



SCHOLARSHIP FUND AGREEMENT FOR  
**[FUND NAME]**

THIS AGREEMENT is made and entered into on \_\_\_\_\_, \_\_\_\_\_, by and between RANCHO SANTA FE FOUNDATION ("Foundation"), and \_\_\_\_\_ 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 scholarship fund for the exclusive benefit of **[Name of Educational Institution, if so limited]** designated as the \_\_\_\_\_ Scholarship 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 paragraph 5 below, the purpose of the Fund shall be to:

\_\_\_\_\_  
**[Describe parameters of the scholarship program, such as recipient qualification and continuing qualification, educational institutions, academic major limitations, and so forth.]** The Donor acknowledges that the Foundation may, but is not required to, consult with the Donor regarding the selection of scholarship recipients and that the selection of the scholarship recipients shall be in the Foundation's sole and absolute discretion, subject to the parameters set forth in this paragraph 2.

### 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 be an endowment fund within the meaning of the Uniform Prudent Management of Institutional Funds Act, California Probate Code sections 18501 and following. Each year, in accordance with Probate Code section 18504 and the Foundation's Policies and Procedures manual, the Foundation will distribute the amount appropriated for expenditure in any year in accordance with Probate Code section 18504 and the Foundation's Endowment Spending Policy, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference. The amount appropriated shall be calculated on the fair market value of the Fund, determined quarterly and averaged over a period of not less than three years immediately preceding the year in which the appropriation for expenditure is made. The Foundation recommends that no distribution be made in the first year of the Fund. The amount appropriated annually shall be net of costs set forth in paragraph 8, below. The Foundation shall distribute the appropriated amount to such one or more scholarship recipients selected by the Foundation in accordance with the parameters in paragraph 2 of this Agreement.

### 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 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, 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.

5.3.1 The Foundation shall operate the Fund in accordance with the provisions of Internal Revenue Code section 4945 and Treasury Regulation section 53.4945-4 regarding grants to individuals, provided, however, that because the Foundation is a public charity and not a private foundation, the Foundation shall not be required to obtain prior approval by the Commissioner of Internal Revenue for the scholarship granting procedure.

5.3.2 To facilitate the operation of the Fund, the Foundation may publish and amend from time to time a scholarship granting procedure that will govern the selection of scholarship recipients and the distribution of scholarship grants from the Fund.

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. As an example, and not as a limitation, the Foundation may distribute the Fund to an educational organization described in Internal Revenue Code sections 170(c)(1 or 2), 2055(a), and 2522(a) to be used by such educational organization for scholarship purposes as compatible as reasonably practicable with the parameters set forth in paragraph 2 of this Agreement.

## 6. 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.

## 7. 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."

## 8. 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.

## 9. ACCOUNTING

The Foundation shall account for this Fund 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.

## 10. IRREVOCABILITY; AMENDMENT

10.1 This Agreement is irrevocable.

10.2 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 7, 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.

10.3 The Foundation may amend this Agreement with the consent of the Donor, if the Donor is then living and competent. Notwithstanding the foregoing, no such amendment 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.

## 11. 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 Charity 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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