



**ADVISED PASS - THROUGH FUND AGREEMENT BETWEEN
ANN ARBOR AREA COMMUNITY FOUNDATION, INC. AND
THE COMMISSION ON ART IN PUBLIC PLACES**

THIS AGREEMENT, made and entered into on March 17, 1999, by and between the ANN ARBOR AREA COMMUNITY FOUNDATION (the "Foundation"), and the COMMISSION ON ART IN PUBLIC PLACES, hereinafter referred to as the "Donor".

WITNESSETH:

WHEREAS, the Donor desires to have established in the Foundation an advised pass-through fund designated ANN ARBOR ART IN PUBLIC PLACES FUND with respect to which the Donor can recommend recipients or charitable grants; and

WHEREAS, the Foundation is a nonprofit Michigan corporation exempt from taxation under Federal 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 an advised fund, subject to the terms and conditions hereof;

NOW THEREFORE, the parties agree as follows:

1. GIFT AND NAME OF FUND. Donor hereby transfers irrevocably to the Foundation the property described in the attached Exhibit A to establish in the Foundation the ANN ARBOR ART IN PUBLIC PLACES 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 sources 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 accept and distribute funds to support the purpose of the Commission on Art in Public Places (attached Exhibit B). Further purposes of the Fund include, but are not limited to, to accept and distribute funds to support the creation of public art for the Ann Arbor community.

3. DISTRIBUTION. The annual earnings allocable to the Fund, net of fees and expenses set forth in paragraph 11, and principal, to the extent expressly permitted by this Agreement or the gift instrument, shall be committed, granted or expended for purposes described in Code Section 170(c)(2)(B) to organizations described in Sections 509(a)(1), (2), or (3). 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 authority of the Foundation's Board of Trustees (hereinafter "the Board") to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Foundation's Board 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.

4. RECOMMENDATIONS 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 to such organizations of the type 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 names of specified organizations described in paragraph 3 to which it 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.

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 Michigan laws. The Board shall monitor the distribution of the Fund, and shall have all powers of modification and removal specified in United States Treasury Regulation Section 1.170A-9(e)(11)(v)(B).

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. 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 Donor's intent;
- (b) Variance from Donor's direction;
- (c) Amendments.

7. CONTINUITY OF THE FUND. The Fund shall continue so long as assets are available in the Fund and the purposes of 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 purposes that:

- (a) are within the scope of the charitable purposes of the Foundation's Articles of Incorporation.
- (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 assets of 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 the 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

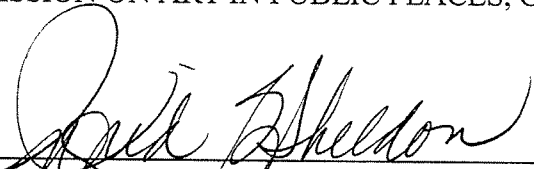
purposes.

11. COSTS OF THE FUND. It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs of the Foundation. Those 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. 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 of Trustees and to be executed by a duly authorized officer, all as of the day and year first above written.

COMMISSION ON ART IN PUBLIC PLACES, CITY OF ANN ARBOR

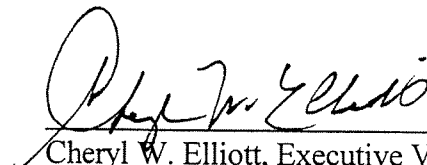
By:


Ingrid Sheldon, Mayor

Approved by the Board of Trustees of the Ann Arbor Community Foundation
on March 17, 1999.

ANN ARBOR AREA COMMUNITY FOUNDATION, INC.

By:


Cheryl W. Elliott, Executive Vice President & COO

By:

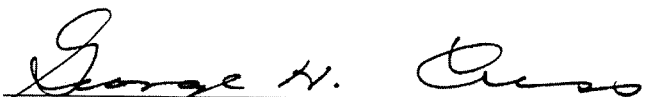

George H. Gress, President & CEO

EXHIBIT B

The purpose of the Commission on Art in Public Places (CAPP) is to foster a supportive climate for the visual arts; to encourage greater community awareness of, access to, participation in, and appreciation for the visual arts as an essential component of the vitality, health and spirit of the City; and to nurture and enhance the City's image as a cultural and artistic hub through the promotion of public art that is diverse as Ann Arbor itself.