

This agreement (“Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ (collectively, “Donor”) and Benton Community Foundation (“BCF”). The terms of this Agreement may be subject to approval by BCF’s Board of Directors and acceptance of the Donor’s gift described herein below; thus, this Agreement shall be effective only upon signature of BCF’s President & CEO.

**PREAMBLE**

A. Donor *has included/intends to include* BCF as a beneficiary in one or more estate documents;

B. Although the parties to this Agreement fully acknowledge that, during Donor’s lifetime, Donor’s estate documents are fully revocable, this Agreement is made to govern how BCF shall administer Donor’s bequest in the event said gift is made to BCF. The parties to this Agreement acknowledge and agree that this is **not** a contract to make a will and that this Agreement **shall not** be used as a basis for such legal argument.

C. Donor acknowledges and agrees that BCF has a minimum fund balance requirement to establish a named endowed fund. Donor anticipates that Donor’s intended bequest to BCF will be at least \$ \_\_\_\_\_.

To this end, in the event that BCF receives a gift from one or more of Donor’s estate documents, BCF shall administer said gift as follows:

1. Establishment of Fund. *Provided Donor’s gift meets the minimum fund balance*, an Endowed Designated Fund shall be established as a fund on the books of BCF and known as the \_\_\_\_\_ (the “Fund”). The gift (or the net sales proceeds of the gift) shall be held, managed and maintained by BCF as a permanently restricted endowment. All gifts made to the fund shall constitute irrevocable gifts to BCF. The Fund shall include the gift from Donor and any other gift that others may later transfer to BCF for inclusion in the Fund subject to acceptance by BCF board. Assets of the Fund may be commingled for purposes of investment with other assets of BCF. BCF has the sole responsibility to manage and invest the funds and may retain firms or individuals to assist in this responsibility.

*In the event that Donor’s gift is less than the minimum fund balance in effect at the time of receipt, Donor and BCF acknowledge and agree that Donor’s gift shall be unrestricted for use by BCF where it is needed most as determined by BCF’s Board of Directors.*

2. Beneficiary Designation. Donor and BCF agree that the Fund is established for the benefit

of the following charitable beneficiaries: \_\_\_\_\_.<sup>1</sup> Donor and BCF agree that the Fund is established for the benefit of charitable organizations that are tax-exempt as a public charity under IRS Code Section 501(c) (3) or units of governmental. Donor understands and agrees that BCF will not approve grants to non-charitable organizations, individuals, or for any purpose prohibited by the Internal Revenue Service from the Fund.

3. Administrative Fees. Annual administrative fees will be assessed to the Fund as provided in the Administrative Fee Schedule in effect at the time the gift is received by BCF.

4. Distributable Income. The “distributable income” of the Fund will be paid to the beneficiary listed in Paragraph 2. The “distributable income will be calculated pursuant to BCF’s Investment and Spending Policy in effect at the time the gift is received. The Investment and Spending Policy is subject to periodic review and revision by BCF’s Board of Directors from time to time, and any such revision in effect shall control at any given time.

5. Donor Acknowledges that Fund will be Administered Pursuant to Foundation’s Policies. Donor acknowledges that the Fund shall be administered in accordance with all BCF Policies. BCF policies shall be periodically reviewed and amended, and any such revision in effect shall control at any given time.

6. Permission to Use Donor and Fund Name in BCF Publications. Donor (*select one of the following options*) consents/does not consent to the legal use by the BCF (and its designees) of (*select one or both of the following options*) Donor’s name and/or Photo and/or the name of Donor’s Fund as a member of BCF’s Legacy Society in any form or medium, for news stories, publicity, and website posting. (*If consent is given, add the following*) Donor waives any right to inspect or approve the finished products or the copy or printed matter that may be used with the use by BCF of Donor’s *name and/or photo and/or the name of Donor’s Fund* as a Legacy Society member. Donor hereby releases BCF from any and all claims in connection with the use of Donor’s *name and/or photo and/or the name of Donor’s Fund* as a Legacy Society member, including any and all claims of libel.

7. Variance Power. Donor acknowledges and agrees that, pursuant to tax law, the board shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations set forth above, 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, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.

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<sup>1</sup> **THREE PERCENT RULE.** Donors are not required to name only Benton County Charities as beneficiaries of a designated fund; however, we require that at least 3% of the annual distributable income of the fund benefits Benton County. This can be achieved in three ways: (1) The donor may elect to name a Benton County charity as one of the beneficiaries of the fund (to receive a minimum of 3% of the annual distributable income); (2) If none of the donor’s intended charitable beneficiaries serve Benton County, the donor may simply direct that 3% of the annual distributable income from the fund will be transferred to the pass-through Community Fund for use in BCF’s competitive grant cycle for Benton County charities; or, (3) The donor may elect to name BCF as the recipient of 3% of the fund’s annual distributable income to be used where needed most as determined by the Board of Directors.

8. Fund is Component Part of Foundation. Donor and BCF agree that the Fund shall be a component part of BCF and not a separate entity for tax purposes, and that nothing in this Agreement shall affect the status of BCF as a charitable organization described in Section 501(c) (3) of the Code, and as an organization that is not a private foundation within the meaning of Section 509(a) of the Code. This Agreement shall be interpreted to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. BCF is authorized to amend this Agreement to conform to the provisions of any applicable law or government regulation in order to carry out the purposes of the Fund.

DONOR:

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

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

ACCEPTED AND APPROVED by BCF on \_\_\_\_\_.

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

\_\_\_\_\_  
President/CEO