



**DESIGNATED ENDOWMENT 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 ANN ARBOR AREA COMMUNITY FOUNDATION, INC. (the "Foundation"), and the COMMISSION ON ART IN PUBLIC PLACES (hereinafter referred to as the "Founding Contributor"),

**WITNESSETH:**

**WHEREAS**, the Founding Contributor desires to create a charitable designated endowment in the Foundation; and

**WHEREAS**, the Foundation is a non-profit Michigan 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 an endowment as a Designated Endowment Fund, subject to the terms and conditions hereof;

**NOW THEREFORE**, the parties agree as follows:

**1. NAME OF THE FUND.** There is hereby established in the Foundation, and as a part thereof, a fund designated as ANN ARBOR ART IN PUBLIC PLACES FUND (hereinafter referred to as "the Fund") to receive gifts, in whatever form of money or property, and to administer the same.

**2. PURPOSE.** The purpose of the Fund shall be to provide for the maintenance and preservation of public art in Ann Arbor.

**3. GIFTS.** The Founding Contributor hereby transfers irrevocably to the Foundation the property described on the attached Exhibit A to establish the Fund. Subject to the right of the Foundation to reject any particular gift, any person whether an individual, corporation, trust, estate or organization (hereinafter referred to as "Donor") may make additional gifts to the Foundation for the purposes of the Fund by a transfer to the Foundation of property acceptable to the Foundation in whole or in part for the Fund. All gifts, bequests and devises to this Fund shall be irrevocable once accepted by the Foundation.

**4. DISTRIBUTION.** The annual amount available for distribution, as set forth in the Foundation's current spending policy, net of fees and expenses set forth in paragraph 11, 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 earnings 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.

**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 and the Foundation's Articles of Incorporation and Bylaws. The Board shall monitor the distribution of the Fund, and shall have all powers of modification and removal specified in United States Treasury Regulations Section 1.170-9(e)(11)(v)(B).

The Board agrees to provide the Founding Contributor, and any Donor that has contributed to the Foundation at least \$10,000, a copy of the annual examination of finances of the Foundation as reported upon by independent certified public accountants.

**6. CONDITIONS FOR ACCEPTANCE OF FUNDS.** The Founding Contributor 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 of 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 purposes that:

- (a) are within the scope of the charitable purposes of the Foundations' 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.

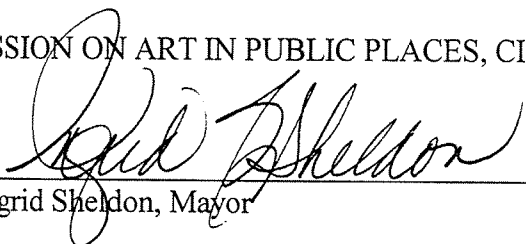
**9. ACCOUNTING.** The receipts and disbursements of the Fund shall be accounted for separately and apart from those other gifts to the Foundation.

**10. INVESTMENTS 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 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.

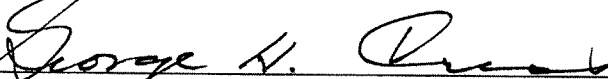
**IN WITNESS WHEREOF**, the Founding Contributor has executed this Agreement and the Foundation has caused this Agreement to be approved by its Board of Trustees and to be executed by a duly authorized officer, all as of the day and year first above written.

COMMISSION ON ART IN PUBLIC PLACES, CITY OF ANN ARBOR

By:   
Ingrid Sheldon, Mayor

ANN ARBOR AREA COMMUNITY FOUNDATION, INC.

By:   
Cheryl W. Elliott, Executive Vice President & COO

By:   
George H. Cress, President & CEO