



POOLED INCOME FUND TRUST AGREEMENT

AGREEMENT made October 18, 2002, between Tompkins Charitable Gift Fund, Inc. ("TCGF"), a New York not-for-profit corporation, with its principal place of business at The Commons, Ithaca, New York, and Tompkins Trust Company, a New York banking corporation, with its principal place of business at The Commons, Ithaca, New York ("Trustee").

Whereas, TCGF is an organization described in § 170 (b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended, hereinafter referred to as the Code; and

Whereas, TCGF desires to establish a pooled income fund having the characteristics described in and meeting all of the requirements of Section 642, (c)(5) of the Code, the regulations under that Section, and Revenue Procedure 88-53; and

Whereas, the Trustee is willing to act as trustee of such fund and to act as trustee under agreements whereby donors transfer property to it to become part of such fund, and to hold, manage, invest, reinvest, and distribute all property so transferred to and accepted by it in trust upon the terms and conditions hereafter set forth;

Now, therefore, in consideration of the premises, the parties agree as follows:

1. *Name.* The fund created pursuant to this agreement shall be known as the Tompkins Charitable Pooled Income Fund, hereinafter called the Fund. The Fund is established exclusively for the management and investment of property transferred by donors to the Trustee of the Fund pursuant to the provisions of this instrument. The Trustee will give prior approval to each contribution to the Fund before it is made a part of the Fund.

2. *Gift of Remainder Interest.* Each donor transferring property to the Fund shall contribute an irrevocable remainder interest in such property to or for the use of TCGF.

3. *Retention of Life Income Interest(s)*. Each donor transferring property to the Fund shall retain for himself for life an income interest in the property transferred, or create an income interest in such property for the life of one or more named beneficiaries, provided that each income beneficiary must be a living person at the time of the transfer of such property to the Fund by the donor. Each such income interest shall be represented by units of participation in the Fund as is more particularly provided for in paragraph 9 hereof. In the event that more than one beneficiary of the income interest is named, such beneficiaries may enjoy their shares of income concurrently, consecutively, or both. TCGF may also be designated as one of the beneficiaries of the income interest. The donor need not retain or create a life interest in all of the income from the property transferred to the Fund, and any income not payable to an income beneficiary shall be contributed to, and within the taxable year of the Fund in which it is received paid to, TCGF. The donor may retain the power exercisable only by will to revoke or terminate the income interest of any income beneficiary other than TCGF.

4. *Commingling of Property*. All property transferred to the Fund by each donor shall be commingled with, and invested or reinvested with, other property transferred to the Fund by other donors who make similar transfers which satisfy the requirements of this instrument and of Section 642(c)(5) of the Code or the corresponding provision of any subsequent federal tax law. The Fund shall include no property transferred under arrangements which do not satisfy such requirements. All or any portion of the Fund may, however, be invested or reinvested jointly with other properties, not a part of the Fund, which are held by or for the use of TCGF, including without limitation, any remainder interest due TCGF that has been severed from the Fund pending distribution. When such joint investment or reinvestment occurs, detailed accounting records shall be maintained by the Trustee specifically identifying the portion of the total amount so invested which is owned by the Fund and the income earned by, and attributable to, such portion.

5. *Taxable Year*. The first taxable year of the Fund shall begin on the date of this Agreement, and end on December 31, 2002. Subsequent taxable years shall begin on January 1, and end on December 31.

6. *Prohibition Against Exempt Securities, etc*. The Trustee is authorized to retain or sell property transferred to the Fund and to invest and reinvest the Fund in any kind of property (including, without limitation, if the Trustee serves as the Trustee of more than one pooled income fund, the right to invest in a common trust fund maintained by the Trustee to which Section 584 of the Code applies for the collective investment and reinvestment of the monies of such funds), without regard to diversification as to kind or amount and without regard to any limitations imposed by law on the investment of trust funds, except that the Trustee may not accept or invest in (a) any securities the income

from which is exempt from tax under Subtitle A of the Code or the corresponding provisions of any subsequent federal tax law, (b) interests in real estate investment trusts or organizations similarly treated under the Code, (c) depreciable assets, (d) depletable assets, or (e) any other property investment which would in any way result in the denial of any charitable contribution deductions to which donors or their estates may be entitled under the Code.

7. *Maintenance, Control and Prohibition as to Trustees.* TCGF shall always maintain the Fund or exercise control, directly or indirectly, over the Fund by retaining the power at any time to remove the Trustee(s) (upon 90 days' written notice to the Trustee) and to designate a successor or successors. No donor to the Fund or beneficiary of an income interest in any property transferred to it shall serve as Trustee nor shall any donor or beneficiary (other than TCGF) have, directly or indirectly, general responsibilities with respect to the Fund which are ordinarily exercised by a Trustee.

8. *Valuation of Assets; Determination Dates.* A Determination Date means each day within a taxable year of the Fund on which a valuation is made of the property in the Fund. The property of the Fund shall be valued monthly on or about the first of the month (as defined in section 7503 of the Code and the regulations thereunder), the valuation shall be made on the next succeeding day which is not a Saturday, Sunday or legal holiday. In addition to these Determination Dates, the Fund's assets shall also be valued on the first day of the first taxable year of the Fund.

In computing the value of the Fund's assets, the amount of any income earned by or received by the Fund but not yet distributed will be excluded from the Fund's value. All valuations of property transferred to or withdrawn from the Fund or of the Fund's assets shall be consistent with customary fiduciary accounting practice and with United States Treasury Regulations and Internal Revenue Service rulings, procedures, and guidelines governing pooled income funds. In any conflict, Internal Revenue Service regulations, rulings, procedures and guidelines will prevail over customary fiduciary accounting practices and any inconsistent provisions of this agreement. As far as conveniently possible, each transfer of property to the Fund and each withdrawal of property from the Fund upon the termination of an income interest will be made upon a Determination Date.

9. *Units of Participation.* Every income interest retained or created in property transferred to the Fund shall be assigned a proportionate share of the annual income earned by the Fund, such share being based on the number of units of participation in the Fund assigned to the beneficiary or beneficiaries of such interest on the date of transfer as provided hereinafter:

(a) *Property Transferred on Determination Dates.* When property is transferred to the Fund by a donor on a Determination Date there will be assigned to the beneficiary or beneficiaries of the income interest designated by the donor a number of units of participation in the Fund equal to the number obtained by dividing the fair market value of the property transferred to the Fund on the date of such transfer by the fair market value of a unit of participation in the Fund immediately before such transfer. The fair market value of a unit of participation immediately before the transfer will be determined by dividing the fair market value of all property in the Fund at such time by the number of units of participation then in the Fund. The value of each unit of participation in the Fund will fluctuate with each new transfer of property to the Fund in relation to the appreciation or depreciation in the fair market or the Fund's property, but all units of participation in the Fund will always be of equal value.

(b) *Property Transferred Between Determination Dates.* If a transfer of property to the Fund by a donor occurs on other than a Determination Date, the number of units of participation assigned to the beneficiary or beneficiaries of the income interest in the property shall be determined by using the average fair market value of the property in the Fund immediately before the transfer, which shall be deemed to be the average fair market values of the property in the Fund on the Determination Dates immediately preceding and succeeding the date of transfer. For the purpose of determining the average fair market value, the property transferred by the donor and any other property transferred to the Fund between the preceding and succeeding dates, or on such succeeding date, shall be excluded. The fair market value of a unit in the Fund immediately before the transfer shall be determined by dividing the average fair market value of the property in the Fund at that time by the number of units then in the Fund. Units of participation assigned with respect to property transferred on other than a Determination Date shall be deemed to be assigned as of the date of the transfer.

10. *Determination and Payment of Income and Termination of Income Interest.*

(a) *Determination of Income.* The amount of income allocated to each unit of participation will be determined by dividing the income of the Fund for the taxable year by the number of units of participation outstanding at the end of such year, except that income will be allocated to units of participation outstanding during only part of such year by taking into consideration the period of time such units of participation are outstanding during such year. For purposes of this instrument, the term "income" has the meaning set forth in Paragraph 15 below.

(b) *Payment of Income.* The Trustee shall pay income to each beneficiary entitled thereto in any taxable year of the fund in the amount determined by the rate of return earned by the Fund for the year with respect to the beneficiary's income interest.

Payments must be made at least once in the taxable year in which the income is earned. Until the Trustee determines that payments will be made more or less frequently or at other times, the Trustee will make income payments to the beneficiaries in four quarterly payments on or about March 15, June 15, September 15, and December 15 of each year. An adjusting payment, if necessary, will be made during the taxable year or within the first 65 days following its close to make the total payment to each beneficiary equal to the actual income to which each beneficiary was entitled for that year. The Trustee need not prorate periodic payments between the estate of a deceased beneficiary and a surviving beneficiary or beneficiaries.

(c) *Termination of Income Interest.* The income interest of any beneficiary shall terminate with the last regular periodic payment of income which was made before the date of such beneficiary's death. The Trustee of the Fund shall not be required to prorate any income payment to the date of the beneficiary's death. All income attributable to such interest and earned by the Fund after the date of such beneficiary's death shall be paid to a succeeding income beneficiary, or if there be none to TCGF at the next regular periodic payment date.

11. *Transferability of Income Interests.* Except as provided in the following sentence, the interest of any beneficiary in the Fund shall be free from interference or control of any creditor or spouse of the beneficiary and shall not be subject to attachment or susceptible of anticipation or alienation or assignment. At any time and from time to time an income beneficiary may irrevocably give any portion or all of his income interest in the Fund to TCGF, provided that it is a public charity as defined in paragraph 12(a) at the time of such gift. If at the time of such gift there is no living beneficiary named to succeed to such income interest after the death of the beneficiary making such gift, the beneficiary making such gift may direct that the portion of the units assigned to such beneficiary's interest in the Fund equal to the portion of his income interest so given to TCGF shall be severed from the Fund and transferred to TCGF in the same manner as if the beneficiary had died on the date of the gift. In the event that the beneficiary gives all of his income interest to TCGF and there is no living beneficiary named to succeed to such income interest, the units attributable to the income interest shall be severed from the Fund and transferred to TCGF in the same manner as if the beneficiary had died on the date of gift.

12. *Severance of Remainder.* Upon the termination of the last income interest in any property transferred to the Fund, the Trustees shall sever from the Fund (in cash, in kind, or partly in each) an amount equal to the value of the remainder interest upon which such income interest is based. The value of the remainder interest for severance purposes shall be its value as of the date on which the last regular payment was made before the

death of the beneficiary. Subject to the following subparagraphs, the amount so severed from the Fund shall be paid to TCGF:

(a) If TCGF goes out of existence or loses its qualification as a public charity (a “public charity” being defined as an organization described in clauses (i) through (vi) of Section 170(b)(1)(A) of the Code) or, if TCGF has gone out of existence, the Trustees hereunder may select another organization which is a public charity to replace TCGF as the charitable organization which is the owner of the remainder interests hereunder and is charged with the maintenance of this Fund. In such event, all references in this instrument to TCGF and/or the trustees thereof shall be deemed to mean the successor public charity so selected.

(b) If at the time of severance of a remainder interest hereunder (including any severance occurring pursuant to the provisions of Paragraph 11) or at the time any income from any gift is payable pursuant to the terms hereof to TCGF, TCGF has ceased to exist or, for any other reason, is not a public charity, and if a successor public charity has not been selected pursuant to the foregoing paragraph, the amount so severed or the income so payable shall be paid to such one or more organizations that are public charities, and in such proportions among them if to more than one, as the Trustees in their discretion shall determine. In no event shall the proceeds of the severance of any remainder interest herein or any income which is by the terms hereof payable to TCGF or a successor public charity be paid to any organization which is not a public charity at the time of such payment.

13. *Accounting.* The Trustees shall render an annual accounting of their administration of the Fund to TCGF. The assent of TCGF to the Fund accounting shall, as to all matters and transactions stated therein or shown thereby, conclusively bind all beneficiaries then or thereafter interested in the remainder interests hereunder. If TCGF fails to object to an accounting in writing within 60 days after the receipt thereof, such accounting shall be deemed approved.

14. *Prohibited Activities.* The income of the fund for each taxable year shall be distributed at such time and in such manner as to not subject the Fund to tax under Section 4942 of the Code. Except for making the required payments to the life income beneficiaries, the Trustee shall not engage in any act of self-dealing as defined in Section 4941(d) and shall not make any taxable expenditures as defined in Section 4945(d). The Trustee shall not make any investments that jeopardize the charitable purpose of the Fund within the meaning of Section 4944 or retain any excess business holdings within the meaning of Section 4943.

15. *Definition of Income.* For the purposes of this instrument and the trusts created, the term income will have the same meaning as it does under Section 643(b) of the Code, or corresponding provision of any subsequent federal tax law, and its regulations. Income will mean net income after payment of the expenses of administering the Fund, including reasonable investment management, custodial, and similar fees. The following shall be treated as principal and not as income: (a) gains and losses from the sale, exchange, redemption, or other disposition of the property; (b) stock dividends, stock splits, or similar distributions; (c) capital gains dividends of regulated investment companies (mutual funds); (d) liquidating distribution; (e) any other dividend or distribution not deemed taxable as income under the Code.

16. *Powers of Trustee.* In the administration of the Fund and trusts created pursuant to this instrument, the Trustee will have all the powers, duties, and discretions conferred upon trustees by the laws of the State of New York from time to time in effect except to the extent specifically limited by this instrument or by Section 642(c)(5) of the Code and the regulations thereunder.

17. *Incorporation by Reference.* To the extent permitted by law, the provisions of this document may be, and are intended to be, incorporated by reference in any will, trust or other instrument by means of which property is transferred to the Fund. Any property transferred to the Fund whereby an income interest is retained or created for the life of one or more named beneficiaries, where this document is not incorporated by reference, shall become a part of the Fund and shall be held and managed under the terms and conditions of this document, unless the instrument of transfer is inconsistent with such terms and conditions, in which case the Trustees shall not accept the property.

18. *Governing Law.* The operation of the fund shall be governed by the laws of the State of New York. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the Fund under Section 642(c)(5) of the Code and the corresponding regulations.

19. *Limited Right of Amendment.* The Fund is irrevocable. However, TCGF shall have the power, acting alone, to amend this instrument and the associated instruments of transfer in any manner required for the sole purpose of ensuring that the Fund qualifies and continues to qualify as a pooled income fund within the meaning of Section 642(c)(5) of the Code.

20. *General.* All references to the masculine gender shall include the feminine gender unless the context indicates to the contrary. The captions appearing in this instrument are for purposes of reference only and shall not be considered a part hereof, or in any way to modify, amend or affect the provisions hereof.

21. *Trustee's Compensation.* The Trustee shall receive compensation for its services based on its published fee schedule in effect from time to time at which it is willing to render similar services to others, unless otherwise agreed by TCGF and the Trustee.

22. *Resignation.* The Trustee may resign this trust by giving 90 days' written notice to TCGF at its principal office in the City of Ithaca.

23. *Counterparts.* This agreement shall be executed in two counterparts, each of which shall be an original and both of which together shall constitute but one and the same instrument.

In witness whereof the parties have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

TOMPKINS CHARITABLE
GIFT FUND, INC.

TOMPKINS TRUST COMPANY

By: _____

By: _____

RCS 10/17/01

