

**THE COMMUNITY FOUNDATION OF THE NEW RIVER VALLEY
DONOR ADVISED ENDOWMENT FUND AGREEMENT FOR
SAMPLE FUND**

THIS AGREEMENT, made and entered into on _____, 20__, by and between **Donor Name** (collectively referred to as the “Donor”) and **The Community Foundation of The New River Valley**, (the “Foundation”),

WITNESSETH:

WHEREAS, the Donor desires to have established in the Foundation a donor advised endowment fund with certain pass-through features designated **NAME OF FUND**, with respect to which the Donor can recommend recipients of charitable grants; and

WHEREAS, the Foundation is a nonprofit Virginia corporation exempt from taxation under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in section 170(b)(1)(A)(vi) of the Code, and accordingly an appropriate institution within which to establish such a charitable endowment; and

WHEREAS, the Foundation is willing and able to create such an endowment as a Donor Advised Endowment Fund with certain pass-through features, subject to the terms and conditions hereof;

NOW THEREFORE, the parties agree as follows:

1. **GIFT AND NAME OF THE FUND.** Donor hereby transfers irrevocably to the Foundation the property described in the attached Exhibit A to establish in the Foundation an endowment fund designated as **NAME OF FUND** (the "Fund"). Subject to the right of the Foundation to reject any particular gift, the Foundation may receive additional irrevocable gifts of property acceptable to the Foundation from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof. All grants, bequests, and devises to this Fund shall be irrevocable once accepted by the Foundation.

2. **PURPOSE.** The purpose shall be to support **DONOR’S PURPOSE STATEMENT** through one or more annual grants to qualified charitable organizations or agencies in the New River Valley (the Counties of Montgomery, Floyd, Pulaski, and Giles, and the City of Radford, Virginia) and elsewhere in the United States and its possessions and territories. At least annually, the Foundation shall award one or more grants to one or more such organizations or agencies for the purposes stated above.

3. **DISTRIBUTIONS.** The annual earnings allocable to the Fund, net of the fees and expenses set forth in paragraph 11, may be committed, granted, or expended only for purposes described in Code section 170(c)(1) or (2)(B); provided, however, that such purposes are consistent with the exempt status and purposes of the Foundation. The Fund principal may

not be committed, granted, or expended, except as otherwise provided in this Fund Agreement. If any gifts to the Foundation for the purposes of the Fund are received and accepted subject to a Donor's conditions or restrictions as to the use of the gift or income therefrom, said conditions or restrictions will be honored, subject, however, to the authority of the foundation's Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Foundation's Board unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Foundation or needs of the community served by the Foundation. No distribution shall be made from the Fund to any entity if such distribution will in the judgment of the Foundation endanger the Foundation's Code section 501(c)(3) status.

The Donor anticipates making a gift of \$ _____ to the Foundation for the purpose of establishing the Fund. The foregoing provisions of this Paragraph 3 notwithstanding, \$ _____ of the initial \$ _____ of the Fund's principal will be available for current and/or future distributions. This \$ _____ shall be referred to as the Fund's "pass-through" component. If and when the Donor makes one or more additional gifts to the Fund, the Donor may designate that part or all of such additional gift or gifts be designated for the pass-through component of the Fund, thereby making such principal available for current and/or future distributions. Any portion or all of a future gift not designated for the pass-through component of the Fund shall be subject to the restrictions dealing with Fund principal first described above in this Paragraph 3.

(Provisions concerning restrictions on the invasion of principal in the event that a fund is "underwater" may be included in Section 3 as well. Sample language is available upon request)

4. **RECOMMENDATIONS FOR DISTRIBUTION**. Subject to the Foundation's principles and procedures for advised funds, the commitments, grants, or expenditures from the Fund contemplated in Paragraph 3 shall be made at such time or times and in such amount or amounts as may be determined solely by the Foundation for such purposes described in Paragraph 2 as may be designated by the Foundation; provided, however, that Donor or the Fund's Advisor may from time to time submit to the Foundation the specific charitable or other exempt purposes or the names of specified organizations for or to which it is recommended that distributions be made. All recommendations from Donor shall be solely advisory, and the Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto. The foregoing notwithstanding, the Donor may designate another advisor to the Fund at any time by written instrument delivered to the Foundation, and any designated Advisor may designate one or more successor advisors to the Fund. If the Donor, the Donor's designated Advisor(s) and all other designated successor advisors all fail or cease to act, the Board of Directors of the Foundation shall itself serve as the advisor of the Fund and shall treat the Fund as a general charitable Fund supporting the above-stated purposes, subject to the Foundation's authority to vary the terms of any gift or fund as described above in Paragraph 3. If more than one person is acting as advisor at any one time, such advisors shall act by majority vote.

5. **ADMINISTRATIVE PROVISIONS**. Notwithstanding anything herein to the contrary, the Foundation shall hold the Fund, and all contributions to the Fund, subject to the provisions of the applicable Virginia laws and the Foundation's Articles of Incorporation and

Bylaws. The Board shall direct or monitor the distribution of the Fund to ensure it is used exclusively for charitable or other exempt purposes (within the meaning of Code section 170(c)(1) or (2)(B)), and shall have all powers of modification and removal specified in United States Treasury Regulations Section 1.170A-9(e)(11)(v)(B).

The Board agrees to provide the Donor a copy of the annual examination of the finances of the Foundation as reported upon by independent certified public accountants.

6. **CONDITIONS FOR ACCEPTANCE OF FUNDS.** Donors agree and acknowledge that the establishment of the Fund herein created is made in recognition of, and subject to, the terms and conditions of the Articles of Incorporation and Bylaws of the Foundation as from time to time amended, 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 donor's intent;
- (b) Variance from donor's direction;
- (c) Amendments.

7. **CONTINUITY OF THE FUND.** The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated, the Foundation shall devote any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

- (a) are within the scope of the charitable or other exempt purposes of the Foundation's Articles of Incorporation; 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 Foundation. All money and property in the Fund shall be held as general assets of the Foundation and not segregated as trust property of a separate trust; provided that for purposes of determining the share of the Foundation's earnings allocable to the Fund and the value of the principal of the Fund, the interest of the Fund in the general assets of the Foundation shall be a percentage determined by dividing the gift to the Fund by the then value of the total assets of the Foundation, such percentage interest being subject to adjustment at the time of each addition to or reduction of the assets of the Foundation.

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

10. **INVESTMENT OF FUNDS.** The Foundation shall have all powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest, and reinvest the Fund and the power to commingle the assets of the Fund with those of other funds for investment purposes. While Donors may indicate a preference for one type of investment strategy over another, the Foundation retains the right to

determine how all Funds are invested. The Donor understands and agrees that the Foundation will use the total return concept in managing the Fund and that distributions may be made from realized or unrealized gains, notwithstanding the provisions of Paragraph 3 above.

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 of the Foundation. Those costs annually charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Foundation as applicable to funds of this type. Any costs to the Foundation in accepting, transferring, or managing property donated to the Foundation for the Fund shall also be paid from the Fund.

12. **INVESTMENT AND TAX ADVICE.** Neither the Foundation nor any one acting on its behalf provides advice to Donors with respect to income, gift, or estate tax laws or with respect to investments or personal finances. All Donors are encouraged to seek independent counsel and advice about these matters regarding any gifts or donations made to the Foundation, including the gift establishing the Fund described above. The Donor hereby certifies that the Donor has either (i) retained independent counsel or advice with respect to the tax ramifications of the gift establishing the above described Fund and the effect that such gift may have upon the Donor's personal investments and finances or (ii) that the Donor has had a reasonable opportunity to retain such independent counsel and advice and has elected not to do so.

IN WITNESS WHEREOF, the Donor has executed this Agreement and the Foundation has caused this Agreement to be approved by its Board and to be executed by a duly authorized officer, all as of the day and year first above written.

Donor Name

Approved by the Board of Directors of The Community Foundation of The New River Valley on _____, 20__

**THE COMMUNITY FOUNDATION OF
THE NEW RIVER VALLEY**

By _____

President

EXHIBIT A

THE COMMUNITY FOUNDATION OF THE NEW RIVER VALLEY
(the "Foundation")
P. O Box 6009
Christiansburg, Virginia 24068
(540) 381-8999

CONTRIBUTION FORM

Name of the Fund: **NAME OF FUND**

Amount of Contribution: \$ _____

Donor: **DONOR NAME**

Address: _____

Federal Identification or Social Security Number: _____

The Foundation (may) (may not) announce publicly the donor's name, and the fact of the donor's contribution.

The Foundation may (may not) indicate the amount of the contribution.

Is the contribution pursuant to a pledge to the Foundation?

_____ YES ___ NO

By signing this form, the donor acknowledges that the contribution described in the form is irrevocably made to the Foundation and that the Foundation shall add the contribution to the Fund in accordance with and subject to the terms and provisions of the agreement establishing the Fund executed on the _____ day of _____, 20__.

Donor's Signature: _____
Donor Name

* Note: If an endowed fund or a donor-advised pass-through fund remains below \$10,000 in value for five (5) years, the fund will be terminated and its assets added to the General Endowed Fund of the Foundation.