

**DISCRETIONARY 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 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 endowment fund for charitable and similar exempt purposes 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 endowment fund; and

**WHEREAS**, the Community Foundation is willing and able to hold and administer such a discretionary 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 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 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 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 purposes described in this Agreement either (i) to pay expenditures of charitable or other exempt programs and activities conducted or sponsored by the Community Foundation itself or (ii) to other organizations described in Code section 170(b)(1)(A). 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 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 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 charitable or other exempt purposes that:

- a. are within the scope of the 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.

**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:

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John A. Smith

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Mary P. Smith

COMMUNITY FOUNDATION OF ST. JOSEPH COUNTY, INC.:

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By: Rose Meissner, President

**EXHIBIT A**

**LIST OF INITIAL DONATIONS TO FUND**

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

Publicly Traded Securities:

Other: