Community 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(e)(11)(v)(B).

The Board agrees to make available to Donors a copy of any annual examination of the finances of the Community 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 the Community Foundation, as amended from time to time, 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, the Community Foundation shall use any remaining assets in the Fund exclusively for educational, charitable, or other exempt purposes that:

- a. are within the scope of the educational, charitable, and other exempt purposes of the Community 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 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.

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

9. INVESTMENT OF FUND ASSETS. The Community 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 Community Foundation's general assets.

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 the Community Foundation. Those costs and expenses 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 and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation's costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which the Community Foundation is prevailing party, also shall be paid from the Fund.

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Execution

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

DONORS:

John A. Smith

Mary P. Smith

COMMUNITY FOUNDATION OF ST. JOSEPH COUNTY, INC.:

By: Rose Meissner, President

EXHIBIT A

LIST OF INITIAL DONATIONS TO FUND

Cash: _____

Publicly Traded Securities:

Other: