



## **DONOR ADVISED EXPENDABLE FUND AGREEMENT BETWEEN THE McPherson County Community Foundation AND John and Jamie Makatche**

THIS AGREEMENT is entered into this **3rd day of March, 2023** by and between **McPherson County Community Foundation** (the "Foundation"), a nonprofit Kansas 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 **John and Jamie Makatche** (hereinafter referred to as the "Donor").

The Donor wishes to create a charitable Expendable Fund, subject to the following terms and conditions:

1. **NAME OF THE FUND.** The name of the Fund shall be **John and Jamie Makatche Fund** (Fund).

2. **PURPOSE.** The primary purpose of the Fund shall be to provide support to **organizations as recommended by the donors** within the scope of Code section 170(c)(1) or (2)(B) that is consistent with the exempt purposes of the Foundation.

3. **GIFTS.** The Donor transfers irrevocably to the Foundation the following property 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.

### **Initial Contribution to the Fund: \$1000.00**

4. **DISTRIBUTION.** Each year grants may be distributed for charitable purposes described in Code section 170(c)(1) or (2)(B) that 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 there from, these conditions or restrictions will be honored, subject, however, to the authority of the Foundation's Board of Directors (the "Board") to vary the terms of any gift if continued adherence to any condition or restriction is in the sole and exclusive judgment of the Foundation's Board unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Foundation or 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 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)(1)(v)(B).

6. **CONDITIONS FOR ACCEPTANCE OF FUNDS.** The Donor and Donors agree and acknowledge that the establishment of the Fund 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. The Fund shall at all times be subject to

various terms and conditions concerning presumption of donor's intent; variance from donor's direction; and amendments agreed upon by Donor and Foundation.

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 sole 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 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. This percentage interest will be adjusted at the time of each addition to or reduction of the assets of the Foundation.

9. ACCOUNTING. The Foundation shall provide applicable accounting reports to the Donor at least annually.

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 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.

The Donor has executed this Agreement and the Foundation Board has approved it as indicated by the signatures below. This is a Kansas agreement subject to Kansas law. The Foundation has not provided any legal advice regarding their contribution and has recommended the donor contact their own attorney.

**DONORS:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

**McPHERSON COUNTY COMMUNITY FOUNDATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Becky Goss, President/CEO

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