

STATE OF SOUTH CAROLINA )

)

**SPECIAL FUND AGREEMENT**

COUNTY OF SPARTANBURG )

This Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 200\_\_,  
between **THE SPARTANBURG COUNTY FOUNDATION** (the "Foundation") and  
\_\_\_\_\_ (the "Sponsor").

**WHEREAS**, (include description of the subject of the special fund)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

**WHEREAS**, the Sponsor desires to create a special fund with the Foundation to be  
devoted primarily to the (include description of the purpose of the special fund)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

**WHEREAS**, the Foundation judges and believes that the (insert language which helps to  
make it clear that the purpose of the fund falls within the purposes of the Foundation)

\_\_\_\_\_  
\_\_\_\_\_.

**NOW, THEREFORE**, in consideration of the premises, it is mutually agreed as follows:

**1. Establishment of Fund.** Contemporaneously with the execution hereof, the  
Sponsor has transferred funds in the amount of \$\_\_\_\_\_ to the Foundation.  
Such funds and any other funds which may be transferred to the Foundation pursuant to this  
Agreement by the Sponsor or any other person, and all other undistributed income and/or  
appreciation (or depreciation) from the foregoing property shall be held by the Foundation and  
shall be known as \_\_\_\_\_

(the "Fund"). All contributions which may be made to the Fund by the Sponsor shall be

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO §§  
15-48-10, et seq., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.**

irrevocable and shall be treated as completed gifts for federal income tax purposes, and under no circumstances may any part of the Fund revert to the Sponsor or provide the Sponsor with any direct or indirect pecuniary benefit; provided, however, if the Sponsor is an exempt organization under Section 501(c)(3) of the *Internal Revenue Code of 1986*, grants may be made by the Foundation to the Sponsor from the fund. Neither the Sponsor nor any other person shall have any right or power to alter, amend, revoke or terminate this Agreement or any of the terms of this Agreement, except as may otherwise be provided in Paragraph 10 herein.

**2. Property of the Fund.** The Fund shall be the property of the Foundation held by it in its corporate capacity as a component fund of the Foundation and shall not be deemed a trust fund held by it in a trustee capacity. The Foundation shall have the ultimate authority and control over all property in the Fund, and income derived therefrom, in accordance with the Articles of Incorporation and By-Laws of the Foundation (as they may be amended from time to time), and the terms of this Agreement, applied in a manner not inconsistent with said Articles and By-laws.

**3. Designation of Purposes.** The principal and net income of the Fund shall be devoted to the (describe purpose of the Fund) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Notwithstanding any other provision contained herein, the Foundation shall at all times have the power to freely and effectively employ the assets of the Fund, and the income derived therefrom, in furtherance of its exempt purposes.

**4. Investment and Administration.** The Fund shall be held, managed, administered, applied and disbursed as a special fund under the general powers and duties of the Foundation. The Foundation shall have all powers necessary or in its sole discretion desirable to carry out the purposes of the Fund, including the power to invest and reinvest in such manner as it deems fit, without being subject to investment restrictions, statutory or judicial, which would otherwise be applicable as a fiduciary, along with the power to commingle the assets of the Fund with those of other funds for investment purposes so long as the Fund is allocated its appropriate shares of principal and income. The Foundation shall have a right to select appropriate organizations, committees or officers to administer the Fund. Without limiting the generality of

the foregoing, the Foundation may delegate investment management discretion to investment managers, cause the assets of the Fund to be placed in trusts with investment managers including banks with fiduciary powers, and cause the assets of the Fund to be invested in so-called common or collective funds of such managers.

**5. Distributions.** The Foundation shall distribute so much of the assets of the Fund as the Foundation deems appropriate, in accordance with investment and distribution policies adopted by the Foundation and amended from time to time, to such charitable organizations or for such charitable purposes as the Foundation deems appropriate. All such payments shall be made at such time, in such proportions and for such general or specific charitable purposes as the Foundation deems appropriate.

**6. The Fund shall be held as the following type of fund:**

**a) Endowed Fund \_\_\_\_\_**

Subject to Paragraph 5 hereof, the Fund shall be held as an endowment fund and invested and administered in accordance with the investment and other policies applicable to endowment funds adopted by the Foundation and amended from time to time. The distributions are not intended to be restricted to income only or otherwise limit the ability to distribute principal in accordance with the spending policy of the Foundation; see Attachment (A). The Sponsor(s) understand(s) and acknowledge(s) that under the current policies of the Foundation the amount available to grant from an endowment fund is determined annually by the Board of Trustees of the Foundation. The Foundation, after considering any recommendation which the Sponsor may wish to make, reserves the right to terminate its obligations and responsibilities under this Agreement by (a) transferring the residue of the Fund to some suitable entity which shall be organized and operated exclusively for charitable, educational, religious or scientific purposes and which shall at the time qualify as an exempt organization under Section 501(c)(3) of the *Internal Revenue Code of 1986* (or the corresponding provision of any future United States Internal Revenue law), such residue to be held by the successor charitable organization as a special endowment of the same purposes as set forth herein, or (b) holding the residue for the general purposes of the Foundation.

**b) Non-Endowed Fund \_\_\_\_\_**

Subject to Paragraph 5 hereof, the Fund shall be held as a non-endowed fund and invested and administered in accordance with the investment and other policies applicable to non-endowed funds adopted by the Foundation and amended from time to time. The parties hereto acknowledge that the intended functioning of the Fund for the purposes designated herein is not practicable unless and until the principal of the Fund is at least \$\_\_\_\_\_. Accordingly, the parties agree that there shall be no disbursements from the Fund of any kind whatsoever until the amount of the Fund is at least \$\_\_\_\_\_. In the event that the principal amount of the Fund shall not equal or exceed \$\_\_\_\_\_ at any time after \_\_\_\_\_ years from the date of this Agreement, or in the event that the principal amount of the Fund shall be less than \$\_\_\_\_\_ at any time thereafter, the Foundation, after considering any recommendation which the Sponsor may wish to make, reserves the right to terminate its obligations and responsibilities under this Agreement by (a) transferring the residue of the Fund to some suitable entity which shall be organized and operated exclusively for charitable, educational, religious or scientific purposes and which shall at the time qualify as an exempt organization under Section 501(c)(3) of the *Internal Revenue Code of 1986* (or the corresponding provision of any future United States Internal Revenue law), such residue to be held by the successor charitable organization as a special endowment of the same purposes as set forth herein, or (b) holding the residue for the general purposes of the Foundation.

**7. Awards from the Fund.** Awards from the Fund will be made by the Foundation upon recommendation of an Awards Committee of the Foundation. The Trustees of the Foundation will appoint an Awards Committee consisting of \_\_\_\_\_ members for such terms as the Trustees of the Foundation shall designate. Appointments to the Awards Committee will be made by the Trustees of the Foundation on nomination by the Sponsor, provided, however, in the event of failure of the Sponsor to submit a nomination for appointment within sixty (60) days after a vacancy occurs, then the Foundation may proceed to fill such vacancy by appointment without nomination by the Sponsor. The original members of the Awards Committee shall be the following persons: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

Notwithstanding anything in this Agreement to the contrary, all awards and benefits from the Fund shall be of such eleemosynary character and so related to the Spartanburg community as to fall within the purposes of the Foundation.

**8. Promotion of the Fund.** The Sponsor at all times will use its best efforts to promote the Fund and cooperate with the Foundation in a common effort to attain the maximum benefit from the existence and operation of the Fund.

**9. Variance.** In the event that the charitable use of the Fund as provided in Paragraph 3 hereinabove shall, in the judgment of the majority of the Board of Trustees of the Foundation, become unnecessary, undesirable, impracticable, or no longer adapted to the needs of the community, the Foundation reserves the right to terminate this Agreement by (a) transferring the residue of the Fund to some suitable entity which shall be organized and operated exclusively for charitable, educational, religious or scientific purposes and which shall at the time qualify as an exempt organization under Section 501(c)(3) of the *Internal Revenue Code of 1986* (or the corresponding provision of any future United States Internal Revenue law), such residue to be held by the successor charitable organization as a special endowment for the same purposes as set forth herein, or (b) holding the residue for the general purposes of the Foundation.

**10. Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration pursuant to the provisions of §§ 15-48-10, *et seq.*, *Code of Laws of South Carolina (1976), as amended*, or such other laws of the State of South Carolina as shall govern arbitration proceedings and be in effect at the time of such arbitration, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

**11. Modification or Amendment.** The Foundation shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that the Fund qualifies and continues to qualify as a component fund of the Foundation to be held exclusively for charitable and eleemosynary purposes, in accordance with the governing documents of the Foundation, and any such amendment shall apply retroactively to the inception of this Agreement. Such amendment shall be accomplished by means of an instrument in writing attached to the original executed copy of this Agreement, with copies to the Sponsor. The

Foundation is hereby exonerated from any and all liability in connection with any exercise of the powers of amendment herein granted, if taken in good faith reasonably believed by the Foundation to be in accordance with the provisions and intent hereof. In no event shall this Agreement be amended in such a way as to cause the Fund not to be treated as a component fund of the Foundation.

**12. Governing Law.** Nothing in this Agreement shall affect the status of the Foundation as an organization (a) described in Section 501(c)(3) of the *Internal Revenue Code of 1986*, as amended (the “Code”), and (b) which is not a private foundation as defined in Section 509(a) of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and in order to conform with the requirements of the foregoing provision of the federal tax laws and any regulations issued thereunder, and any provision held to the contrary or in violation thereof is null and void *ab initio*.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the date first above written.

**IN THE PRESENCE OF:**

**THE SPARTANBURG COUNTY FOUNDATION**

\_\_\_\_\_  
\_\_\_\_\_

**By:** \_\_\_\_\_  
**Its Chairman**

**ATTEST:**

\_\_\_\_\_  
**Its Secretary**

**(INSERT NAME OF SPONSOR)**

\_\_\_\_\_  
\_\_\_\_\_

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

**ATTACHMENT [A]**

to

*[INSERT FUND NAME]*

The Spartanburg County Foundation

Spending Policy

August 2005

The Foundation's spending policy applies to endowed funds. The spending policy defines the amount of money that can be disbursed from a fund each year for charitable purposes. A spending percentage rate of 5% will be the standard rate and shall be subject to the review and approval by the Foundation annually. The spending policy rate is based upon a "total return" approach, which anticipates that both income and capital appreciation will be withdrawn for charitable distributions. The calculation of the spending policy amount for each fund of the Foundation shall be made using the average of the previous twelve quarters of the fund's market value. The formula shall be applied to the twelve quarters ending each December 31. The spending amount is intended to be used for grant making or similar related purposes approved by the Foundation. The fund's annual contribution to the General Fund of the Foundation will not be applied to the spending amount. Any unused spending amount shall be allowed to accumulate at the end of the year and carried forward for future distribution.