

**SAMPLE – DONOR ADVISED GROWTH FUND**

**TOLEDO COMMUNITY FOUNDATION, INC.**

**Fund Agreement**

*Name of Donor or Donors* (hereinafter referred to as the "Donor"), hereby irrevocably gives, conveys and assigns to the Toledo Community Foundation, Inc. (hereinafter referred to as the "Foundation"), a public charity described in sections 501 (c) (3) and 170 (b) (1) (a) (vi) of the Internal Revenue Code, the following property:

*Type and amount of asset*

To have and to hold the same absolutely, upon the terms and conditions set forth in the Articles of Incorporation and Code of Regulations of the Toledo Community Foundation, Inc. and further subject to the following provisions and conditions:

1. The gift shall be known as *name of fund* (hereinafter referred to as the "Fund").

2. The Fund shall be held for the following purposes as permitted by Internal Revenue Code Section 170:

The Fund shall be a Donor Advised Growth Fund and shall be administered under and subject to the "Guidelines and Procedures for Donor Advised Funds" (Attachment A) adopted by the Board of Trustees of the Foundation, including any amendments thereof. The Fund shall be the property of the Foundation. The Foundation shall have the ultimate authority and control over all property in the Fund and income derived therefrom.

The Fund is viewed as an opportunity to build a philanthropic partnership between the Foundation and the Fund Advisors (noted below). While the Foundation must and does retain sole and absolute discretion relevant to grant distributions, the Foundation intends to actively seek recommendations from the Fund Advisors regarding such distributions, which shall be made exclusively for charitable purposes as defined by section 501 (c) (3) of the Internal Revenue Code.

The Fund shall be used only for the charitable, educational, scientific, literary, or religious purposes (including any combination of such purposes and administrative purposes) in furtherance of the purposes of the Foundation, either directly by the Foundation or by contributions to other organizations for such purpose or purposes.

The Foundation shall monitor the charitable needs and grant opportunities in northwest Ohio and southeast Michigan and provide the Fund Advisors with suggestions, information and specific projects for which distributions from the Fund might be appropriate. The Fund Advisors are also encouraged to conduct research into charitable needs and grant opportunities.

During their lifetimes, *name of fund advisors*, shall act as Fund Advisors to the Fund. Fund Advisors may submit to the Foundation recommendations with respect to distributions from the Fund. These recommendations shall be solely advisory and the Foundation shall not be bound by such recommendations. The Fund Advisors may, from time to time, request that a distribution not identify the name of the Fund in connection with the distribution and, if the Foundation's Board of Trustees approves the distribution, the name of the Fund shall not be disclosed to the recipient of the distribution.

During their lifetimes, the Fund Advisors named above may also recommend (in writing) other potential Advisors to the Fund, so long as such recommended Advisors are then living. Said recommended Advisors must be approved by the Foundation's Board of Trustees.

Subsequent Fund Advisors have the right to recommend (in writing to the Foundation) additional Advisors to the Fund, so long as such recommended Advisors are then living. Said recommended Advisors must be approved by the Foundation's Board of Trustees.

After the last of the Fund Advisors is deceased or the Fund Advisors no longer desire to make recommendations regarding grants from the Fund, the Fund shall remain intact and continue to give priority consideration for grants to organizations and/or fields of interest which the Fund supported during the lifetime of its Fund Advisor(s).

3. The Fund may be increased by additional gifts, and any such additional gifts shall be held subject to the provisions and conditions herein stated.

4. It is understood and agreed that in the event there are liabilities associated with assets given to this Fund, such liabilities become liabilities of this Fund only and not of the Foundation or of any other component Fund.

5. It is intended that the Fund shall be a component part of the Foundation, and that nothing in this Agreement shall affect the status of the Foundation as an organization described in Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended, and as an organization which is not a private foundation within the meaning of Section 509 (a) of the Internal Revenue Code.

This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Foundation is authorized to amend this agreement to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention. References herein to provisions of the Internal Revenue Code of 1986, as amended, shall be deemed references to the corresponding provisions of any future Internal Revenue Code.

6. The assets of the Fund may be commingled for investment purposes with the assets of other gifts made to the Foundation.

7. The Donor's expressed desire with regard to the Fund shall be respected and observed, subject however, in every case to the condition that if and whenever circumstances shall appear to the Board of Trustees of the Foundation to render unnecessary, impractical or impossible compliance with the terms of the Fund, the Board of Trustees shall have the power to modify any restriction or condition on the distribution of funds 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, incapable of fulfillment or inconsistent with the charitable needs of the community or area served without regard to and free from any specific restriction, limitation or direction imposed by the Donor.

Agreed to and signed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

DONOR

\_\_\_\_\_  
Donor's name

TOLEDO COMMUNITY FOUNDATION, INC.

\_\_\_\_\_  
Keith Burwell, President

## ATTACHMENT A

### TOLEDO COMMUNITY FOUNDATION, INC. GUIDELINES AND PROCEDURES FOR DONOR ADVISED FUNDS

Approved May 4, 2004

These guidelines and procedures have been adopted by the Board of Trustees of the Toledo Community Foundation, Inc. for the acceptance and administration of funds established by donors who desire to retain the privilege of making recommendations as to distributions from such funds (hereinafter "Donor Advised Funds" or "Funds").

#### **I. Establishment of Funds**

Donor Advised funds are encouraged by the Toledo Community Foundation to develop support of, and participation in, the philanthropic interests and activities of the Foundation and the Toledo community. They are a means of encouraging endowment support, stimulating interchange of ideas between donors and the Foundation, and providing funds to extend the charitable purposes of the Foundation. The Foundation encourages donors to create Donor Advised funds that will remain as permanent endowments in the Foundation.

Donor Advised funds are subject to close regulatory scrutiny by the Internal Revenue Service to ensure that they are considered for tax purposes a component fund of the Foundation and do not become private foundations; such Funds may not be subject to the direct or indirect control of the donor over distributions. Failure to comply with regulatory restrictions can jeopardize the Foundation's standing as a public charity and the deductibility of donors' contributions. Accordingly, the Foundation has adopted the following policies governing Donor Advised funds:

In accepting Donor Advised funds, the goals of the Toledo Community Foundation are:

1. To meet charitable needs and opportunities for benefit of the Toledo area, and/or
2. To increase charitable giving by persons in the Toledo area

The Board of Trustees of the Toledo Community Foundation will examine each prospective Donor Advised fund for compatibility with these goals before accepting the Fund. Grants may be made to organizations outside the Toledo area as long as the Foundation can ensure that they are being made to legitimate charitable organizations and in accordance with applicable laws and regulations.

#### **II. Ownership and Control by Foundation**

1) Each Donor Advised Fund shall be the property of the Foundation, owned by it in its normal corporate capacity. The Foundation shall have the ultimate authority and control of all property in the Fund, and the income derived therefrom, for the charitable purposes of the Foundation or for such specific charitable purpose as designated by the donor in the written instrument establishing the Fund.

2) Each Donor Advised Fund shall be the subject of a separate written instrument which shall provide for the holding of the Fund by the Foundation on the terms and subject to the conditions set forth in the Foundation's governing instruments, including its Articles of Incorporation and Code of Regulations, as amended from time to time, and any resolutions and procedures from time to time in effect. This shall include reasonable and proper compensation for services and expenses.

3) Each Donor Advised Fund shall be recorded on the books and records of the Foundation as an identifiable or separate fund and shall be given a name or other appropriate designation as requested by the donor.

4) Each Donor Advised Fund shall require a minimum balance of \$10,000 to create and to maintain. Additional contributions in any amount may be added to a Donor Advised fund once it is established.

### **III. Donor's Recommendations**

1) Advisors may be the donor and donor's spouse or others designated by the donor, including children. Where persons in addition to the donor or spouse may make recommendations, the Foundation requires that one person be designated to submit recommendations to the Foundation. The privileges of making recommendations regarding distributions from a Donor Advised Fund, unless sooner relinquished by the donor, shall be limited to the lifetimes of the donor and, if the donor in the written instrument establishing the Fund designates the donor's spouse or other persons to exercise the privilege, then for the lifetime of the designee(s) so specified as Successor Advisors.

2) Advisors for Donor Advised Endowed Funds may submit recommendations regarding the distribution of income from the principal and may consult with the Foundation's staff concerning the use of distributions from the Fund for the general charitable purposes of the Foundation or the particular charitable purpose(s) stated in the written instrument. While these recommendations will be given careful and thoughtful attention by the Foundation's Board and staff, the recommendations will be solely advisory and will not be binding upon the Foundation.

3) Advisors for Donor Advised Growth Funds may submit recommendations regarding the distribution of income and principal down to, but not below the minimum required fund balance and may consult with the Foundation's staff concerning the use of distributions from the Fund for the general charitable purposes of the Foundation or the particular charitable purpose(s) stated in the written instrument. While these recommendations will be given careful and thoughtful attention by the Foundation's Board and staff, the recommendations will be solely advisory and will not be binding upon the Foundation.

(Reference hereinafter to recommendations by donors shall apply equally to recommendations by a donor's spouse or a donor's designee(s).)

### **IV. Independent Study**

1) Distributions from advised funds will be consistent with the Foundation's general grant making principles; specifically, grants for a wide range of philanthropic purposes in arts/culture; physical/mental health; social services; natural resources; education; neighborhood & urban affairs and other fields. However, final discretion in all cases rests with the Foundation's Board of Directors.

2) Final decisions on all grants from Donor Advised funds will be made by the Foundation. The Foundation is not bound by the advice of donors or advisors, and the donor does not retain any legal right to direct these grants.

3) The Foundation's staff will conduct an independent investigation of each recommendation to determine whether it is consistent with the charitable needs of the Toledo community and the goals of the Toledo Community Foundation. The degree of formality of the investigation will depend upon the nature

of the grantee organization, the purposes of the grant, and the information already available to the Foundation on the proposed grantee. If it is determined that the recommendation is not appropriate, the advisor will be informed that the recommendation does not meet the standards for distribution.

4) To educate donors and advisors on community needs and encourage them to make recommendations accordingly, the Foundation will maintain basic information on local non-profit and charitable organizations for assisting advisors in their decision making, and will encourage donors and advisors to consult with the staff on prospective recommendations. The Foundation will also provide information to advisors from time to time on the charitable needs and opportunities of the community.

5) The Foundation encourages advice from other members of the community, in addition to donors and advisors, as to the distribution of grants from Donor Advised funds. The Foundation may from time to time seek advice from persons familiar with community needs or having expertise in a particular field to make recommendations on distributions from a given fund.

## **V. Provision for Distributions According to the Foundation's Spending Guidelines**

Unless specific provision for distributions from principal is made in the written instrument establishing the Fund, each Donor Advised Fund will be considered an endowment fund to the Foundation with distributions made only according to the Foundation's spending guidelines that may be in effect from time to time. Donors may provide in the written instrument establishing the Fund for the distribution of principal known as a Donor Advised Growth Fund.

## **VI. Regular Grant Making Procedure**

Distributions from a Donor Advised Fund shall be made only following formal consideration by the Board of Trustees and formal authorization of the distributions in accordance with the regular grant making procedure of the Board of Trustees.

## **VII. Limitations on Distributions**

In accordance with IRS regulations, the Toledo Community Foundation will decline to make distributions as recommended by advisors when:

1. The organization is not a 501(c)(3) charitable organization. Distributions cannot be made to private foundations.
2. The recommendation is deemed unworkable.
3. A recommended grant from an advised fund is intended to discharge or to satisfy a pledge of the advisor or any other person or to pay the dues of any person to any organization.
4. The distribution would not be fully tax-deductible if given directly by the donor. For example, we are unable to make distributions if the donor receives direct benefit from the distribution, such as a dinner or tickets, or the donor may receive special privileges or services as a result of the distribution.
5. After investigation, the Foundation finds that the recommended recipient does not meet the Foundation's general standards for grant making.

6. For any other reason, the Foundation finds the recommendation to be incompatible with the charitable needs and opportunities of the Toledo area or the goals of the Foundation.
7. No distributions are made to individual persons. Scholarships, for example, are made to the educational institution, but are restricted to use for the student specified.

### **VIII. Asset Management**

Control over investment and asset management of the Fund shall be exercised exclusively by the Foundation following its normal policies and procedures and the donor shall have no control over such investment or asset management.

### **IX. Termination**

Upon termination of the donor's privilege to make recommendations, the Fund shall continue as part of the permanent funds of the Foundation. The Fund shall become an Unrestricted Fund unless the donor at the time the Fund is established states a specific charitable purpose in which case it becomes a Field-of-Interest Fund for that purpose but it continues to carry the name designated by the donor.

### **X. Reports**

A report of all distributions from all Donor Advised Funds shall be included in the annual report of the Foundation and such additional reports regarding such Funds as may be published by the Board of Trustees. The Foundation will provide donors and advisors with quarterly statements of contributions to and distributions from the Donor Advised fund.

### **XI. Recognition of Donor**

Unless otherwise requested by the donor, any distribution from a Donor Advised Fund shall identify to the grantee the name of the Fund from which the distribution is made.

Further information on Donor Advised Funds, including forms for establishing a Fund, is available upon request at the address set forth below. We will be most happy to answer any questions you may have concerning this innovative form of charitable giving.

Write or call:

Toledo Community Foundation, Inc.  
608 Madison Ave., Suite 1540  
Toledo, OH 43604-1151  
419.241.5049

TOLEDO COMMUNITY FOUNDATION, INC.

Unrestricted Grant Making  
Desired Outcomes/Priority Statements

The Foundation targets its grant making resources to programs and activities intended to achieve the following community outcomes:

- I. Create safe, positive living environments.
- II. Enable families to develop the skills/resources needed to support and nurture each member.
- III. Foster the development of responsible young people who are capable of achieving their fullest potential.

Examples of the types of efforts that could lead to the desired outcomes include (but are not limited) to those programs designed to:

- A. Encourage resident participation in developing solutions to the problems which confront neighborhoods throughout the city.
- B. Promote the availability of affordable housing and/or maintain the adequacy of existing housing stock.
- C. Increase availability/awareness of opportunities for the general population -- especially children -- to experience and learn about the arts.
- D. Educate the public -- especially children -- regarding environmental facts.
- E. Provide parenting skills education and/or otherwise encourage parents to play an active, appropriate role in the lives of their children.
- F. Assist families in preventing and/or addressing behaviors which contribute to individual or family dysfunction.
- G. Offer positive youth development programming which can serve to prevent such problems as substance abuse, teenage pregnancy, juvenile delinquency, etc.
- H. Provide prevention/enrichment programs -- commencing, when possible, at the pre-school or elementary level -- for youngsters who are considered at-risk of experiencing academic failure and/or dropping out of school.