

Botkins Memorial Pool Improvement Fund Agreement

This Agreement, made and entered into this 10TH day of FEBRUARY, 2022, by and between The Community Foundation of Shelby County, a not for profit Ohio corporation whose principal office is located in Sidney, Shelby County, Ohio (the "Foundation"), and the Botkins Memorial Pool Committee of Botkins, Ohio (the "Donor").

Recitals

WHEREAS, the Foundation carries on a philanthropic program in Shelby County, Ohio, and is empowered to receive, hold, handle, administer, invest and reinvest money and property of all kinds received by gift, devise, bequest or appointment for charitable, scientific, educational and similar purposes more particularly described in the Foundation's Articles of Incorporation;

WHEREAS, the Foundation is a tax-exempt public foundation under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, the Donor is interested in furthering the philanthropic program of the Foundation by making a gift to the Foundation for the purpose of creating a restricted fund.

NOW THEREFORE, the parties agree as follows:

1. Name of the Fund

The name of the Fund shall be the Botkins Memorial Pool Improvement Fund (the "Fund"). So far as practicable, the Foundation shall conduct investment activities of the Fund in that name.

2. Receipt of the Fund

The Fund shall be a Component Fund of the Foundation. It shall be considered established upon the acceptance of this Agreement by the Board of Trustees of the Foundation ("Board") and the receipt of a contribution(s) as set forth on the attached Exhibit "A" ("Initial Donation"), which are deemed acceptable in accordance with the Gift Acceptance Policy. All contributions to the Foundation, which are designated in writing for the Fund, shall constitute the Fund.

Each Donor by making a contribution to the Foundation for inclusion in the Fund acknowledges the Fund shall be managed in accordance with the Articles of Incorporation and Code of Regulations of the Foundation together with policies and resolutions of the Foundation, each as from time to time may be amended.

The Initial Donation, and any subsequent gifts to the Foundation which are applied to the Fund, shall be irrevocable and the Foundation shall have exclusive legal control over the assets contributed.

3. Investment of the Fund

The Initial Donation, together with any additional gifts, shall constitute the Fund Principal (“Principal”). The Principal shall be invested and reinvested as provided for under this Agreement and the governing instruments of the Foundation.

The Foundation may retain the services of an investment advisor, such as a trust department of a bank, a broker, or such other professional, to advise the Foundation on the investment of the Fund.

4. Continuity

The Fund shall be a Non-Endowed Fund and shall continue indefinitely so long as money or property is available for its purposes. Total Return and Principal may be expended.

5. Purpose

The purpose of this Fund shall be to provide monies for capital expenses relating to the maintenance, enhancement or replacement of the Botkins Memorial Pool, Botkins, Ohio. In the case of an emergency preventing the pool from operating, a portion of the Fund may be used for operational expenses.

Should the Botkins Memorial Pool cease to exist, grants shall benefit public parks and recreational facilities within the Village of Botkins, Ohio. Any funds transferred to the Village under these conditions should be placed in a fiduciary private interest fund, with expenditures only allowable for public parks and recreational facilities.

6. Fund Distributions

Upon the majority vote of the Donor’s committee members, the Foundation may disburse to the Donor such portions of the Fund, as said vote authorized, so long as the purposes set forth in Section 5. of this Agreement are satisfied. The Foundation reserves the right to decline to disburse any portion of the Fund that is not, in the sole opinion of the Foundation, for a purpose as defined in Section 5.

The Foundation shall have the right to request documentation of expenses prior to a disbursement from the Fund. Upon the request of the Donor, disbursements may be made to the Village of Botkins, Ohio.

7. Separate Accounting

The Fund shall be considered a separate fund. For accounting purposes, all assets of the Fund shall be separately identified from the general assets of the Foundation or any other designated funds.

8. Investment and Operating Expenses

The Foundation shall bear all Ordinary and Necessary Expenses of administering the Fund and pay all taxes, if any, relating to the Fund. The Fund shall bear its share of Foundation administrative and investment expenses in accordance with the Foundation's fee schedule. Expenses over and above Ordinary and Necessary Expenses shall be paid directly by the Fund.

9. Additional Authority

The Foundation is authorized to adopt such regulations, procedures, and other administrative provisions to carry out the purposes of the Fund or as may be required by the Internal Revenue Service so as not to jeopardize the Foundation's status as a tax-exempt community foundation.

Notwithstanding anything in the Agreement to the contrary, this Agreement may be modified by the Board if such modification or amendment is required in order to continue to retain the Fund or the Foundation as a qualified tax-exempt organization under Section 501(c)(3) of the Code.

10. Variance Power

Should the Foundation, in their sole judgment (without the approval of any third party trustee, custodian, or agent), decide that any restriction or condition on the Distribution of the Fund has become, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of its service area, it may invoke its Variance Power to modify the restriction or condition and such application of the whole and any part of the Principal or income of the Fund to such other charitable purposes as, in its judgment, will most closely satisfy the expressed intent of the Donor.

11. Notices

Any notice hereunder must be in writing and delivered personally; by United States mail, registered or certified, return receipt requested; United States Express Mail, Federal Express, or equivalent courier service; and shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as set forth below, or as may be designated in writing, from time to time:

The Community Foundation of Shelby County
100 S. Main Ave., Ste. 202
Sidney, Ohio 45365-2771

Botkins Memorial Pool Committee
PO Box 372
Botkins, Ohio 45306

12. Binding Effect

This Agreement shall be binding and inure to the benefit of the Donor and the Foundation, or their respective personal representatives, executors, administrators, successors, and assigns, as applicable.

13. Entire Agreement

This Agreement represents the entire Agreement between the parties, and supersedes all other understandings or agreements, if any.

14. Severability

The validity or enforcement of any particular provisions of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable were omitted.

15. Capitalized Terms

All capitalized terms that are not herein defined shall have the same meaning as defined in the Foundation's Glossary of Terms, which may be amended from time to time.

16. Governing Law

This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of Ohio.

IN WITNESS THEREOF, the parties have hereunto set their hand this 10th day of FEBRUARY, 2022.

THE COMMUNITY FOUNDATION OF SHELBY COUNTY

BY: Marian F. Spicer
Marian F. Spicer, Executive Director

Botkins Memorial Pool Committee:

Andrew F. Rutermaun
Signature

Andrew F. Rutermaun
Print name, title

Derek J. Koerig
Signature

Derek J. Koerig, President
Print name, title

Steve Woodruff
Signature

Steve Woodruff
Print name, title

Laura Maurer
Signature

Laura Maurer, Treas.
Print name, title

Patrick Ellinger
Signature

Patrick Ellinger
Print name, title

Michael W. Maurer
Signature

MICHAEL W MAURER
Print name, title

Craig D. Brown
Signature

Craig D. Brown
Print name, title