

Discretionary Scholarship Fund Agreements

A Discretionary Scholarship Fund (endowment or nonpermanent) typically is established to provide educational scholarships to individuals, with no advice or recommendations from the Donor (or persons designated by the Donor). If the Donor wishes to be involved in the selection of scholarship recipients (or wishes to designate one or more persons to be involved in the selection of scholarship recipients), the Committee Advised Scholarship Fund Agreement forms should be used.



Lake County's Community Foundation

**DISCRETIONARY SCHOLARSHIP ENDOWMENT 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 a discretionary scholarship endowment fund in the Legacy Foundation; 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 a discretionary scholarship endowment fund; and

WHEREAS, the Legacy Foundation is willing and able to hold and administer such a discretionary scholarship endowment fund, which shall provide scholarships at the discretion of the Legacy Foundation pursuant to the process established by the Legacy Foundation in accordance with the terms and conditions of this Agreement.

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 a discretionary scholarship endowment 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. All scholarship determinations shall be made by a scholarship committee entirely appointed by the Legacy Foundation’s Board of Directors (and on which the Donors shall not serve).

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 pursuant to the distribution (or spending) policy of the Legacy Foundation, as such policy may be amended from time to time by the Legacy Foundation, 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). The Legacy Foundation’s distribution (or spending) policy, as applied to endowments such as the Fund, shall be designed to take into account total return concepts of investment and spending, with the goal of preserving the real spending power of endowments over time while balancing the need for consistent spending to support the educational, charitable, and similar purposes of such endowments.

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. 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.

5. 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.

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, 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.

7. 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.

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

9. 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.**

10. 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.

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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 by the Legacy Foundation 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.]