

**DONOR ADVISED FUND AGREEMENT**  
of the  
**KEARNEY AREA COMMUNITY FOUNDATION**  
to establish the  
**Dr. Joseph and Susie Walter Family Memorial Advised Fund**

**THIS AGREEMENT**, made and entered into on November 1, 2003, by and between the Kearney Area Community Foundation, (hereinafter referred to as the FOUNDATION), and Jackie Walter, Eric Walter and Clay Walter, of Kearney, Nebraska, (hereinafter collectively referred to as the DONOR.)

**WITNESS TO:**

**WHEREAS**, the DONOR, to further charitable purposes, desires to create a charitable expendable fund; and;

**WHEREAS**, the FOUNDATION is a non-profit Nebraska corporation exempt from taxation pursuant to Section 170(b)(1)(A)(vi) of the Internal Revenue Code, and is an appropriate institution within which to establish a Donor Advised Fund; and,

**WHEREAS**, the FOUNDATION is willing and able to create such fund subject to the terms and conditions hereof;

**THEREFORE**, the parties agree as follows;

**1. ESTABLISHMENT OF FUND**

There is hereby established within the FOUNDATION, and as a part thereof, a fund to be identified as the Dr. Joseph and Susie Walter Family Memorial Advised Fund (hereinafter referred to as the FUND.) The FOUNDATION will treat the FUND as a component fund of the FOUNDATION in accordance with the provisions of federal tax laws relating to component funds of community foundations. The FUND shall include all property delivered with this agreement as listed on Schedule A (attached), any other property which hereafter may be transferred to the FOUNDATION from any source for inclusion in the FUND and accepted by the FOUNDATION for inclusion in the FUND, and all undistributed income from all of such property.

**2. PURPOSE**

The purpose of the FUND shall be to provide financial support to programs and projects within the charitable, educational, scientific, literary, civic, cultural, or religious areas that further the purposes of the Foundation, either directly by the Foundation or by contributions to other organizations for such purpose or purposes.

**3. RECEIPT OF GIFTS, GRANTS, BEQUESTS, DEVISES**

Any individual, corporation, trust, estate, or organization, may make a gift, grant, bequest or devise to the FOUNDATION for inclusion in the FUND by a transfer to the FOUNDATION of property acceptable to the FOUNDATION in whole or in part for the FUND. All gifts, grants, bequests and devises to the FUND shall be irrevocable and shall be made to the FOUNDATION. Approval of any gift, grant, bequest, or devise consisting of real or personal property, other than cash, must be given by the FOUNDATION before the DONOR may indicate to the donor acceptance of the same for inclusion in the FUND.

**4. DISTRIBUTIONS**

In regard to distributions, the FOUNDATION will use the principal and income of the FUND, solely for direct expenses, administrative costs, and grant awards as detailed below:

(a.) Direct Expenses:

- i. Direct expenses are those incurred by the operation of the FUND, including but not limited to those expenses incurred for attracting, accepting, transferring or managing property donated to the FOUNDATION for the FUND.
- ii. Payment of direct expenses shall be made in a timely manner upon receiving a bill from a

vendor or upon the FOUNDATION incurring such expense. The FOUNDATION may reimburse itself from the FUND for such direct expenses.

(b.) Administrative Costs:

i. It is understood and agreed that the FUND shall share a fair portion of the total administrative costs of the FOUNDATION, and that such administrative costs are those general expenses incurred by the FOUNDATION in connection with its general operations. The FOUNDATION shall pay to itself, from the FUND, an amount equal to:

1.50% of the total average annual balance of the FUND, with a minimum of \$150.00 annually, with such fees being taken into consideration along with the contribution made to the FOUNDATION Unrestricted Funds as stated in paragraph 6 below.

ii. Administrative costs charged against funds administered by the FOUNDATION shall be those determined in accordance with the then current Fee Schedule identified by the FOUNDATION as the fee structure applicable to donor advised funds.

iii. Administrative costs will be deducted at the same time earnings are allocated according to the established policy of the FOUNDATION, whether that be annually, semi-annually or quarterly.

(c.) Grant Awards:

i. Grant awards are those distributions in support for one or more of the charitable and/or educational purposes set forth in the Articles of Incorporation of the FOUNDATION, but only for such purposes as they relate and support the purpose of the FUND as stated in Section #2 above.

ii. Distribution from the FUND=s principal or investment earnings will be made at such times, in such amounts, and in such ways as the FOUNDATION shall determine. The DONOR may from time to time submit to the FOUNDATION recommendations for distribution by completion and submission of the Advised Fund Distribution Request Form.

iii. Grant awards from the FUND will be at least \$250; except for scholarships awards which must be a minimum of \$500 (five hundred dollars).

iv. Grant awards from the FUND will be identified as coming from the Dr. Joseph and Susie Walter Family Memorial Advised Fund. If grants are to be awarded anonymously, the Donor shall so indicate on the Request Form.

v. All grant awards from the FUND will be processed by the FOUNDATION in the same manner in which the FOUNDATION makes grants for other charitable purposes, and only as liquid assets are available.

## **5. CONTINUANCE OF FUND**

The privilege of being Advisor to the FUND is presently limited to the DONOR (Jackie Walter, Eric Walter and Clay Walter) until terminated by (a.) death of the last DONOR to die, (b.) written notice to the FOUNDATION of resignation or release of the privilege, or (c.) a finding by the FOUNDATION that the person(s) making the recommendations is (are) not available or is (are) incompetent to exercise the privilege, which finding shall be binding on the DONOR.

In the event that the balance of the FUND is \$10,000 or more after the termination of the privilege of the Advisor(s), as set forth in the above paragraph, the FUND shall continue as the Dr. Joseph and Susie Walter Family Memorial Endowment Fund. So as to provide continuity and create the legacy desired by the Bowman family, the FOUNDATION will continue to make grant distributions from the FUND to support qualified projects and programs in a like manner to those grants distributed during the term of the Advisor(s). For example: if 30% of the grants had been directed toward agriculture education, then 30% of the grant awards shall continue to be awarded to this charitable area of interest.

In the event that the balance of the FUND is less than \$10,000 after the expiration period set forth in the above paragraph, the FUND will be preserved as part of the Unrestricted Endowment Fund of the FOUNDATION.

## **6. GRANT AWARDS AND REQUESTS**

The FOUNDATION will from time to time seek the advice of the DONOR regarding the charitable and educational purposes for which the principal and allocated earnings of the FUND should be used. The DONOR may, at such time as the DONOR wishes, request by means of a written and signed fund distribution form, that the FOUNDATION use any part or all of the principal and/or allocated earnings of the FUND for some particular purpose or purposes. The FOUNDATION will give consideration to the advice and to the requests of the DONOR, but the final decision in each case must and shall be made by the FOUNDATION consistent with the provisions of this agreement. In each case there will be an independent investigation by the FOUNDATION to evaluate whether the advice and/or the distribution request proposes a grant that is consistent with specific charitable needs that are deserving of support by a public charity.

## **7. CONDITIONS FOR ACCEPTANCE OF FUND**

The DONOR agrees and acknowledges that the establishment of the FUND herein created is made subject to the terms and conditions of the Articles of Incorporation, By-laws, and the Procedures for Operation of Advised Fund of the FOUNDATION as from time to time amended. It is intended that the FUND shall be a component part of the FOUNDATION and not a separate trust, and that nothing in this Agreement shall affect the status of the Foundation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as an organization which is not a private foundation within the meaning of Section 509(a) of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of the foregoing provisions of the federal tax laws and any regulations issued pursuant thereto. The Foundation is authorized to amend this Agreement to conform to the provisions of any applicable law or government regulation in order to carry out the foregoing intention. References herein to provisions of the Internal Revenue Code of 1986, as amended, shall be deemed references to the corresponding provisions of any future Internal Revenue Code.

## **8. INVESTMENT OF FUND**

The FOUNDATION shall have sole discretion to carry out the purposes of the FUND, including, but not limited to, the power to retain, invest and reinvest the FUND in any manner consistent with the prudent investor standard and shall have the power to commingle the assets of the FUND with those of other funds for investment purposes.

## **9. BOOKS OF ACCOUNT, REPORTING**

The FUND shall be accounted for separately and apart from other gifts to the FOUNDATION. The FOUNDATION shall make available to the DONOR or ADVISOR an annual written report relating to the FUND, either separately or as part of the annual audit. In addition, all books of account and records of the FOUNDATION relating to the FUND shall be open for inspection and copying by the DONOR during business hours.

## **10. ADDITIONAL PROVISIONS**

No provisions of this Agreement shall be construed as obligating the Board of Directors of the FOUNDATION to accept any gift on behalf of the FOUNDATION that it determines should not be accepted because of the nature of the property given, the conditions attached to the gift, or for any other reasons. Nothing set forth in this agreement shall obligate the FOUNDATION to act contrary to its Articles of Incorporation or By-laws, nor in any manner that might reasonably be expected to endanger its standing as a publicly supported organization to which contributions are deductible under the provisions of the United States Internal Revenue Code and the Treasury Department Regulations issued pursuant thereto.

The FOUNDATION shall perform its obligations under this agreement through its staff, governing board and committees, as it deems proper.

No distribution from the FUND may be used to discharge or satisfy a legally enforceable pledge or obligation of any person, including the DONOR of the FUND.

The FOUNDATION is not responsible for any legal or tax decisions or consequences incurred by the DONOR in establishing the FUND.

IN WITNESS WHEREOF, THIS AGREEMENT, upon execution, in duplicate, shall be binding upon both parties.

\_\_\_\_\_  
Jackie Walter

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Eric Walter

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Clay Walter

\_\_\_\_\_  
DATE

Approved by the Board of Directors of the Kearney Area Community Foundation on \_\_\_\_\_.

KEARNEY AREA COMMUNITY FOUNDATION

By \_\_\_\_\_  
Marilyn Hadley, Chairman

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Mary Kalb, Secretary

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Judi Sickler, Executive Director

\_\_\_\_\_  
DATE