

Advised Scholarship Non-Permanent Fund
For:
Date:



Advised Scholarship Fund Agreements

An Advised Scholarship Fund (endowment or pass-through) typically is established to provide educational scholarships to individuals, where the Donor or persons designated by the Donor are to be involved in the selection of scholarship recipients. Under new Code provisions added by the Pension Act, the Donor (or his or her designee) may only participate in such selection as a member of a larger advisory committee, and the following additional requirements must be met:

- (i) Each and every member of the committee must be appointed by the Community Foundation (rather than by the Donor);
- (ii) The Donor and his/her designees may not control or constitute a majority of the committee, and
- (iii) All scholarship grants must be awarded pursuant to objective and nondiscriminatory procedures, approved in advance by the Community Foundation's Board of Directors, that are designed to satisfy Code section 4945(g)(1), (2), or (3).

The scholarship advisory committee's recommendations must be advisory only, and the Community Foundation must be free to reject any recommendations.

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ADVISED SCHOLARSHIP NON-PERMANENT FUND AGREEMENT

BETWEEN

**HERITAGE FUND – THE COMMUNITY FOUNDATION OF BARTHOLOMEW COUNTY,
AND
_____ (“DONORS”)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of _____, 20__ by and between Heritage Fund – The Community Foundation of Bartholomew County, Inc. (the “Community Foundation”), and _____ (“Donors”).

Recitals

WHEREAS, Donors desire to establish an advised scholarship pass-through fund in the Community Foundation with respect to which Donors, or a Donor Representative (as defined below), may participate in an advisory committee established by the Community Foundation to recommend to the Community Foundation potential scholarship recipients from such fund; 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 an advised scholarship pass-through fund; and

WHEREAS, the Community Foundation is willing and able to hold and administer such an advised scholarship pass-through 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 an advised scholarship pass-through fund to be known as

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the _____ 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 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).

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. SCHOLARSHIP ADVISORY COMMITTEE AND CRITERIA. Until the last to die of (i) the surviving Donor and (ii) the Donor Representative (if any) (as defined below), the Community Foundation shall establish a Scholarship Advisory Committee (the "Committee") for the purpose of providing advice and recommendations to the Community Foundation with respect to proposed recipients of educational scholarships from the Fund and shall appoint members of the Committee as provided below. The final selections of recipients shall be made by the Community Foundation subject to the Community Foundation's objective and nondiscriminatory selection criteria for awarding scholarships to individuals, such criteria previously having been approved by the Board consistent with Code section 4945(g) and corresponding Treasury Regulations. The following guidelines shall be followed in establishing and conducting the affairs of the Committee:

- a. The Community Foundation shall consider and may appoint to membership on the Committee either (i) one or both Donors or (ii) one representative (the "Donor Representative") jointly identified and nominated by Donors, or identified and nominated by the Donor who is last to survive. An appointed Donor or appointed Donor Representative shall participate with the other members of the Committee in recommending to the Foundation proposed scholarship recipients consistent with the purposes described in this Agreement.
- b. At no time shall Donors or the Donor Representative, in combination with any persons related to either Donor or the Donor Representative, constitute a majority of the Committee's membership or otherwise directly or indirectly control the Committee.

5. RECOMMENDATIONS FOR DISTRIBUTIONS. Subject to the Community 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 Community Foundation; provided, however, that the Committee (if any) may from time to time submit to the Community Foundation the names of proposed recipients for educational scholarships from the Fund. All recommendations from the Committee shall be solely advisory, and the Community Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto.

6. 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(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 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.

7. 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.

8. 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.

9. 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.

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

11. 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.

12. 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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For:

Date:

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:

Donor

Donor

HERITAGE FUND – THE COMMUNITY FOUNDATION OF BARTHOLOMEW COUNTY:

By: _____

Title: _____

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For:

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EXHIBIT A

LIST OF INITIAL DONATIONS TO FUND

Cash: _____

Publicly Traded Securities:

Other: