

O ctngpg'Dtqy p'cpf 'Gctn'Ngy ku'
''''''Gpf qy o gpv'Fwpf 'hqt'yj g''
''''''''''''''Ej krf tgp)u'O wugwo

O CTN

**MARLENE BROWN & EARL LEWIS ENDOWMENT FUND
FOR THE CHILDREN'S MUSEUM**
Designated Fund Agreement

AN AGREEMENT, dated this 29 day of December, 2004, by and between the Marlene B. Brown and Earl J. Lewis (the "Donors"), residing at 53 White Street, Clark Mills, New York, 13321, and The Community Foundation of Herkimer & Oneida Counties, Inc. (the "Foundation"), a not-for-profit corporation located at 1222 State Street, New York, 13502, for the creation of a designated fund.

1. The Donation. The Donors, in consideration of their abiding interest in the Foundation and its charitable works, hereby donate to the Foundation a gift of not less than ten thousand dollars (\$10,000) for use consistent with this Agreement ("The Donation").
2. Fund Name. The Donation shall be designated on the books of the Foundation and in its publications as the "Marlene Brown & Earl Lewis Endowment Fund for the Children's Museum" (the "Fund").
3. Management of the Fund. All assets of the Fund shall be held, invested and managed by the Foundation. The Foundation has full right and power to commingle and co-invest the assets of the Fund with other investment assets of the Foundation and to delegate investment management of the assets of the Fund. The donation and all income generated therefrom, as well as all future appreciation or losses, realized and unrealized, attributable to the Donation, shall be credited to the Fund. Additions to the Fund shall be accepted from any and all sources, subject to the same restrictions as are placed on the Donation, and shall be valued as at the time of receipt. The value of the Fund shall be separately determined and set forth at least annually by the Foundation, and such determination shall be conclusive. The Fund shall be subject to an on-going administrative fee as established from time to time by the Foundation.

4. **RESTRICTIONS:**

Use Restrictions.

The Fund shall at all times be used exclusively for the benefit of the Children's Museum, currently located at 311 Main Street, Utica, New York, 13501, as long as it is an organization described in either Section 170(c)(1) or (2) or in Section 501(c)(3) and Section 509(a)(1) or (2) of the Internal Revenue Code of 1986, as amended.

Endowment Restrictions.

The Fund shall at all times be maintained as an endowment fund, the income of which may be expended on a current basis, consonant with the Foundation's spending policy, if any or as such policy may be amended by the Foundation in its sole discretion from time to time and at any time. Distributions shall be made yearly or not less frequently than every four years. Distributions from the Fund shall be in the form of grants to the Children's Museum and shall be requested in writing by their Executive Director with approval of a quorum of the Children's Museum Board.

General Restrictions. Notwithstanding any of the foregoing, no part of the Fund may be used, directly or indirectly, for any of the following: the benefit of specific individuals; the relief of any legal obligation of any donor to the Fund; the benefit of any foreign charities, private foundation or other organization not described in Code Section 170(c)(1) or (2), or in Code Sections 501(c)(3) and 509(a)(1) or (2); to influence legislation with the meaning of Code Section 4945(e); to influence the outcome of any specific public election except as provided in Code Section 4945(f).

- 5. Conditions and Variance Power. Donors agree and acknowledge that the Donation is made in recognition of, and the Fund is at all times subject to, the terms and conditions of the Certificate of Incorporation and By-laws of the Foundation as from time to time may be amended. The Foundation Board has the power to modify any restriction or condition on the distribution of grants from the Fund for any specified charitable purpose or to any specified organization if, in the sole judgment of the Foundation Board, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served. Consistent with its status as a community foundation, the Foundation Board may modify such restrictions or conditions without obtaining the approval of Justice of the Supreme Court or notice to the State Attorney General.
- 6. Governing Law. This Agreement shall be governed by and its terms and conditions construed in accordance with the laws of the State of New York, without regard to conflict of law principles.
- 7. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the Donation, and supersedes all oral and written agreements entered into before or at the same time as this Agreement regarding Donation.

IN WITNESS WHEREOF, the Donors and the Foundation have executed this Agreement as of the date first set forth above.

The Donors:

Marlene B. Brown
 Marlene B. Brown
Earl J. Lewis
 Earl J. Lewis

Date: 12/29/04

The Community Foundation of Herkimer and Oneida Counties, Inc.

By: Margaret Anne Tisher
 Title: President

Date: 2/4/05