



Lake County's Community Foundation

**COMMITTEE-ADVISED SCHOLARSHIP NONPERMANENT FUND AGREEMENT
BETWEEN
LEGACY FOUNDATION, INC.,
AND
_____ (“DONORS”)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of _____, 20 __, by and between Legacy Foundation, Inc. (the “Legacy Foundation”), and _____ (“Donors”).

Recitals

WHEREAS, Donors desire to establish an advised scholarship nonpermanent fund in the Legacy Foundation with respect to which Donors, or a Donor Representative (as defined below), may participate in an advisory committee established by the Legacy Foundation to recommend to the Legacy Foundation potential scholarship recipients from such fund; and

WHEREAS, the Legacy Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code (“Code”) section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such an advised scholarship nonpermanent fund; and

WHEREAS, the Legacy Foundation is willing and able to hold and administer such an advised scholarship nonpermanent fund, subject to the terms and conditions hereof.

General Provisions

NOW THEREFORE, the parties agree as follows:

1. GIFT AND FUND DESIGNATION. Donors hereby transfer irrevocably to the Legacy Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish an advised scholarship nonpermanent fund to be known as the _____ Fund (the “Fund”). Subject to the right of the Legacy Foundation to reject any particular gift, from time to time the Legacy Foundation may accept additional irrevocable gifts of property from Donors or from any other source to be added to the

Fund, all subject to the provisions hereof. All gifts, bequests, and devises to this Fund shall be irrevocable once accepted by the Legacy Foundation.

2. PURPOSE. The purpose of the Fund shall be to provide support as directed by the Board of Directors (the “Board”) of the Legacy Foundation for educational scholarships for students who are accepted into and attend an accredited educational organization that normally maintains a regular faculty and curriculum and has a regularly enrolled body of students as described in Code section 170(b)(1)(A)(ii). Consistent with the charitable purposes of the Legacy Foundation, distributions from this Fund will be used primarily to provide scholarships in accordance with the criteria contained in Exhibit B to this Agreement and the Legacy Foundation’s Policies and Procedures for Scholarship Funds, as amended from time to time (including policies specifically related to donor advisor selection committee members which are implemented to ensure compliance with applicable donor advised fund rules).

In the event that the above criteria are too restrictive (because no student acceptable to the Legacy Foundation meets the criteria, or for other reasons), the purpose of the Fund shall include the support of educational scholarships for deserving students who most closely satisfy the criteria. All support provided from the Fund shall further the educational, charitable, or other exempt purposes of the Legacy Foundation within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and shall be consistent with the mission and purposes of the Legacy Foundation.

3. DISTRIBUTIONS. The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended solely for the purposes described in this Agreement. In addition, all Fund assets shall be available to make payments in support of previously approved educational scholarships (for example, a four-year scholarship awarded with the understanding that scholarship payments will continue as long as the recipient remains in good standing with a particular grade point average). Distributions may be made from the entire Fund balance, including both income and principal, and the Fund may be spent down in its entirety and retired.

If any gift to the Legacy Foundation for the Fund is accepted subject to conditions or restrictions as to the use of the gift or income therefrom, such conditions or restrictions will be honored, subject, however, to the authority of the Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board unnecessary, incapable of fulfillment, or inconsistent with the educational, charitable, or other exempt purposes of the Legacy Foundation or the needs of the community served by the Legacy Foundation. No distribution shall be made from the Fund that may in the judgment of the Legacy Foundation jeopardize or be inconsistent with the Legacy Foundation’s Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

4. SCHOLARSHIP ADVISORY COMMITTEE AND CRITERIA. Until the last to die of (i) the surviving Donor and (ii) the Donor Representative (if any) (as defined below), the Legacy Foundation shall establish a Scholarship Advisory Committee (the “Committee”) for the

purpose of providing advice and recommendations to the Legacy Foundation with respect to proposed recipients of educational scholarships from the Fund and shall appoint all members of the Committee as provided below. The final selections of recipients shall be made by the Legacy Foundation subject to the Legacy Foundation's objective and nondiscriminatory selection criteria for awarding scholarships to individuals, such criteria previously having been approved by the Board consistent with Code section 4945(g) and corresponding Treasury Regulations. The following guidelines shall be followed in establishing and conducting the affairs of the Committee:

- a. The Legacy Foundation shall consider and may appoint to membership on the Committee either (i) one or both Donors or (ii) one representative (the "Donor Representative") jointly identified and nominated by Donors, or identified and nominated by the Donor who is last to survive. An appointed Donor or appointed Donor Representative shall participate with the other members of the Committee appointed by the Legacy Foundation in recommending to the Legacy Foundation proposed scholarship recipients consistent with the purposes described in this Agreement.
- b. At no time shall Donors or the Donor Representative, in combination with any persons related to either Donor or the Donor Representative, constitute a majority of the Committee's membership or otherwise directly or indirectly control the Committee.

5. RECOMMENDATIONS FOR DISTRIBUTIONS. Subject to the Legacy Foundation's principles and procedures for advised funds, the commitments, grants, or expenditures from the Fund contemplated in this Agreement shall be made at such time or times and in such amount or amounts as may be determined by the Legacy Foundation; provided, however, that the Committee (if any) may from time to time submit to the Legacy Foundation the names of proposed recipients for educational scholarships from the Fund. All recommendations from the Committee shall be solely advisory, and the Legacy Foundation may accept or reject them, applying reasonable standards and guidelines with regard thereto.

6. ADMINISTRATIVE PROVISIONS. Notwithstanding anything herein to the contrary, the Legacy Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Legacy Foundation's Articles of Incorporation and Bylaws, as amended from time to time. The Board shall oversee distributions from the Fund and shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B) or corresponding provisions of any subsequent federal tax laws.

Upon request, the Board will provide Donors a copy of any annual examination of the finances of the Legacy Foundation as reported by independent certified public accountants; provided, however, that the Donors provide contact information to the Legacy Foundation and update such contact information as needed.

This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

7. CONDITIONS FOR ACCEPTANCE OF GIFTS. Donors agree and acknowledge that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of the Legacy Foundation, as amended from time to time, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for:

- a. Presumption of Donors' intent;
- b. Variance from Donors' direction; and
- c. Amendments.

8. 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, the Legacy Foundation shall use any remaining assets in the Fund exclusively for educational, charitable, or other exempt purposes that:

- a. are within the scope of the educational, charitable, and other exempt purposes of the Legacy Foundation; and
- b. most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

9. NOT A SEPARATE TRUST. The Fund shall be a component part of the Legacy Foundation. All money and property in the Fund shall be held as general assets of the Legacy Foundation and not segregated as trust property of a separate trust.

10. ACCOUNTING. The receipts and disbursements of the Fund shall be accounted for separately and apart from those of other gifts to the Legacy Foundation.

11. INVESTMENT OF FUND ASSETS. The Legacy Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Legacy Foundation's general assets. **Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value; provided, however that the Legacy Foundation is not required to invest the assets in the Fund.**

12. COSTS OF THE FUND. It is understood and agreed that the Fund shall share a fair portion of the total investment and administrative costs and expenses of the Legacy Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Legacy Foundation as applicable to funds of this type, as such schedule may be amended by the Legacy Foundation from time to time. Any costs and

expenses incurred by the Legacy Foundation in accepting, transferring, or managing property donated to the Legacy Foundation for the Fund, including without limitation the Legacy Foundation's costs and expenses (including reasonable attorneys fees) of any claim or proceeding with respect to the Fund in which the Legacy Foundation is prevailing party, also shall be paid from the Fund.

[GO TO NEXT PAGE]

Execution

IN WITNESS WHEREOF, Donors and the Legacy Foundation, by a duly authorized officer, have executed this Agreement as of the day and year first above written.

DONORS:

Donor

Donor

LEGACY FOUNDATION, INC.:

By: _____

Title: _____

EXHIBIT A

LIST OF INITIAL DONATIONS TO FUND

Cash: _____

Publicly Traded Securities:

Other:

EXHIBIT B

SELECTION CRITERIA

Pursuant to the terms of the Agreement, scholarships may be awarded to students who meet the following qualifications:

[For example:

- Residency requirements
- School currently attended
- Level of study to be supported (undergraduate, graduate, etc.)
- Requirement for field or fields of study and/or career guidelines
- Need based and/or merit based requirements
- Requirement for attendance at specific institution(s) or within geographic boundary]

[Criteria chosen must be objective, non-discriminatory, and reasonably related to the purpose of the scholarship.]