

## DRAFT SAMPLE AGREEMENT

### DISCRETIONARY ENDOWMENT FUND AGREEMENT

**This Discretionary Endowment Fund Agreement** is made to establish an endowed fund to be known as the [**name of fund**] (the “Fund”) within The Community Foundation for Northeast Florida, a Florida not-for-profit corporation located in Jacksonville, Florida (the “Foundation”) by [**names of Donors**] (the “Donors”).

#### 1. Purpose of the Fund

The Foundation may use the Fund only for religious, charitable, scientific, literary and educational purposes in furtherance of the charitable initiatives of the Donors and the purposes of the Foundation as set forth in its Articles of Incorporation and By-Laws.

#### 2. Contributions to the Fund

a. The Donors will transfer and deliver to the Foundation, as an irrevocable and unconditional gift, certain property to be used to create the Fund. After the Foundation has accepted such property and created the Fund, the Foundation will administer and use the Fund in accordance with this Agreement, including Grantmaking Policies established and amended from time to time by the Board of Trustees.

b. The Donors and any other person or entity may make additional contributions to the Fund by making an outright gift or pursuant to a bequest or other deferred or planned gift. The Foundation’s Board of Trustees may, in its sole discretion, accept or refuse any gift. Each contribution to the Fund shall be an irrevocable, nonrefundable and unconditional gift to the Foundation.

c. The Fund will be the property of the Foundation and will not be deemed a separate trust fund held by it in a trustee capacity. The Fund will operate under, and all assets held in the Fund will be subject to, the governing instruments (including the Articles of Incorporation and Bylaws of the Foundation) and the Grantmaking Policies, as revised from time to time, provisions of applicable Florida law, and control of the Foundation through its Board of Trustees.

#### 3. Grantmaking

The Fund shall be used for such charitable, religious, scientific, literary or educational purposes as may be determined solely in the discretion of the Foundation’s Board of Trustees (the “Board”).

OR

The Fund shall be used for the purpose of supporting and promoting [**identify the field of interest and geographical location, if applicable**] in furtherance of the charitable public purposes of the Foundation.

The Foundation may make distributions for such purpose to any organization that has been recognized as tax-exempt under the provisions of Section 501(c) (3) or comparable provisions of the Internal Revenue

Code of 1986 as now or hereafter amended, or to any other recipient to the extent the same is permissible under applicable federal tax laws.

#### **4. Fund Administration by the Foundation**

a. The Fund created under this Agreement is intended to be, and will be administered as, a component fund of the Foundation under applicable federal Treasury Regulations.

b. The Fund will be subject to the power reserved to the Foundation's Board of Trustees to modify any condition or restriction on the distribution of funds if in its sole judgment such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the area served by the Foundation.

c. The Foundation shall charge the Fund a fee in accordance with the then prevailing fee schedule. This fee is in addition to any investment fees, costs associated to acceptance of donated assets and to any expenses relating specifically to the Fund (e.g. special printing costs, supplies, legal services, and so forth), which will be paid by the Fund.

#### **5. Distributions from Endowed Funds**

The distributions the Foundation makes from permanent, endowed funds is limited each year to a distributable amount determined pursuant to a Spending Policy, as set and amended from time to time by the Board of Trustees. The Spending Policy is designed to protect the economic value of the principal of the Fund, help the principal grow over time, give grantees the benefit of a reasonably stable, consistent and predictable flow of funds, and smooth the effect of market volatility in earnings on the investment of endowment fund assets over a period of years.

#### **6. Publicity**

The name of the Fund and the name of the Donors may be listed in the Foundation's annual report, newsletters, news releases, website or other informational venues unless the Donors have requested in writing not to be included in such publications.

#### **7. Choice of Law; Venue**

This Agreement will be governed by, and construed in accordance with the laws of the State of Florida, other than conflict of laws principles that would apply the laws of another jurisdiction. The parties agree that any legal proceeding will be brought only in courts having jurisdiction over Duval County, Florida and agree to submit to jurisdiction and venue in such courts.

#### **8. Donor Acknowledgements**

By signing this Agreement, the undersigned Donors hereby acknowledge and confirm to the Foundation that they have read and understand this Agreement and understand that:

- a. all gifts made to the Foundation for inclusion in the Fund are irrevocable;
- b. no person may subject the Fund, directly or indirectly, to any material restriction or

condition as described in the regulations promulgated under Section 170 of the Internal Revenue Code;

- c. no person may use the Fund to discharge or satisfy a legally enforceable pledge or obligation of any person;
- d. distributions from the Fund will be limited by the Foundation's Spending Policy; and
- f. no person may receive any economic or other tangible benefit in return for a distribution from the Fund

By our respective signatures below, we indicate our agreement to the foregoing terms and conditions governing the Fund, effective as of the date on which the Agreement has been signed by all parties.

Donor(s):

The Community Foundation for Northeast Florida

\_\_\_\_\_

[Donor name]

By: \_\_\_\_\_  
Nina M. Waters, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

[Donor name]

Date: \_\_\_\_\_