

PRESBYTERIAN FOUNDATION OF BOULDER

Donor Advised Fund Agreement

THIS FUND AGREEMENT (“Agreement”) is made this ___ day of _____, 20__ between the PRESBYTERIAN FOUNDATION OF BOULDER, a Christian foundation (“Foundation”), and _____ (“Donor(s)”) to establish a Donor Advised Fund of the Foundation.

1. *Creation of the Fund.*

Initial Contribution. The Donors hereby contribute _____ to the Foundation to create the _____ Donor Advised Fund (“Fund”). The Donors or any other person or organization may make subsequent contributions to the Foundation to be held as part of the Fund. All contributions to the Fund shall be administered pursuant to the terms and conditions of this Agreement. The Fund shall be held by the Presbyterian Foundation of Boulder.

2. *Donor Advice.*

The Donor may advise the Foundation in writing from time to time on the distribution of the Fund. In addition the Donor may from time to time designate (or withdraw) in writing one or more successor persons to advise the Foundation in the event of the withdrawal, incapacity or death of the Donors. Such successor persons are called Successor Advisors.

The Donor appoints as the initial Successor Advisors

_____,
address _____, telephone _____,
_____, email _____.

The Foundation will reasonably consider all advice from the Donor or Successor Advisors, and act upon it in a spirit of cooperation and good faith; but the Foundation shall not be obligated to comply with any such advice.

All advice concerning distributions which is to be considered must be for distributions which advance the charitable purposes of the Foundation. Any other advice will not be followed.

3. *The Donor's Present Intention as to the Purpose of the Fund.*

The Donor's Present Intention as to the purpose of the Fund is to provide funds for Christian purposes.

4. *Multiple Advisors.*

If more than one person shall have the right to advise the Foundation at any time, and the Donors shall not have designated a particular Spokesperson for the Advisors, those who have a right to advise shall unanimously notify the Foundation in writing of the Spokesperson who shall communicate with the Foundation on their behalf. The Foundation may rely upon such notification until changed by written notice executed by all such persons, and shall not be obligated to consider advice without the written unanimous designation of a Spokesperson.

5. *Failure to Advise.*

If, as of the end of the second calendar year following the year during which a gift was made, the Foundation has received no written advice concerning the recipient or recipients of the gift, the Foundation shall notify the Donor and Successor Advisors and request advice. Only reasonable efforts need be made to contact the Donor and Successor Advisors. If the Donor and Successor Advisors are deceased or incapacitated or cannot reasonably be located, or if despite notice to them no advice is received within a reasonable period specified in the notice, than the Foundation shall select the recipient of the gift (which may be the Foundation) in such a manner as to advance the charitable purposes of the Foundation. In making its selection, the Foundation shall give reasonable consideration to furthering the initial present intention of the Donor concerning the gift, or any subsequently rendered advice from the Donor or Successor Advisors.

6. *Administration.*

- a. The Fund shall be held and administered, and distributions from the Fund shall be made, in accordance with such procedures for the administration and operation of similar funds of the Foundation as may be in effect from time to time, and shall, in all events, be subject to the Foundation's ultimate control and absolute discretion.
- b. In particular, no distribution will be permitted which is to be used to directly or indirectly provide more than an incidental benefit to any Donor, Successor Advisor, financial advisor to the Donor, or person related thereto.
- c. No distribution shall be made from the Fund to satisfy a pledge or other commitment of the Donors, Successor Advisors, parties related to the Donors or Successor Advisors, financial advisor to the Donor, or any other person with the right to advise the Foundation on distributions from the Fund.
- d. In particular, no distribution will be permitted in the form of a grant, loan, compensation or similar payment, including expense reimbursement, to the Donor, Successor Advisor, financial advisor to the Donor, a member of the family of same, or an entity 35 percent or more of the governing votes of which may be cast by the Donor or the Successor Advisor, financial advisor of the Donor, or the family of same.
- e. In the event that a distribution is made to an individual for purposes of travel, study, Christian missionary activities or other activities intended to advance the charitable purposes of the Foundation, the Foundation will exercise supervisory and expenditure authority, sufficient for compliance with the internal Revenue Code, and otherwise determined in the discretion of the Foundation, to assure that the Foundation's charitable purposes are being advanced by the distribution. The same supervisory and expenditure authority will be exercised in the event of distribution to an organization which is not described in Section 170(b)(1)(A) (*i.e.*, a charitable organization contributions to which are deductible for income tax purposes).
- f. Any recipient of benefits from the Fund shall be advised that such benefits are from the Fund.
- g. A gift, and the income thereon, may be retained indefinitely and the income added to principal, if the purpose of retention is to accumulate funds for the purchase or operation of

real or personal property, or the construction, repair or remodeling of buildings, if the purpose thereof is to advance the charitable purposes of the Foundation; or if the purpose of retention is the generation of sufficient funds to permanently endow one or more of the charitable purposes of the Foundation.

- h. The Fund is intended to be a component part of the Foundation.
- i. The Foundation will provide the Donor or Successor Advisors, as of each calendar year end, with the value of the principal and the amount of the earnings of the Donor's gift, and distributions thereof. In addition, upon reasonable request of the Donor to facilitate the donor's planning distributions or investments, the Foundation will provide the same information as of the end of any particular month.
- j. Charges shall be assessed against the Fund consistent with the charges assessed from time to time against similar funds of the Foundation.

7. *Procedures.*

- a. The Board of Directors of the Foundation, or a committee established by the Board (the Gift Review Committee) shall enforce the foregoing contractual limitations and the following procedures. (The Board shall act in the absence of a Gift Review Committee, and the Board shall review and approve or disapprove of actions of the Gift Review Committee.)
- b. The Gift Review Committee shall promptly review all recommendations for distributions and all recommendation for investments to assure that if followed, the recommendations will advance the charitable purposes of the Foundation and comply with the contractual provisions set forth above. The Gift Review Committee is under no obligation to recommend compliance with any recommendation.
- c. No person shall act as a member of the Gift Review Committee or the Board with respect to any gift donated by that person or his or her family or his or her Successor Advisor or financial advisor or the family of same. The term "financial advisor as used herein" includes financial manager, investment advisor, attorney, or certified public accountant.

8. *Agreement Irrevocable; Limited Power of Amendment.*

This Agreement is irrevocable. For the sole purpose of ensuring that the Fund qualifies as a component part of the Foundation for federal tax purposes, however, the Foundation, acting alone, shall have the power to modify the terms of this Agreement to the extent necessary to ensure such qualification.

9. *Controlling Law; Arbitration.*

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to its conflict of law provisions. Except as provided below, any and all disputes arising under or related to this Agreement which cannot be resolved through negotiations between the parties shall be submitted to binding arbitration. If the parties fail to reach a settlement of their dispute within thirty (30) days after the earliest date upon which one of the parties notifies the other(s) in writing of the existence of and its desire to attempt to resolve the dispute, then the dispute shall be promptly submitted to arbitration by a single arbitrator through the Judicial Arbiter Group of Denver, Colorado, any successor of the Judicial Arbiter Group, or any similar arbitration provider who can provide a former judge to conduct the arbitration if the Judicial Arbiter Group is no longer in existence (“JAG”). The arbitrator shall be selected by JAG, if possible, on the basis of his or her expertise in the subject matter(s) of the dispute. The decision of the arbitrator shall be final, nonappealable and binding upon the parties, and it may be entered in any court of competent jurisdiction; provided, however, that any party to the arbitration proceeding may seek a court order vacating the decision of the arbitrator in accordance with the provisions of and on the grounds set forth in C.R.S. § 13-22-214 and/or a modification or correction of the arbitrator’s award in accordance with the provisions of C.R.S. §§ 13-22-211 or 13-22-215, and may take an appeal from court orders related to the arbitration proceeding or award as provided in C.R.S. § 13-22-221.

The arbitration shall take place in Denver, Colorado. The arbitrator shall be bound by the laws of the State of Colorado applicable to the issues involved in the arbitration and all Colorado rules relating to the admissibility of evidence, including, without limitation, all relevant privileges and the attorney work product doctrine. Discovery shall be permitted and shall be completed in accordance with the time limitations prescribed in the Colorado Rules of Civil Procedure, unless extensions of such time limitations are approved by all parties to the arbitration or are ordered by the arbitrator on the basis of strict necessity adequately demonstrated by the party requesting an extension of time. The arbitrator shall have the power to grant equitable relief where available

under Colorado law, and shall not be entitled to make an award of punitive damages. The arbitrator shall issue a written opinion setting forth his or her decision and the reasons therefor within thirty (30) days after the arbitration proceeding is concluded. The obligation of the parties to submit any dispute arising under or related to this Agreement to arbitration as provided in this section shall survive the expiration or earlier termination of this agreement. Notwithstanding the foregoing, any party to this Agreement may seek to obtain, in aid of the arbitration, an injunction or other appropriate relief from a court to preserve or protect trademarks, trade names, copyrights, patents, trade secrets or other intellectual property or proprietary information or to preserve the status quo with respect to any matter pending conclusion of the arbitration proceeding, but no such application to a court shall in any way be permitted to stay or otherwise impede the progress of the arbitration proceeding.

In the event of any arbitration or litigation being filed or instituted between the parties concerning this Agreement, the prevailing party will be entitled to receive from the other party or parties its attorneys' fees, witness fees, costs and expenses, court costs and other reasonable expenses, whether or not such controversy, claim or action is prosecuted to judgment or other of relief. The "prevailing party" is that party which is awarded judgment or other legal or equitable relief as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by such party. If both parties receive a judgment, settlement payment or other award or relief, the court or the arbitrator shall determine which party is the prevailing party, taking into consideration the merits of the claims asserted by each party, the relative values of the judgments, settlements or other forms of relief received by each party, and the relative equities between the parties.

IN WITNESS WHEREOF, the Foundation and the Donors have executed this Agreement.

Attest:
COLORADO

PRESBYTERIAN FOUNDATION OF

By:

Date: _____

DONORS:

Date: _____

Date: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day
of _____, 20____, by _____,
Donor(s).

Witness my hand and official seal.

My commission expires: _____.

Notary Public

