



COMMUNITY  
FOUNDATION  
*of Northeast Alabama*

**DONOR ADVISED FUND AGREEMENT**

**THIS AGREEMENT** (the "Agreement"), is made and entered into on the \_\_\_\_ day of \_\_\_\_\_ 2013, by and between \_\_\_\_\_ (hereinafter the "Donor"), who is a resident of \_\_\_\_\_, Alabama, and the **COMMUNITY FOUNDATION OF NORTHEAST ALABAMA** (hereinafter the "Foundation").

WITNESSETH:

**WHEREAS**, the Donor desires to provide for the establishment of a permanently endowed charitable fund within the Foundation for the benefit of the community as consistent with the needs of the area served by the Foundation and as consistent with the charitable or other exempt purposes of the Foundation; and

**WHEREAS**, the Foundation is a not-for-profit Alabama trust located in Anniston, Alabama, exempt from taxation under Internal Revenue Code (hereinafter the "Code") Section 501(c)(3) as a public charity described in Section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a charitable fund; and

**WHEREAS**, the Foundation is willing and able to create and administer such a charitable fund as a Donor Advised Fund, subject to the terms and conditions hereof:

**GENERAL PROVISIONS**

NOW, THEREFORE, the parties agree as follows:

1. **FUND NAME.** There is hereby established in the Foundation, and as a part thereof, a fund designated as the \_\_\_\_\_ FUND (hereinafter the "Fund") to receive gifts, in whatever form of money or property, and to administer the same. The Donor agrees that the Fund is publicly recognized along with grants and distributions from the Fund.

2. **FUND PURPOSE.** The primary purpose of the Fund shall be to recommend charitable grants approved by the Foundation as consistent with the needs of the community served by the Foundation that further the charitable purposes of the community within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and are consistent with the mission and charitable or other exempt purposes of the Foundation.

3. **GIFTS.** The Donor hereby irrevocably transfers to the Foundation the property described in the attached Exhibit A to establish the Fund. Subject to the right of the Foundation to reject any particular gift, the Donor, and parties other than the Donor, may make additional

irrevocable gifts to the Foundation for the purposes of the Fund by a transfer to the Foundation of property acceptable to the Foundation. All gifts, bequests, and devises to this Fund shall be the sole property of the Foundation once accepted by the Foundation. All gifts are subject to the legal and fiduciary control of the Foundation.

If any gift to the 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 Foundation or the needs of the community served by the Foundation.

4. ORGANIZATIONAL AND GOVERNING INSTRUMENTS. The Foundation acknowledges receipt of the Contribution in Exhibit A and agrees to hold and administer the Contribution and any subsequent contributions to the Fund, on the terms and subject to the conditions set forth in the Foundation's organizational and governing instruments, applicable Order(s) and Judgment of the Calhoun County Circuit Court, the Bylaws of the Foundation, as amended from time to time, and any resolutions, policies, guidelines, and procedures from time to time in effect. All the provisions of such organizational and governing instruments of the Foundation and such resolutions, policies, guidelines, and procedures are incorporated in this Document by reference and made a part hereof.

5. DONOR DEFINED. As used herein, "Donor" is the individual that made the Contribution and provides the Foundation with recommendations regarding the distribution of assets in the Fund. The Donor must submit recommendations on a signed form provided by the Foundation for the Foundation's consideration in making distributions from the Fund. The Foundation can only accept written recommendations to exercise the due diligence required for such grants. The Donor is encouraged, but not required, to make recommendations for distributions from the Fund to those charitable needs enumerated above as being most deserving of Fund distributions. The Foundation shall furnish the Donor from time to time with an updated list of charitable needs or initiatives for the Donor's consideration in making recommendations to the Foundation.

6. ADVISORY PRIVILEGE.

- (a) Fund Duration. The privilege of making recommendations is limited to the Donor. Such privilege of the Donor will be continuous with the existence of the Fund unless the privilege is terminated earlier by (i) death, (ii) written notice to the Foundation of resignation or release, or (iii) a finding by the Foundation that the person involved is not available or is incompetent to exercise the privilege.
- (b) Advisory Successor. The Donor may also designate a child, or children of the Donor to succeed and continue the privilege of making recommendations after the death or incapacity of the Donor, and such designation by the original Donor will be recognized if it furthers continued family participation, support, and involvement by such successors. Where children succeed to the privilege of making recommendations under this Paragraph, the Foundation requires them to designate one of the children to act for all of them in submitting recommendations to the Foundation, and in the event that the children cannot or do not name one child to act, the Donor agrees that the Foundation may act for them until such time as the children do agree and name one of them to act for all.
- (c) Designee. The Donor designates \_\_\_\_\_ as the person to exercise

the privilege to make recommendations as successor to the Donor. The privilege will only exist during the lifetime of the successor, unless earlier terminated as described in Paragraph 6 (a) above.

- (d) **Divorced Advisors:** If founding donors or advisors to a donor advised fund are subsequently separated or divorced, the Foundation reserves the right to decline grant recommendations from either husband or wife unless unanimous consent is communicated in writing, or the appointment of advisors is restated or confirmed as deemed sufficient by the Foundation.

7. **DISTRIBUTIONS.** The Board shall 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)). The Fund shall be used to make grants to qualified not-for-profit organizations in support of the purposes defined in this Agreement.

- (a) **Fund Duration.** The Fund is perpetual.
- (b) **Distribution Policy.** 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 Foundation, as such policy may be amended from time to time by the Foundation, solely for purposes described in this Agreement or in Code Section 170(c)(1) or (2)(B) to organizations described in Code Section 509(a)(1), 509(a)(2), or 509(a)(3); provided, however, that such purposes are consistent with the exempt status and purposes of the Foundation. The 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 exempt purposes of such endowments.
- (c) **Distribution Restrictions.** It is further understood and agreed that no Donor, Successor, Designee or any related parties shall derive any benefit, goods or services in exchange for a grant or distribution from the Fund. Advisors and their related parties are also prohibited from making any distribution to discharge or satisfy a legally enforceable pledge or obligation as further defined in the *Donor Advised Fund Policies and Guidelines*.
- (d) **Charitable Objective.** All funds of the Foundation are to serve or promote the enhancement of the quality of life of the communities served by the Foundation and its charitable mission. No distribution shall be made from the Fund to any individual or entity if such distribution may in the judgment of the Foundation impair or endanger the Foundation's tax exempt status under Code Section 501(c)(3) or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

8. **FOUNDATION AS OWNER OF THE FUND.** The Fund shall be the irrevocable property of the Foundation, which shall have the ultimate authority and control of all property in the Fund, and the income derived therefrom for the charitable purposes as defined in this

Agreement. Notwithstanding anything herein to the contrary, the Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of the applicable Alabama laws and the Foundation's Organizational Documents, Bylaws as amended from time to time, and the provisions of the Judgment and Order creating the Foundation and any amendments or additions thereto at any time made. Nothing in this Agreement shall affect the status of the Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as an organization which is not a private foundation within the meaning of Section 509(a) of the Code.

9. VARIANCE AUTHORITY. The Donor agrees and acknowledges that this Agreement and the Fund shall at all times be subject to the power of the Board to modify any restriction or condition on the distribution of funds for any specified charitable purpose(s) to any specified organization if, in the sole judgment of the Board, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community, area served or the mission of the Foundation (United States Treasury Regulations Section 1.170A-9(e)(11)(v)(B), (C), and (D)).

10. CONDITIONS FOR ACCEPTANCE OF FUNDS. The establishment of the Fund herein created is made in recognition of, and subject to, the terms and conditions of the Organizational Documents and Bylaws of the Foundation as from time to time amended, and 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 donors' intent;
- (b) Variance from donor's direction; and
- (c) Amendments.

11. CONTINUITY. 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 assets in the Fund become, in the good faith opinion of the Foundation's Board, uneconomical to administer, has not reached the minimum principal balance defined herein, or remains below the minimum principal balance for three consecutive (3) years with no additional contributions, or if the Fund is otherwise terminated; the Foundation shall transfer all remaining fund assets to the Foundation's Longleaf General Endowment Fund exclusively for charitable or other exempt purposes that:

- (a) are within the scope of the of the Foundation's Organizational Documents and Bylaws as from time to time amended; and
- (b) most nearly approximate, in the good faith opinion of the Board, the original charitable purpose(s) and donor intent of the Fund.

12. 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 Fund balance 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.

13. ACCOUNTING. The receipts and disbursements of this Fund shall be accounted for separately and apart from those of other gifts to the Foundation. The Donor shall receive a quarterly statement of the Fund's total assets including the additions, gains, losses, fees and distributions.

14. INVESTMENTS.

- (a) Full Discretion. The Foundation shall have full and unfettered power 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 Foundation's general assets in such manner as the Foundation shall in its discretion determine.

The Foundation may hold reasonable sums in cash for any period of time and may invest in properties of every kind and description, real or personal, tangible or intangible, without limitation; provided, however, that in making investments, the Foundation shall exercise the judgment and care, under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital.

- (b) Responsibility. The Foundation shall not be responsible for any loss or reduction in value with respect to any assets held in the Fund unless any loss or reduction in value is due to the intentional misconduct or negligence of the Foundation or its employees or agents.
- (c) Advisors and Agents. The Foundation may, in its discretion, engage investment advisors, custodians of securities, investment or property managers, appraisers, accountants, attorneys and other agents and advisors, and delegate to them such powers of authority as the Foundation may determine, and as may be reasonably required for the Foundation to carry out its duties and responsibilities with respect to the Fund. The Foundation may pay the reasonable fees and expenses of all such agents or advisors as a direct expense of the Fund.

15. FUND EXPENSES. It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current *Fee Policy* identified by the Foundation as applicable to funds of this type; as such schedule may be amended by the Foundation from time to time. Any costs or expenses incurred by the Foundation in accepting, transferring, or managing property donated to the Foundation for the Fund, including without limitation the Foundation's costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which the Foundation is the prevailing party, also shall also be paid for by the Fund.

16. BINDING EFFECT; AMENDMENTS. This Agreement shall bind, and shall inure to the benefit of, the parties and their respective successors and assigns. The Foundation shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that the Foundation qualifies and continues to qualify as a tax-exempt organization described in Section 501(c)(3) of the Code, and that the Funds qualify as

"component parts" of the Foundation as a "community trust" within the meaning of Treasury Regulation Section 1.170A-9(e)(10)(14).

17. REFERENCES TO CODE. All references to the Code are to the Internal Revenue Code of 1986, as amended from time to time, and shall include the corresponding provisions of any subsequent federal tax law.

18. GOVERNING LAW. This Agreement is made and delivered in the City of Anniston, Alabama in Calhoun County and all related proceedings shall be governed by and interpreted under the laws of the State of Alabama. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Alabama.

## EXECUTION

IN WITNESS WHEREOF, the Donor and the Foundation have 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

By: \_\_\_\_\_  
Name  
Title

COMMUNITY FOUNDATION OF NORTHEAST ALABAMA

By: \_\_\_\_\_  
Jennifer S. Maddox  
President & CEO

## **Exhibit A**

INITIAL CONTRIBUTION: [Gift defined] irrevocably made payable to the Community Foundation of Northeast Alabama for the benefit [Fund Name].

DRAFT