

SAMPLE

Agreement to Establish the
[Name of Fund]
DONOR-ADVISED ENDOWMENT FUND
within
The Branch County Community Foundation

This agreement is between [Name of Donor(s)] ("the Donor[s]") and the Branch County Community Foundation (the "Foundation"), a Michigan nonprofit corporation.

Recitals

1. The Donors have an interest in the welfare of Branch County, and desire to establish an endowment fund which would be used to provide current income and long-term protection for charitable, educational, benevolent, or public purposes or organizations.
2. The Branch County Community Foundation is a Michigan nonprofit corporation which is exempt from taxation under Internal Revenue Code ("Code") section 501(c)3, is a public charity described in section 170(b)(1)(A)(vi) of the Code, is a certified community foundation under the Michigan Income Tax Act of 1967, and is accordingly an appropriate institution within which to establish such a charitable endowment.
3. The Donors and the Foundation desire to enter into a written agreement to describe the terms under which such a fund will be held and distributed.

In consideration of the covenants and agreements described in the agreement ("the Agreement"), the sufficiency of which is acknowledged, the Donors and the Foundation agree as follows.

Terms

1. Establishment of Fund. A fund will be established on the books of the Foundation which shall be known as the **[Name of Fund]** ("the Fund"). The Fund will be identified as the **[Name of Fund]** in the literature, reports, promotional materials, and other written, magnetic, and electronic documentation of the Foundation and of the Fund.
2. Property of the Fund. The Fund will include the property listed in Schedule A such property as may from time to time be transferred to the Foundation by the Donor(s) and various other persons for inclusion in the Fund, such property as may from time to time be transferred from any other source for inclusion in the Fund and accepted by the Foundation, and all undistributed income from the foregoing property. The Foundation may, in its discretion, refuse to accept any gift offered to the Foundation.
3. Status of the Fund. The Fund shall be the property of the Foundation, held in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. It is intended that the Fund will be a component fund of the Foundation. The Foundation shall have the ultimate authority and control over all property in the Fund, and the income derived therefrom, in accordance with the Articles of Incorporation, bylaws, Procedures for Establishment and Administration of Donor Advised Funds, and other governing instruments of the Foundation (as they may be amended from time to time), and the terms of this Agreement applied in a manner not inconsistent with said Articles, bylaws, and other governing instruments.
4. Notification and acknowledgment of gifts to the Fund. The Foundation shall have the right to acknowledge and publicize, in the discretion of the Foundation, any gifts or transfers to the Fund, or designated for the benefit of the Fund. The Foundation may periodically notify the Donor of gifts and transfers from other sources to the Fund.

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5. Designation of Purpose. The Fund shall be used for support of [state charitable purpose(s)] as determined from time to time by the Foundation, under this Agreement, and as otherwise provided in the Agreement.

6. Investment of the Fund. The Foundation shall have final authority and discretion as to the investment and reinvestment of the Fund. The Fund will be held by the Foundation as part of the general investment assets of the Foundation, and will be invested as determined, from time to time, by the Foundation. The overall investment guidelines, objectives, and performance of the Fund will be provided to the Donor on the request of the Donor.

7. Distributions. It is the donor's intent and expectation that the fund be a permanent endowment fund. Distributions from the fund will be made as the Foundation deems appropriate in accordance with the spending policy adopted by the Foundation as amended from time to time, to those charitable organizations or for those charitable purposes as the Foundation determines and in accordance with the terms of this Agreement.

The Donor(s) may from time-to-time submit to the Foundation recommendations with respect to distributions. Such recommendations are advisory, and the Foundation need not follow such recommendations.

8. Reporting. The Foundation shall provide a written financial report of the Fund on an annual basis. The Foundation may, in its discretion, provide more frequent reports. The Foundation shall provide all routine accounting reports to the Michigan Attorney General and the Internal Revenue Services with respect to the Fund.

9. Variance Power. It is understood and agreed that all assets in the Fund shall be subject to the Articles of Incorporation and By-laws of the Foundation, (as they may be amended from time to time) including the power contained therein for the Board of Directors of the Foundation to modify any restrictions or conditions on the distribution of funds for any specified charitable purposes or to specified organizations, if in its sole judgement, *cy pres*, (without approval of any trustee, agent or custodian), such restrictions become, in effect, unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the area served by the Branch County Community Foundation.

10. Publicity. The Foundation may use materials submitted by the Fund and the name of the Fund in the Foundation's promotional efforts, printed materials, newsletter, annual report, and special mailings to prospective donors, as determined by the Foundation. The Foundation, in its discretion, may publicize that the Foundation holds the Fund.

11. Fees. The Fund will share a fair portion of the total administration costs of the Foundation. The administrative costs charged against the Fund will at all times be reasonable, will be in accordance with the current fee schedule applicable to funds of this type, and will not exceed usual and customary rates.

12. Dissolution of the Foundation. If the Foundation ceases to be exempt from taxation under Code section 501(c)3 or if the Foundation proposes to dissolve, then the assets of the Fund shall, after payment or making provision for payment of any liabilities properly chargeable to the fund, be distributed to serve purposes similar to those of the Fund, all in the discretion of the Foundation.

13. Actions consistent with Foundation's tax status. Notwithstanding any provision of this Agreement, in no event will the Foundation be required to take any action or fail to act, if, in the determination of the Foundation, such action or failure to act would cause the Foundation to fail to meet the requirements for exemption from income taxation applicable to the foundation, or if such action or failure to act would cause the Foundation to cease to be a Qualified Charitable Organization. If, but for this section, such action or failure to act is required under this

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Agreement, then the Foundation, in its determination, shall take such action and decline to act in the manner determined by the Foundation

14. Construction. Nothing in this Agreement shall affect the status of the Foundation as a Qualified Charitable Organization. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Code and any regulations or ruling promulgated under the Code, applicable to the Foundation’s status and in accordance with the law of the State of Michigan, to the extent not inconsistent with the Code.

15. Amendments. This agreement may be amended only with the written consent of the donor and the Foundation. Notwithstanding the preceding sentence, the Foundation has the power to modify any restriction or condition on the distribution of the Fund if, in the sole judgment of the Foundation, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Branch County community.

In witness of the adoption of this Agreement to Establish the **[Name of Fund]**, each of the **Donors** and the Foundation, by their duly authorized representatives, have executed this Agreement.

Donor(s)

Branch County Community Foundation

by: _____

by: _____

date: _____

its: President

by: _____

date: _____

date: _____

by: _____

its: Executive Director

date: _____