



ADVISED ENDOWMENT FUND AGREEMENT
for

_____Fund

THIS AGREEMENT is made and entered into on _____ 2003, by and between THE SAN DIEGO FOUNDATION ("SDF") and _____ ("Donor").

1. NAME OF THE FUND

Donor intends to transfer certain assets, irrevocably, to SDF upon his/her death to establish in SDF the _____ Fund (the "Fund"). SDF may receive additional irrevocable gifts of property acceptable to SDF from time to time from Donor and from any other source to be added to the Fund, all subject to the provisions hereof.

2. PURPOSE

Subject to the limitations of paragraph 4 below, the primary purpose of the Fund shall be to _____. [IF PURPOSE IS TO SUPPORT A SPECIFIC CHARITABLE ORGANIZATION—In the event that [ORG] should (i) no longer be described in Sections 170(c)(1) or (2) of the Internal Revenue Code (ii) become subject to bankruptcy proceedings under state or federal law or (iii) liquidate and dissolve or otherwise cease to exist, then the assets of the Fund shall be applied as described in paragraph 6 below.]

It is the wish of Donor that _____% of distributions from the fund be made available for unrestricted grantmaking by the Board of Governors of The San Diego Foundation.

3. INVESTMENT OF FUNDS

SDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the "prudent person" standard and 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's Code.

4. DISTRIBUTEES

Subject to paragraph 6, earnings allocated by SDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California. Distributions from the Fund shall be within the purposes and procedures of SDF as contained in its Articles of Incorporation and its Bylaws.

5. RECOMMENDATIONS FOR DISTRIBUTION

- a. [ALTERNATE ONE-Single Donor] The Donor shall be the advisor of the Fund (the “Fund Advisor”). Upon the death or incapacity of the Donor, the Board of Governors of SDF itself shall serve as the advisor of the Fund.

[ALTERNATE TWO-Advisory Committee] The Fund shall have an Advisory Committee, consisting of _____, _____, _____, _____, _____, and _____. The Fund Advisory Committee shall, from time to time, designate a Chair in writing signed by its members and delivered to SDF. The Chair shall be the only person who has the authority to communicate the desires of the Fund Advisory Committee to SDF, and shall be the “Fund Advisor.” Upon the death or incapacity of any member of the Fund Advisory Committee, the remaining member(s) shall serve as the Fund Advisory Committee. Upon the death or incapacity of the last surviving member of the Fund Advisory Committee, the Board of Governors of SDF itself shall serve as the Fund Advisory Committee.

- b. Distributions from the Fund may be made from income and so much of the net appreciation (realized and unrealized) in the fair value of the assets of the Fund over the historic dollar value (as defined herein) of the Fund as is prudent under the standard established by Section 18506 of the California Probate Code. Distributions shall be made to permissible distributees and at such times and in such amounts as may be determined by the Board of Governors of SDF. There shall be no requirement that income be distributed each year; income may be accumulated and added to principal. Income which is accumulated and added to the principal may, however, be distributed in the future as herein provided. Distributions shall be made to such distributees of the type described in paragraph 4 as may be designated by the Board of Governors of SDF. If any gifts to the Fund are received and accepted subject to a donor’s restriction on the use of income, such restrictions will be honored, subject however to the powers of modification set forth in Section 7 hereof. As used herein, “historic dollar value” means the aggregate fair value in dollars of (a) the Fund at the time it became an endowment fund, (b) each subsequent donation to the principal of the Fund at the time it is made, and (c) any accumulation made pursuant to any direction herein at the time the accumulation is added to the Fund. California Probate Code Section 18501(d.)

6. CONTINUITY OF THE FUND

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for either of the above reasons, SDF shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of SDF’s Articles of Incorporation;
and,
b. most nearly approximate, in the good faith opinion of the Board of Governors, the original purpose of the Fund.

7. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of SDF. All money and property in the Fund shall be assets of SDF, and not a separate trust, and shall be subject only to the control of SDF. Pursuant to Treasury Regulations, the Board of Governors of The San Diego Foundation has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. §1.170A-9(e)(11)(v)(B) and (E).

8. COSTS OF THE FUND

It is understood and agreed that the Fund shall share a fair portion of the total administrative costs of SDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by SDF as the fee structure applicable to Funds of this type. Any costs to SDF in accepting, transferring or managing property donated to SDF for the Fund shall also be paid from the Fund.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to SDF.

10. CHARITABLE DEDUCTIONS

It is intended by Donor and by SDF that federal gift, income and estate tax charitable deductions shall be allowed to Donor and to Donor's estate and that SDF 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 entire 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 WHEREOF, we execute this agreement on _____.

Donor: _____

Approved by the Board of Governors of The San Diego Foundation on _____.

By: _____
Chair, Board of Governors