Agreement to Establish the

Organization Name
Endowment Fund
(A Donor Designated Fund)

within the

Battle Creek Community Foundation

This Agreement is between Organization Name (the "Donor(s)"), a Michigan nonprofit corporation, which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, (the "Code"), and is not a private foundation as described in Code section 509(a), and the Battle Creek Community Foundation (the "Foundation"), a Michigan nonprofit corporation.

Recitals

I. The Donor has an interest in the welfare of the Battle Creek community, and is serving charitable, scientific, literary, or educational purposes for the benefit of the Battle Creek community.

II. The Foundation was established to receive and administer funds as endowments for various charitable, scientific, literary, or educational purposes and organizations in the Battle Creek community.

III. Various interested persons and the Donor have expressed a desire to establish a fund in the Foundation in the nature of an endowment to provide current income and long term protection for the operations of the Donor, and the Donor desires to have the benefits of such a fund.

IV. The Donor and Foundation desire to enter into a written agreement to describe the terms under which such a fund will be held and distributed.

In consideration of the covenants and agreements described in this agreement (the "Agreement"), the sufficiency of which is acknowledged, the Donor and the Foundation agree as follows.

Terms

1. Establishment of Fund. A Fund shall be established on the books of the Foundation which shall be known as the Organization Name Endowment Fund (the "Fund").

2. Property of the Fund. The Fund shall include such property as may from time to time be transferred to the Foundation by the Donor for inclusion in the Fund, such property as may from
time to time be transferred from any other source for inclusion in the Fund and accepted by the Foundation, and all undistributed income from the foregoing property. The Foundation may, in its discretion, refuse to accept any gift offered to the Foundation. If more than one endowment fund for the Donor has been established with the Foundation, then all property transferred to the Foundation for inclusion in any endowment fund will be transferred to the Foundation for inclusion in this Fund, unless specified otherwise in writing by the Donor at the time of such transfer.

3. **Status of Fund.** The Fund shall be the property of the Foundation, held in its corporate capacity, and shall not be deemed a trust fund held by it in a trustee capacity. It is intended that the Fund will be a component fund of the Foundation. The Foundation shall have the ultimate authority and control over all property in the Fund, and the earnings derived therefrom, in accordance with the Articles of Incorporation, By-Laws, and other governing instruments 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, By-Laws, and other governing instruments.

4. **Notification and acknowledgment of gifts.** The Foundation shall have the right to acknowledge and publicize any gifts or transfers to the Fund, or designated for the benefit of the Donor. The Foundation will respect the wishes of donors requesting anonymity. The Foundation shall periodically notify the Donor of gifts and transfers from other sources to the Fund.

5. **Designation of Purposes.** The Fund shall be used for support of the charitable, scientific, literary, or educational purposes of the Donor and its affiliated agencies, as determined from time to time by the Foundation, under this Agreement, and as otherwise provided in this Agreement.

6. **Investment of Fund.** The Foundation shall have final authority and discretion as to the investment and reinvestment of the Fund. The Fund will be held by the Foundation as part of the general investment assets of the Foundation, and will be invested as determined, from time to time, by the Foundation. The overall investment guidelines, objectives, and performance of the Fund will be provided to the Donor on the request of the Donor.

7. **Distributions.** The net earnings of the Fund, if any, as determined by the Foundation in its discretion, shall be paid and distributed to the Donor annually, or more or less frequently as the Foundation and the Donor may from time to time agree. Payment by the Foundation of the net earnings to the Donor shall be a complete release and discharge of the Foundation with respect to the earnings paid, and the Foundation shall not be responsible to the Donor or to any other person for the use of such earnings by the Donor. The Donor may direct that part or all of the net income be reinvested; such net earnings shall be held by the Foundation as a part of the Fund, pursuant to this Agreement.

For periods in which the Battle Creek Community Foundation Board of Trustees determines that “unusual circumstances” exist, the Battle Creek Community Foundation’s general distribution policy shall apply, notwithstanding that the balance of the fund is below, or will fall below, gift or principal balance. This invasion of principal of the Fund will be permitted when “unusual
“circumstances” are determined by the Board of Trustees of the Battle Creek Community Foundation to exist, but only as consistent with the Battle Creek Community Foundation’s general spending policy, as adopted by the Board of Trustees, which is intended and expected to increase and maintain corpus of the fund over time.

8. **Reporting.** The Foundation shall provide a written financial report of the Fund on an annual basis. The Foundation may, in its discretion provide more frequent reports. The Foundation shall provide all routine accounting reports to the Michigan Attorney General and the Internal Revenue Service with respect to the Fund.

9. **Dissolution of the Donor.** Except as provided otherwise in this Agreement, on the dissolution of the Donor, the Fund shall continue to be held by the Foundation and shall be administered *cy pres* for the purposes of its creation as nearly as may be within the appropriate provisions of the Code and regulations. On or after the dissolution of the Donor, notwithstanding the preceding sentence, if, in the discretion of the Foundation, from time to time, the Fund is reduced to such an amount as renders it impractical to maintain such account, then the Foundation may terminate the Fund and transfer the amounts in the Fund to other accounts and funds of the Foundation, for use as determined by the Foundation.

10. **Publicity.** The Foundation may use materials submitted by the Donor and the name of the Donor in the Foundation's promotional efforts, printed materials, newsletter, annual report, and special mailings to prospective donors, as determined by the Foundation. The Foundation, in its discretion, may publicize that the Foundation holds the Fund.

11. **Fees.** The Foundation will charge its customary and usual fees for its management, accounting and investments services for the Donor and the Fund. The Foundation is authorized to charge the Donor with special expenses incurred in connection with the Fund, as determined by the Foundation from time to time. If such fees and charges are not paid directly by the Donor, then the Foundation is authorized to pay such fees and charges from the Fund.

12. **Variance.** The Board of Trustees of the Foundation may exercise the variance power under Article IX of the By-Laws of the Foundation. The Foundation shall promptly notify the Donor of any decision made to exercise the variance power.

13. **Dissolution of the Foundation.** If the Foundation ceases to be exempt from taxation under Code section 501(c)(3) or if the Foundation proposes to dissolve, then the assets of the Fund shall, after payment or making provision for payment of any liabilities properly chargeable to the Fund, be distributed to the Donor. If the Donor is then (i) not exempt from taxation under Code section 501(c)(3) or (ii) a private foundation under Code section 509, then such assets shall be distributed in such a manner and to such Organization Name or organizations in the Battle Creek community as are (i) exempt from taxation under Code section 501(c)(3) and (ii) not a private foundation under Code section 509 (a “Qualified Charitable Organization”) and serve purposes similar to those of the Donor, all in the discretion of the Foundation.
14. **Actions consistent with Foundation's tax status.** Notwithstanding any provision of this Agreement, in no event will the Foundation be required to take any action or fail to act, if, in the determination of the Foundation, such action or failure to act would cause the Foundation to fail to meet the requirements for exemption from income taxation applicable to the Foundation, or if such action or failure to act would cause the Foundation to cease to be a Qualified Charitable Organization. If, but for this section, such action or failure to act is required under this Agreement, then the Foundation, in its determination, shall take such action and decline to act in the manner determined by the Foundation.

15. **Construction.** Nothing in this Agreement shall affect the status of Foundation as a Qualified Charitable Organization. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the Code and any regulations or rulings promulgated under the Code, applicable to the Foundation's status, and in accordance with the laws of the State of Michigan, to the extent not inconsistent with the Code.

16. **Amendments.** The Foundation has the power to modify any restriction or condition on the distribution of the Fund if, in the sole judgment of the Foundation, such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Battle Creek community.

This Agreement is effective immediately. In witness of the adoption of this Agreement to Establish the **Organization Name Endowment Fund**, each of the Donor and the Foundation, by their duly authorized representatives, have executed this Agreement.

**Donor**

by: ____________________________

its: ____________________________

**Battle Creek Community Foundation**

by: ____________________________

Brenda L. Hunt

by: ____________________________

its: President and CEO

Dated: ____________________________

**Yearbook Description**

(Purpose of fund/organization. This description is the write-up for New Fund Plaques, as well as other advertising for the fund.)