



## **SAMPLE FUND AGREEMENT – ENDOWED FUND**

On this \_\_\_XXX\_\_\_ day of \_\_\_\_\_XXX\_\_\_\_\_, 20\_\_XXX\_\_, with the Initial Gift set forth in Schedule A (attached hereto and made a part hereof) from the undersigned Donor(s), the XYZ ENDOWMENT FUND (the "Fund") is established as an endowed donor advised fund of The Community Foundation for the Greater Capital Region, Inc. (the "Foundation") pursuant to the following terms and conditions:

1. As used herein, "Public Charity" means a not-for-profit organization qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code") and not a private foundation as defined in Code Section 509(a) nor a Type III supporting organization (as defined in Code Section 509(a)(3)) which is not functionally integrated with its supported organization. References to Code sections include corresponding provisions of any future federal tax law with similar intent and effect.
2. In addition to the Initial Gift, the Fund shall include any other property which hereafter may be transferred to the Foundation by the Donor(s) or any other source for inclusion in the Fund and accepted as such by the Foundation.
3. The Fund (and the income and gains/losses allocable thereto) shall be the exclusive property of the Foundation, which shall exercise the legal authority and control over all property in the Fund. The Foundation has full right and power to commingle and co-invest the assets of the Fund with other investment assets of the Foundation and to delegate investment management of the assets of the Fund. Additions to the Fund may be accepted from any and all sources; such additions shall be subject to the same terms and restrictions as are placed on the Initial Gift (subject to the ability of the Donor(s) to release or modify restrictions with the consent of the Foundation) and shall be valued as of the time of receipt. The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive.

For endowment gifts, reports on performance of the Fund and use of its proceeds shall be provided annually to the Donor(s) at the last available address on the records of the Foundation. For capital and current use gifts, the Foundation shall endeavor to report to the Donor (at the last available address on the records of the Foundation) once the gift has been fully paid and/or employed by the Foundation for the purpose specified in this Agreement. The Donor(s) acknowledge(s) that the Foundation shall not be responsible for providing any further or additional notices to the Donor(s) or any other contributors to the Fund, except as specifically provided in this Agreement.]

4. The Fund shall be used only for charitable, educational, scientific, literary, or other purposes permitted of a Public Charity (including any combination of such purposes and administrative support) in furtherance of the purposes of the Foundation, either directly by the Foundation or through contributions to other Public Charities for such purposes.

5. As a donor advised fund, the Fund will be used to benefit the Public Charities selected by the Foundation's Board of Directors, which shall receive non-binding recommendations from the Donor(s) [or a committee of persons appointed by the Donor(s) for that purpose] regarding the timing, amounts and recipients of payments from the Fund. Such recommendations may be accepted or rejected, in whole or in part, by the Foundation's Board of Directors in its sole and absolute discretion.
6. It is understood that no distribution from the Fund shall:
  - a. be used to discharge or satisfy a pre-existing, legally enforceable pledge or obligation of any person, including the Donor(s);
  - b. result in the Donor(s) or any other individual receiving more than an incidental benefit or privilege in return for such distribution;
  - c. be used to carry on propaganda, or attempt to influence legislation or the outcome of any public election, to carry on, whether directly or indirectly, any voter registration drive, or to undertake any activities for a purpose other than described in the distribution request;
  - d. be made to foreign charities, except those which have an IRS determination letter; or
  - e. be made to private non-operating foundations.

All requests for distributions to supporting organizations, as defined in Code Section 509(a)(3), must include (a) a statement that the supporting organization is not controlled, directly or indirectly, by any Fund Advisor or family member of such individuals (as defined in Code Section 4958); and (b) information regarding what type of supporting organization the organization is.

7. To assist the Donor(s) [or designated committee(s)] in making recommendations, the Foundation will provide from time to time information regarding community needs the Foundation seeks to meet.
8. The right of the Donor(s) [or committee(s)] to make recommendations is limited to the lifetime(s) of one generation of successor advisor(s). In the case of a donor advised fund established by a business entity, the right to make recommendations is limited to twenty (20) years.
9. It is understood and agreed that the Fund shall be an endowment fund. The annual amount of support provided by the Fund will be determined in accordance with the Foundation's policy on endowment spending as established by its Board of Directors, including its application even in the event the value of the Fund falls below its original funding value. The Fund shall not be subject to any law creating a presumption as to unreasonableness with respect to the amounts expended.
10. The Fund shall be administered under and subject to the Foundation's Certificate of Incorporation and Bylaws, as those may be amended from time to time. Thereunder, the Foundation's Board of Directors has the power to modify any restriction or condition on distributions from the Fund for any specified purpose or to any specified organization if, in the sole judgment of that Board, compliance with such restriction or condition becomes unnecessary, impractical or impossible, or inconsistent with the purposes of the Foundation.

11. If a Fund has not attained a value of \$5,000 within thirty (30) months, the Foundation will attempt to contact the donor to discuss the intention for the Fund. If inactivity continues an additional six (6) months, the assets of the Fund shall be reclassified as an unrestricted fund and the balance, at the direction of the board of the Foundation, shall be added to the "Community Impact Fund."
12. The Fund may be charged regularly for a proper allocation of direct and indirect expenses attributable to the creation and maintenance of funds of this type.
13. The Fund is expressly intended to be a component part of the Foundation. Nothing in this Agreement is intended to create a separate trust fund or other separate entity held by the Foundation as a trustee or in any other capacity. Nothing in this Agreement is intended to affect adversely the status of the Foundation as a Public Charity. The Fund shall be administered in compliance with Code Sections 4966 and 4967, as may be amended, that apply to donor advised funds. This Agreement shall be interpreted in a manner consistent with the foregoing intentions and to conform to the requirements of the Code and regulations. The Foundation is authorized to amend these terms and conditions to conform to the provisions of any applicable law or government regulation now in existence or hereinafter created, in order to carry out the foregoing intentions.
14. This Agreement shall be governed by the laws of the State of New York, without regard to conflict of law principles. This Agreement constitutes the entire understanding between the parties and supersedes all prior negotiations, discussions, and understandings between them on the subject matter of the Fund.

**AGREED AND ACCEPTED:**

Donor(s)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Accepted this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_. Receipt of the above-described property on this date is acknowledged. No property, goods or services were provided to Donor(s) in exchange.

THE COMMUNITY FOUNDATION FOR THE GREATER CAPITAL REGION, INC.

By: \_\_\_\_\_

Karen Bilowith, President/CEO  
The Community Foundation for the Greater Capital Region  
Six Tower Place, Albany, New York 12203 (518) 446-9638

SCHEDULE A

Description of Property

Delivered to The Community Foundation for the Greater Capital Region, Inc.

Pursuant to Donor Advised Fund Agreement Dated \_\_\_\_\_

SAMPLE