

# TEMPLATE

*THIS FORM HAS IMPORTANT  
LEGAL CONSEQUENCES AND THE PARTIES  
SHOULD CONSULT LEGAL AND TAX OR OTHER  
COUNSEL BEFORE SIGNING.*

## AGREEMENT ESTABLISHING THE

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### A DONOR ADVISED GIFT FUND WITHIN THE COMMUNITY FOUNDATION

THIS AGREEMENT is entered into by \_\_\_\_\_ (“the Donor”) and The Community Foundation serving Boulder County (“The Community Foundation”), on this \_\_\_\_day of \_\_\_\_\_, 2008. The Agreement establishes a donor advised fund, to be known as the “\_\_\_\_\_ Fund”), with The Community Foundation and is viewed as an opportunity to build a philanthropic partnership between The Community Foundation and the Donor. While The Community Foundation must and does retain sole and absolute discretion over grants and distributions from the Fund, it is understood that the Donor may request that grants from the Fund be made from time to time for charitable purposes (as defined in The Community Foundation’s Articles of Incorporation and Bylaws) to charitable organizations that qualify under Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”), as amended from time to time. An irrevocable minimum donation of \$25,000 in cash or other assets shall be required to establish the Fund. No minimum balance shall be required to maintain the Fund, and the balance may be fully depleted through authorized grants.

The Donor may designate a representative to maintain his or her ongoing relationship with The Community Foundation and may appoint an Advisory Committee consisting of the Donor, friends, children or other relatives. The Donor or the Advisory Committee may recommend grants to charities from the Fund; all grant requests shall be for \$500 or more. The Community Foundation shall continuously monitor the community’s charitable needs and gifting opportunities and provide the Donor and the Advisory Committee with suggestions, information, and specific projects for which grants from the Fund might be appropriate. The Community Foundation shall inform the Donor through his or her designated representative with respect to each grant made from the Fund.

Distributions from the Fund shall be made exclusively for charitable purposes as defined in The Community Foundation's Articles of Incorporation and Bylaws and Section 501(c) of the Internal Revenue Code.

Grants from the Fund may not be awarded to individuals. Scholarship funds may not benefit anyone in the donor's family. Donors also may not receive tangible benefits from a grant. These might include, but are not limited to: meals and tables at charity events, concert tickets or museum membership benefits, for example. Additionally, a donor may not use grants from the Fund to satisfy a previously committed personal pledge made to a charity.

The Fund shall include the property described in the attached Schedule A together with any property which may later be added to the Fund and accepted by The Community Foundation, all of which shall be irrevocable gifts to The Community Foundation. The governing board of The Community Foundation shall have complete discretion to accept or refuse any non-cash gifts and shall have complete authority and discretion as to the investment and reinvestment of the assets of the Fund as part of The Community Foundation's investment portfolio.

The Donor may designate, in writing, a representative to maintain his or her ongoing relationship with The Community Foundation or may appoint an Advisory Committee consisting of the Donor, friends, children or other relatives. If a designated representative is appointed, the designated representative shall be the exclusive contact with The Community Foundation with respect to advice regarding dispersals from the Fund. However, the Donor may change the designated representative of the Fund at any time, including by will, by communicating that change to The Community Foundation in writing. If an Advisory Committee is appointed by the Donor, The Community Foundation must be kept informed in writing as to the Advisory Committee's representative who has been designated to act as the Committee's exclusive contact with The Community Foundation on behalf of the Committee.

Upon the death of the Donor, if a representative has not previously been designated and is not designated by the Donor's will, the Donor's heirs may designate a representative. The Community Foundation shall be entitled to rely on the advice and recommendations communicated by a representative who has been designated in writing by the Donor or the Donor's heirs and shall have no obligation to confirm such advice or recommendation with the Donor, the Donor's heirs or other members of an Advisory Committee. If neither the Donor nor a designated representative contact the Community Foundation for a period of five consecutive years, and The Community Foundation, after taking reasonable measures to do so, is unable to locate the Donor, Donor's heirs or designated representative, the Fund will be terminated and The Community Foundation shall thereafter continue to hold the assets of the Fund in its general unrestricted endowment fund (the Community Trust) and shall distribute the net income and principal therefrom to such organizations as the governing board of The Community Foundation, in its discretion, shall consider appropriate.

The Community Foundation shall hold, manage, invest, and reinvest the assets of the Fund which may be commingled with the assets of other component funds within The Community Foundation, provided, however, that the separate identity of the Fund shall be maintained in the accounting records, and grants from the Fund shall be clearly identified as such to the recipients. The Community Foundation shall report annually to the Colorado Department of Revenue and the Internal Revenue Service regarding the Fund as a component fund within The Community Foundation.

If, for any reason, The Community Foundation dissolves, or ceases to hold or administer the Fund or otherwise to function under this Agreement, then the net assets of the Fund shall be distributed to such charitable organizations as the governing board of The Community Foundation may select, with primary consideration being given to any advice offered by the Donor and the Advisory Committee.

The Fund's assets shall be the property of The Community Foundation to be held by it 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 shall be a component fund within The Community Foundation as an organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention so as to conform with any applicable requirement of the Internal Revenue Code and its regulations. The Community Foundation may amend this Agreement without the consent of the Donor to the extent necessary to comply with any amendments to applicable law.

It is understood and agreed that all assets held in the Fund shall be subject to the Articles of Incorporation and Bylaws of The Community Foundation, including the variance power contained therein which permits the governing board of The Community Foundation to modify or remove any restriction or condition regarding the distribution of funds if, in its sole judgment, such restriction or condition becomes unnecessary, incapable of fulfillment or inconsistent with the charitable purposes and needs served by The Community Foundation.

All earnings from the Fund shall be allocated to The Community Foundation operating fund and shall not be available for grant requests. In addition, a 2% administrative fee shall be charged on the transfer of assets to the Fund. If the Donor prefers not to diminish the Fund by the payment there from of such administrative costs, such costs may instead be paid directly by the Donor to The Community Foundation.

The Donor

The Community Foundation

By \_\_\_\_\_

By \_\_\_\_\_  
Josephine W. Heath, President

Date \_\_\_\_\_

Date \_\_\_\_\_

# SCHEDULE A

DESCRIPTION OF PROPERTY TO BE DELIVERED TO  
THE COMMUNITY FOUNDATION

FOR THE

\_\_\_\_\_,  
A DONOR ADVISED GIFT FUND

Assets to be given: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Expected date for transfer of assets: \_\_\_\_\_