

TESTAMENTARY FUND AGREEMENT

This Agreement ("AGREEMENT") is made this ____ day of _____, 20__, between the **COMMUNITY FOUNDATION OF BROWARD, INC.**, a Florida nonprofit corporation ("FOUNDATION"), and _____ ("DONOR"), to create an **endowed unrestricted Fund** ("FUND") of the FOUNDATION through the last will and testament, or other testamentary plans of the DONOR. However, the DONOR reserves the right to rescind and revoke this AGREEMENT at any time prior to FUND being seeded with a gift or estate gift upon the death of the DONOR. The DONOR reserves the right to activate the FUND at any time during his or her lifetime. All persons and ORGANIZATIONs making contributions to this FUND shall be bound by the terms of this AGREEMENT. All gifts to the FUND are irrevocable.

1. **NAME OF FUNDS**: The name of the FUND created hereby is:

_____ **CHARITABLE FUND**

2. **PURPOSES**: The purposes of the FUND are to further or carry out the charitable purposes of the FOUNDATION, specifically to fulfill the most urgent needs of the time.
3. **INVESTMENT OF FUNDS**: The FOUNDATION shall invest the FUND balance in accordance with its normal investment guidelines or procedures. The FUND balance shall be adjusted for the results of the investment performance in accordance with the procedures adopted by the FOUNDATION.
4. **DISTRIBUTIONS**: It is the general policy of the FOUNDATION to make distributions from the FUND balance at least annually. Such distributions shall be made in accordance with the current spending policy adopted by the FOUNDATION, which may change from time to time. Currently the distribution policy is 5% of the 12 quarter weighted average of the fair market value of the FUND.
5. **COMPENSATION TO FOUNDATION**: As compensation for its services, the FOUNDATION may receive and charge against the FUND balance those fees and/or reimbursement for expenses attributable to the administration and management of the FUND. Fees and expenses charged will be in accordance with fee schedules and policies, which the FOUNDATION sets from time to time. Current FOUNDATION fees and administrative services appear as **Schedule A**.

6. **VARIANCE POWER**: The Board of Directors shall have the power to modify any restriction or condition on the distribution from the FUND for any specified charitable purposes or to specified organizations if, in the sole judgment of the board (without the approval of any trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, or incapable of fulfillment.
7. **FOUNDATION AS OWNER OF THE FUND**: Subject to the terms of the AGREEMENT and the FOUNDATION's governing instruments, this FUND shall be the property of the FOUNDATION owned by it in its normal corporate capacity and shall have the ultimate authority and control of all property in the FUND. The DONOR acknowledges that the FOUNDATION is not an agent of the DONOR for any purpose. Assets transferred to establish the FUND are described in **Schedule B**.
8. **PERMANENCE OF PRINCIPAL**: It is the intent of the DONOR that the FUND be a permanent part of the FOUNDATION. The only distributions allowed are those specified in this AGREEMENT.
9. **INCORPORATION OF GOVERNING INSTRUMENTS OF THE FOUNDATION**: The Governing Instruments of the FOUNDATION shall include its Articles of Incorporation, By-Laws and the resolutions and procedures adopted by the FOUNDATION from time to time, including any amendments or modifications thereto. After the assets are transferred to seed the FUND, the DONOR agrees to be bound by the terms of the FOUNDATION's Governing Instruments, including any subsequent amendments thereto.
10. **NAME RESTRICTION**: DONOR may use the name of the FOUNDATION in pamphlets, newsletters, brochures or other materials for purposes of soliciting donations with prior written approval by the FOUNDATION. If approved, DONOR shall make clear in all communications that the FUND is a Fund of the Community Foundation of Broward. All donations to the FUND shall be made payable to: *Community Foundation of Broward, Inc.* and shall include a reference to the FUND name.

11. **ARBITRATION**: All claims and disputes arising under or relating to the AGREEMENT are to be settled by binding arbitration in the state of Florida or another location mutually agreeable to the parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusion of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any decision shall be binding on the parties to the AGREEMENT and their respective successors and assigns. All parties to the AGREEMENT, by entering into it, have agreed to the use of binding arbitration in lieu of having any such dispute decided in a court of law before a jury.
12. **MORALS CLAUSE**: Any serious act (including noncriminal acts) of misconduct by the DONOR or DONOR's related parties, including but not limited to acts of dishonesty, theft, misappropriation of funds or property, moral turpitude, or any other action that is detrimental or unacceptable, may result in a unilateral termination of the AGREEMENT by the FOUNDATION.
13. **DONOR RECOGNITION**: DONOR will be named as a member of the Legacy Society of the Community Foundation of Broward in publications unless DONOR instructs the FOUNDATION to keep name anonymous.
14. **MISCELLANEOUS**: This AGREEMENT shall be construed and governed by the provisions of Florida law. In the event that any one or more of the provisions contained in this AGREEMENT are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this AGREEMENT. In the event of any dispute concerning this AGREEMENT or the FUND, the FOUNDATION may charge its legal fees and costs incurred in connection with the dispute against the FUND balance, if the FOUNDATION is the prevailing party. This AGREEMENT shall bind the parties to this AGREEMENT and their respective successors and assigns.



IN WITNESS WHEREOF, the DONOR and the FOUNDATION have caused this AGREEMENT to be executed as of the day and year first above written.

DONOR:

COMMUNITY FOUNDATION OF BROWARD, INC:

DONOR NAME

By: _____
Jennifer O’Flannery Anderson Date
President/CEO

Witness signature

Witness signature

Print Witness Name Date

Print Witness Name Date

Witness signature

Witness signature

Print Witness Name Date

Print Witness Name Date

Communications should be sent to:

FOUNDATION Staff:

Name:

Kelly Marmol
Vice President, Philanthropic Services
Community Foundation of Broward
910 East Las Olas Blvd., Suite 200
Fort Lauderdale, FL 33301
(954) 761-9503
kmarmol@cfbroward.org

Address:

T:
e-mail:

SCHEDULE A

COMMUNITY FOUNDATION OF BROWARD, INC.

ADMINISTRATIVE FEES OF THE FOUNDATION

1. The following blended administrative fee schedule applies to Funds:

Annual Administrative Fees

2.25% on first \$2 million

2.00% on next \$3 million

1.75% on next \$5 million

1.25% over \$10 million

2. The minimum gift to establish a Fund is \$25,000.

3. The minimum annual Fund administrative fee is \$563.

4. Fees are charged on a prorated monthly basis, based on the Fund value at the end of each month.

5. Administrative services provided include:

- research on needs and opportunities
- due diligence of non-profits and programs
- issue requests for proposals
- prepare grant recommendations
- monitor grant process
- keep historical records
- manage investment portfolio
- provide quarterly Fund statements
- comply with IRS regulations
- prepare tax returns
- audits
- account reconciliations
- check writing
- keep advisors informed
- maintain giving in accordance with the Fund Purpose Agreement in perpetuity

6. A one-time administration fee of up to 1% is applied upon the receipt of planned gifts contributed to new or existing funds occurring at death or upon termination of a trust. This applies to all planned gift contributions of assets by means of a bequest, trust, life insurance policy, retirement plan, or other testamentary transfer.

7. Investment management fees charged by our investment managers are currently estimated to be (annually):

Investment Management Fees

85 basis points for diversified investment pool (typically endowed Funds)

The Community Foundation of Broward does not retain any portion of the investment management fee charged by asset managers. Funds are billed only for actual expenses, however because Fund statements show earnings net of fees, we disclose this estimated annual fee above.



SCHEDULE B

Charitable Fund

of the **Community Foundation of Broward**

Description of Assets to be Transferred to Establish FUND

The Community Foundation of Broward, Inc. hereby acknowledges that it shall receive the following item(s) under the terms of the agreement dated _____
(Date of Fund Purpose Agreement)

An estate gift upon death of _____ from the last will and testament or trust to the Community Foundation of Broward, Inc. to create the _____ Charitable Fund.

DONOR

Kelly Marmol
Vice President, Philanthropic Services

DONOR

The Community Foundation of Broward gratefully acknowledges your gift.

The Community Foundation of Broward, Inc. meets all requirements specified by the Florida Solicitation of Contributions Act. The Foundation’s registration number is **CH1377**. A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll-free 1-800-435-7352 within the State of Florida. The Foundation does not use paid solicitors and 100% of each contribution is received by the Community Foundation of Broward. Registration does not imply endorsement, approval, or recommendation by the State.