

DONOR ADVISED PASS-THROUGH FUND AGREEMENT
BETWEEN
CREATE FOUNDATION, INC.
AND

THIS AGREEMENT, made and entered into on _____, by and between CREATE Foundation, Inc., Tupelo, Mississippi (the "Foundation"), and _____, (hereinafter referred to as the "Donor").

W I T N E S S E T H:

WHEREAS, the Donor desires to have established in the Foundation a Donor Advised Fund with respect to which the Donor can recommend recipients of charitable grants; and

WHEREAS, the Foundation is a nonprofit Mississippi corporation exempt from taxation under Internal Revenue Code ("Code") section 501(c)(3), a public charity described in section 170(b)(1)(A)(vi) of the Code, and accordingly an appropriate institution within which to establish such a charitable endowment; and

WHEREAS, the Foundation is willing and able to create such Fund, subject to the terms and conditions hereof;

NOW, THEREFORE, the parties agree as follows:

1. GIFT AND NAME OF THE FUND. Donor hereby transfers irrevocably to the Foundation the property described in the attached Exhibit A to establish in the Foundation a Donor Advised Pass-Through Fund designated as the _____ Fund. Subject to the right of the Foundation to reject any particular gift, the Foundation may receive additional irrevocable gifts of property acceptable to the Foundation from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof. All grants, bequests and devises to this Fund shall be irrevocable once accepted by the Foundation.

2. PURPOSE. The primary purpose of the Fund shall be to provide support as directed by the Foundation Board of Directors (the "Board"), for general charitable purposes.

3. DISTRIBUTION. The principal, net of the fees and expenses set forth in paragraph 11, may be committed, granted or expended only for purposes described in Code section 170(c)(1) or (2)(B); provided, however, that such purposes are consistent with the exempt status and purposes of the Foundation. If any gifts to the Foundation for the purposes of the Fund are received and accepted subject to a Donor's conditions or restrictions as to the use of the gift or income therefrom, said conditions or restrictions will be honored, subject, however, to the power of the Foundation's Board of Directors (hereinafter the "Board") 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, if effect, unnecessary, incapable of fulfillment or inconsistent with the charitable needs of the community served by the Foundation.

No distribution shall be made from the Fund to any individual or entity if such distribution will in the judgment of the Foundation endanger the Foundation's Code section 501(c)(3) status. No distribution shall be made from the Fund to fulfill pledges and/or to secure benefits from the distribution recipient for donors, advisors, and related parties. No distribution shall be made from the Fund to donors, advisors or related parties as grants, loans, compensation or similar payments. No distribution shall be made from the Fund as grants to individuals or to entities for the benefit of a specified individual.

4. RECOMMENDATION FOR DISTRIBUTION. Subject to the Foundation's principles and procedures for advised funds, the commitments, grants or expenditures from the Fund contemplated in paragraph 3 shall be made at such time or times and in such amount or amounts as may be determined solely by the Foundation for such purposes described in paragraph 3 as may be designated by the Foundation; provided, however, that Donor may from time to time submit to the Foundation the specific charitable or other exempt purposes or the names of specified organizations for or to which is recommended that distributions be made. All recommendations from Donor shall be solely advisory, and the Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto. (See attached *Donor Advised Pass-Through Process*.)

If Donor is married and Donor's spouse does not desire to serve as an advisor, Donor's spouse is requested (but not required) to sign a Spousal Consent as an addendum to this Agreement. If both spouses sign this Agreement as Donor, each shall equally advise as to Fund distribution. After the death of Donor or the survivor of Donor and Donor's spouse, as appropriate, the Board of the Foundation shall itself serve as the advisor of the Fund. (See attached *Advisor Succession*.)

5. ADMINISTRATIVE PROVISIONS. Notwithstanding anything herein to the contrary, the Foundation shall hold the Fund, and all contributions to the Fund, subject to the provisions of the applicable Mississippi laws and the Foundation's Articles of Incorporation and Bylaws. The Board shall monitor the distribution of the Fund to ensure it is used exclusively for charitable or other exempt purposes (within the meaning of Codes section 170(c)(1) or (2)(B)), and shall have all powers of modification and removal specified in United States Treasury Regulations section 1.170A-9(e)(11)(V)(B),(C), and (D).

The Board agrees to provide the Donor a copy of the annual examination of the finances of the Foundation as reported upon by independent certified public accountants.

6. CONDITIONS FOR ACCEPTANCE OF FUNDS. The Donor and Donors agree and acknowledge that the establishment of the Fund herein created is made in recognition of, and subject to, the terms and conditions of the Articles of Incorporation and Bylaws of the Foundation as from time to time amended, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for:

- a) Presumption of donors' intent;
- b) Variance from donors' direction;
- c) Amendments.

7. CONTINUITY. The fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated, the Foundation shall devote any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

- a) are within the scope of the charitable or other exempt purposes of the Foundation's Articles of Incorporation; and,
- b) most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

8. NOT A SEPARATE TRUST. The Fund shall be a component part of the Foundation. All money and property in the Fund shall be held as general assets of the Foundation and not segregated as trust property of a separate trust; provided that for purposes of determining the share of the Foundation's earnings allocable to the Fund and the value of the principal of the Fund, the interest of the Fund in the general assets of the Foundation shall be a percentage determined by dividing the gift to the Fund by the then value of the total assets of the Foundation, such percentage interest being subject to adjustment at the time of each addition to or reduction of the assets of the Foundation.

9. ACCOUNTING. The receipts and disbursements of this Fund shall be accounted for separately and apart from those of other gifts to the Foundation.

10. INVESTMENT OF FUNDS. The Foundation shall have all powers necessary, or in its sole discretion desirable, to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund and the power to commingle the assets of the Fund with those of other funds for investment purposes.

11. COSTS OF THE FUND. The costs annually charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Foundation as applicable to funds of this type. There are currently no fees assessed to Donor Advised Funds. Any costs to the Foundation in accepting, transferring or managing property donated to the Foundation for the Fund shall also be paid from the Fund.

IN WITNESS WHEREOF, the Donor has executed this Agreement and the Foundation has caused this Agreement to be approved by its Board and to be executed by a duly authorized officer, all as of the day and year first above written.

BY: _____
Donor

Approved by the Board of Directors of CREATE Foundation, Inc. on _____.

CREATE FOUNDATION, INC.

BY: _____
President

Advisor Succession

The advisor or advisors to a Fund are named by the donor at the time the Fund is established. At that time or at a later date, the donor may name an advisor to succeed him or her upon his or her death or resignation. The donor must identify his or her successor by name (i.e. “John Smith,” not “my child”) and provide the successor’s most recent mailing address. Each succeeding advisor may also identify in writing a subsequent successor in the same manner. If the Foundation has received no written notification of a successor advisor during the life of the advisor and no indication within 12 months of the advisor’s death that a successor was named in a will, the Fund will be directed by the CREATE Foundation Board of Directors.

CREATE Foundation, Inc.

SUCCESSOR ADVISOR(S) FORM

THE NAMED SUCCESSOR ADVISOR(S)
FOR MY ADVISED FUND IS (ARE) AS FOLLOWS:

Name of Advised Fund: _____

Name of Successor Advisor(s): _____

Address: _____

Phone Number: _____

Email Address: _____

Please select one: Current Advisor Successor Advisor

Should this person receive a quarterly fund statement? Yes No