

STATE OF SOUTH CAROLINA)

)

DONOR ADVISED FUND AGREEMENT

COUNTY OF SPARTANBURG)

This Agreement made and entered into as of the ____ day of _____ 200____,
between **THE SPARTANBURG COUNTY FOUNDATION** (the “Foundation”) and
_____ (“Donor”).

WHEREAS, the Donor desires to make an irrevocable charitable gift to the Foundation for the creation of a donor advised fund and to designate the Donor or another individual(s) as an “Advisor” to the Fund for the purpose of making non-binding recommendations from time to time with respect to distributions from the Fund, subject to the terms and conditions of this Agreement; and

WHEREAS, the Foundation agrees to accept said property in order to create and administer a fund under the terms and conditions of this Agreement;

NOW, THEREFORE, the Donor and the Foundation hereby agree as follows:

1. Creation of Fund. Upon signing this Agreement, the Donor has irrevocably transferred and delivered to the Foundation, and the Foundation has accepted and received, all of Donor’s right, title, and interest in and to the property described on Exhibit “A” attached hereto and made a part hereof, for the creation of a separate donor advised fund consisting of such initial contribution of property, any subsequent contributions thereto, and any and all income derived therefrom (the “Fund”). The Fund shall be known as the _____
_____ Fund.

Under no circumstances may any part of the Fund revert to the Donor or provide the Donor with any direct or indirect pecuniary benefit. Neither the Donor nor any other person shall have any right or power to alter, amend, revoke or terminate this Agreement or any of the terms of this Agreement, except as may otherwise be provided in Paragraph 9 herein.

2. Administration of Fund Generally. The principal and net income of the Fund shall be used and administered in furtherance of the exempt purposes of the Foundation and shall be subject to all of the terms and conditions of the Articles of Incorporation, Trust Indenture, and Bylaws of the Foundation, as amended from time to time. The Fund shall be the property of the Foundation held by it in its corporate capacity as a component fund of the

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO §§ 15-48-10, et seq.,
CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.**

Foundation and shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and income derived therefrom, in accordance with the Articles of Incorporation and By-Laws of the Foundation (as they may be amended from time to time), and the terms of this Agreement, applied in a manner not inconsistent with said Articles and By-laws. All provisions of the Articles of Incorporation, Trust Indenture, Bylaws, and Policies and Procedures Statement are incorporated herein and made a part of this Agreement by reference. The Fund will be administered under and subject to the Foundation's governing documents and policies, as amended from time to time, including its "variance power" which gives the Foundation's Board the ability to redirect funds should the purposes for which they were given become obsolete.

3. Advisor. Donor shall have the right during Donor's lifetime to designate Donor or another individual(s) as an advisor to the Foundation with respect to distributions from the Fund (the "Advisor"). Donor hereby designates _____ as the Advisor. If more than one person is designated the Advisor, the Foundation may rely upon the advice and recommendations of:

___ Any one such person individually; or

___ All such persons collectively; or

___ Otherwise, as follows: _____

The Donor may designate a new Advisor during Donor's lifetime by delivering to the Foundation written instructions signed by Donor. The Advisor may consult with, advise, and make non-binding recommendations to the Foundation with respect to the timing, amount and charitable recipients of distributions from the Fund. The Foundation shall consider and evaluate such advice and recommendations, but such advice or recommendations shall be purely advisory and under no circumstances shall the Foundation be bound by such advice and recommendations.

4. Contribution to General Fund. The Fund shall make a minimum annual contribution to the General Fund of the Foundation in the amount specified by the Foundation's contribution schedule.

5. Duration of the Fund. The Fund shall terminate no later than:

___ The date of the death of the Donor, or

___ The date of death of the survivor of the Donor and the Donor's spouse.

Upon termination of the Fund, all remaining assets in the Fund shall be transferred to the General Fund of the Foundation; provided, however, if the Fund shall have a value of \$25,000.00 or more at the time of such termination, the Trustees in their discretion may continue the Fund thereafter as a separate memorial fund under the name _____ Fund, a fund already created in The Spartanburg County Foundation, which fund shall be administered by the Foundation under the same terms applicable to “The General Fund” of the Foundation.

6. Reports. The Foundation shall provide to the Donor (and to the Advisor if the Advisor is not also the Donor) a copy of the annual report of the Fund prepared under the general accounting and auditing programs of the Foundation.

7. Ultimate Control of Fund. Notwithstanding any other provision contained herein, the Foundation shall at all times have the power to freely and effectively employ the assets of the Fund, and the income derived therefrom, in furtherance of its exempt purposes. Nothing contained herein shall prevent the Foundation from exercising ultimate authority and control over such property in accordance with its Articles of Incorporation, Trust Indenture, Bylaws, Policies and Procedures Statement for Advised Funds, all as amended from time to time, and any other resolutions and procedures duly adopted by the Board of Trustees.

8. Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration pursuant to the provisions of §§ 15-48-10, *et seq.*, *Code of Laws of South Carolina (1976), as amended*, or such other laws of the State of South Carolina as shall govern arbitration proceedings and be in effect at the time of such arbitration, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

9. Modification or Amendment. The Foundation shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that the Fund qualifies and continues to qualify as a component fund of the Foundation to be held exclusively for charitable and eleemosynary purposes, in accordance with the governing documents of the Foundation, and any such amendment shall apply retroactively to the inception of this Agreement. Such amendment shall be accomplished by means of an instrument in writing attached to the original executed copy of this Agreement, with copies to the Donor. The

Foundation is hereby exonerated from any and all liability in connection with any exercise of the powers of amendment herein granted, if taken in good faith reasonably believed by the Foundation to be in accordance with the provisions and intent hereof. In no event shall this Agreement be amended in such a way as to cause the Fund not to be treated as a component fund of the Foundation.

10. Governing Law. Nothing in this Agreement shall affect the status of the Foundation as an organization (a) described in Section 501(c)(3) of the *Internal Revenue Code of 1986*, as amended (the “Code”), and (b) which is not a private foundation as defined in Section 509(a) of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and in order to conform with the requirements of the foregoing provision of the federal tax laws and any regulations issued thereunder, and any provision held to the contrary or in violation thereof is null and void *ab initio*.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

IN THE PRESENCE OF:

THE SPARTANBURG COUNTY FOUNDATION

By: _____
Its President

(INSERT NAME OF DONOR)

