



## DONOR ADVISED FUND AGREEMENT FOR

(Donor name)

THIS AGREEMENT is made and entered into on, \_\_\_\_\_ by and between RANCHO SANTA FE FOUNDATION ("Foundation"), and \_\_\_\_\_ (referred to individually and collectively as the "Donor"). The Donor and the Foundation agree as follows:

### 1. FUND NAME

The Donor hereby transfers irrevocably to the Foundation the property described on Exhibit A, attached hereto and incorporated herein by this reference, to establish in the Foundation a donor advised fund designated as the \_\_\_\_\_ Fund ("Fund"). The Rancho Santa Fe Foundation hereby acknowledges receipt of the property described on Exhibit A and agrees to hold, administer, and distribute the Fund in accordance with applicable law and the provisions of this Agreement. The parties acknowledge and agree that the Foundation may receive additional irrevocable gifts of property acceptable to the Foundation from time to time from the Donor and from any other source to be added to the Fund, all subject to the provisions of this Agreement.

### 2. PURPOSE

Subject to the limitations of paragraphs 5 and 6 below, the Foundation shall maintain and administer the Fund for general charitable purposes. Consistent with the foregoing, the Foundation shall make distributions of principal to such grantees of the type described in paragraph 5 as may be designated by the Foundation. **(The Foundation will tailor this language according to the Donor[s] interests.)**

### 3. INVESTMENT OF FUNDS

The Donor acknowledges that the Foundation has exclusive legal control of the assets described on Exhibit A and any other assets which may later become part of the Fund. The Foundation's legal control means that the Foundation has all of the rights of ownership of the assets of the Fund, including but not limited to the power to retain, invest and reinvest the Fund in any manner within the "prudent investor" standard and the Foundation's Investment Policy Guidelines as they may exist from time to time. The Foundation shall have the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporation Code.

### 4. ALLOCATION OF FOUNDATION EARNINGS AND LOSSES TO FUND

4.1 The Foundation shall credit and debit earnings and losses, respectively, on the Fund's investments (including an appropriate portion of investment gains, losses and expenses of other investment assets of the Foundation which are commingled with the Fund) to the Fund. Donor recognizes and agrees that by reason of losses from such investments, the Fund balance may experience a decrease. There is no guarantee that the Fund will be invested profitably; the Fund's principal balance may decrease by reason of investment losses and other expenses.

4.2 The Donor agrees that the Fund shall not be an endowment fund within the meaning of the Uniform Prudent Management of Institutional Funds Act, California Probate Code sections 18501 and following. Accordingly, except as otherwise specifically provided in this Agreement, all of the principal and income of the Fund, net of the costs set forth in paragraph 9, may be committed, granted, or expended for, or in the furtherance of, the purposes of the Fund.

### 5. DISTRIBUTION FOR CHARITABLE PURPOSES ONLY

5.1 The Foundation shall make distributions from the Fund exclusively for charitable, scientific, literary or educational purposes. The Foundation may directly apply distributions from the Fund for such purposes, or the Foundation may make distributions for such purposes to one or more organizations, each of which shall be described in Internal Revenue Code sections 170(c)(1 or 2), 2055(a), and 2522(a) at the time a distribution is made to any such organization.

5.2 The Foundation shall make distributions from the Fund only in accordance with the purposes and procedures of the Foundation as contained in its Articles of Incorporation and its Bylaws.

5.3 The Foundation shall not make any distributions from the Fund which would incur the imposition of taxes on taxable distributions under Internal Revenue Code section 4966, taxes on prohibited benefits under Internal Revenue Code section 4967, or taxes on excess benefit transactions under Internal Revenue Code section 4958. Without limiting the generality of the foregoing, the Foundation shall not make any distribution that would be intended to fulfill or would fulfill any pledge or other legal obligation of the Donor, any contributor to the Fund, any Fund Advisor, or any related person, or any distribution that would result in the Donor, any contributor to the Fund, any Fund Advisor, or any related person securing benefits from the grantee.

5.4 If the Foundation, in its sole discretion, shall determine that the continuation of the Fund is unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community, the Foundation shall distribute the Fund to such one or more organizations which are then described in IRC section 501(c)(3), and in such shares, as the Foundation, in the Foundation's sole and absolute discretion shall determine; provided, however, that the Foundation shall first notify the Donor and shall make reasonable efforts to select such qualified charities that most nearly approximate, in the good faith opinion of the Foundation, the original purpose of the Fund.

## 6. RECOMMENDATIONS FOR DISTRIBUTION

6.1 The "Fund Advisor" may advise the Foundation in writing from time to time regarding distributions from the Fund. The Fund Advisor may from time to time submit to the Foundation the names of proposed grantees to which the Fund Advisor recommends that the Foundation make distributions and the amounts of such recommended distributions. Any such proposed grantee shall be an organization described in paragraph 5.1.

6.2 All recommendations from the Fund Advisor shall be solely advisory. The Foundation shall consider all advice given in accordance with this Agreement and shall apply reasonable standards and guidelines with respect to any proposed distribution to any proposed grantee. The Foundation may otherwise accept or reject any proposed distribution or any proposed grantee. Subject to the foregoing, distributions from the Fund shall be made at such times and in such amounts as the Foundation shall determine. The Donor acknowledges that the Foundation is under no obligation to accept or follow the advice of the Fund Advisor.

6.3 The Donor shall be the initial advisor of the Fund (the "Fund Advisor"). If the "Donor" consists of more than one person (such as husband and wife), they shall coordinate their advice so that the Foundation does not receive conflicting advice. If husband and wife are the Donor, upon the incapacity or death of either of them the other shall be the Fund Advisor. Upon the death of the Donor, or upon the death of the survivor of husband and wife if both are the Donor, the Foundation shall serve as the Fund Advisor. **(Here you may also name successor advisors)**

## 7. CONTINUITY OF THE FUND

The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated for failure to satisfy either of such conditions, the Foundation shall devote any remaining assets in the Fund exclusively for charitable purposes that (a) are within the scope of the charitable purposes of the Foundation's Articles of Incorporation; and (b) most nearly approximate, in the good faith opinion of the Board of Directors, the original purpose of the Fund.

## 8. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of the Foundation. All money and property in the Fund shall be assets of the Foundation and not a separate trust, and shall be subject only to the exclusive legal control of the Foundation. Pursuant to Treasury Regulation section 1.170A-9(f)(11)(v), the Board of Directors of the Foundation shall act as the "governing body" of the Fund. The Board of Directors shall

have the powers of modification and removal as described in said Treasury Regulation and shall exercise such powers in accordance with Treasury Regulation 1.170A-9(f)(11)(v)(E) "to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body [the Board of Directors], . . . such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served."

## 9. COSTS OF THE FUND

The Fund shall share a fair portion of the total administrative costs of the Foundation for reasonable expenses in managing and administering the Fund in accordance with the then current Fee Policy identified by the Foundation as the fee structure applicable to funds of this type. The Foundation shall determine such share on a reimbursement or allocation basis, as appropriate. In addition, the Foundation shall charge the Fund with any costs to the Foundation in accepting, transferring, or managing property of the Fund.

## 10. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to the Foundation. On an annual or more frequent basis the Foundation shall report to the Donor on the contributions, distributions, charges, and investment performance of the Fund for the period covered by such report.

## 11. IRREVOCABILITY; AMENDMENT

11.1 This Agreement is irrevocable.

11.2 Nevertheless, in order to ensure that the Fund is a qualified component of the Foundation in compliance with applicable sections of the Code and regulations thereunder (see paragraph 8, above), and in order to protect its charitable tax status and to preserve any individual contributor's tax deductions if any would otherwise be allowed, the Foundation shall have the power to modify the terms of this Agreement to the extent required to ensure such qualification.

11.3 The Foundation may not amend this Agreement, but may release or modify a purpose restriction if consistent with the State of California version of UPMIFA. Notwithstanding the foregoing, no such modification shall jeopardize the Foundation's charitable tax status or any individual contributor's tax deductions, if any, or otherwise contravene any provision of the Internal Revenue Code or applicable law.

## 12. CHARITABLE DEDUCTIONS

The Donor and the Foundation intend that federal income, gift, and estate tax charitable deductions shall be allowed to all individual donors to this Fund and to their respective estates and that the Foundation shall continue to qualify as an organization described in Sections 170(b)(1)(A) (vi), 170(c), 2055(a), and 2522(a) of the Internal Revenue code of 1986. This Agreement shall be construed and applied so as to comply with the requirements of federal tax law for allowance of such charitable deductions and for such qualifications.

IN WITNESS THEREOF, the Donor and the Foundation have executed this Agreement on the Effective Date first written above.

\_\_\_\_\_  
[Name of Donor]

\_\_\_\_\_  
[Name of Donor]

THE RANCHO SANTA FE FOUNDATION,  
a California non-profit public benefit corporation

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

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